



MONTGOMERY WATSON

INVOICE

Please Reference Invoice No. With Payment
Remit To: Post Office Box 51140
Los Angeles, CA 90051-5440

Los Osos County Services District
PO Box 6064
Los Osos, CA 93412

Date: 10/29/99

Invoice No: 262856

Contract No: 10834311

Attention: Ms. Rosemary Bowker
President

Client No: 217576

FOR PROFESSIONAL SERVICES RENDERED DURING PERIOD OF 08/10/99 THRU 10/29/99.

Wastewater Project Management Services
Initial Services Authorization & Compensation

Professional Classification	Name	Hours	Rate	Amount
Principal Professional	Ysusi, Mark A.	152.0	140.00	21,280.00
Senior Professional	Shuter, Kelli A.	3.5	100.00	350.00
Senior Professional	Hasan, Ali	4.0	100.00	400.00
Professional	Harrison, Robin S.	2.0	90.00	180.00
Associate Professional	Hill, Joseph R.	58.5	76.00	4,446.00
Senior Administrator	Shepherd, Nancy L.	2.5	60.00	150.00
Total Labor:				\$ 26,806.00

Other Direct Charges	Cost	Plus 15.7 %	Amount
Travel	592.55	93.03	685.58
Mileage	537.54	84.40	621.94
Associated Proj. Costs	1,613.13	253.25	1,866.38

Total ODC: \$ 3,173.90

Total This Invoice: \$ 29,979.90

RECEIVED
NOV 05 1999
BY: *[Signature]*

Contract Amount: \$ 30,000.00
Amount Previously Billed: \$.00

*OK per Paavo 11/12/99
over phone*

Equal Opportunity Employer
Serving the World's Environmental Needs

OSOS County Services District
PO Box 6064
Los Osos, CA 93412

Date: 10/29/99

Invoice No: 262856

Amount This Invoice:	\$	29,979.90
Total Amount Billed to Date:	\$	29,979.90

Please Note: This invoice is due within 30 days of the invoice date.
A charge of 18.00% will be added to past due accounts.

Visit our home page on the World Wide Web at <http://www.mw.com>

FMT: HR0001
BATCH: 548660
VERSION: Z

Attachment E

LOS OSOS COMMUNITY SERVICES DISTRICT

GENERAL MANAGER

EMPLOYMENT AGREEMENT

THIS AGREEMENT, is made and entered into by and between Los Osos Community Services District, herein referred to as DISTRICT, and BRUCE BUEL, with reference to the following recitals:

RECITALS

A. DISTRICT is a Community Services District organized and operating pursuant to 61000 et. seq., of the California Government Code.

B. DISTRICT desires to enter into an employment relationship with BRUCE BUEL as DISTRICT GENERAL MANAGER;

C. BRUCE BUEL desires to enter into an employment relationship as GENERAL MANAGER of the DISTRICT.

D. It is the purpose of this Agreement to define the employment relationship of BRUCE BUEL and the DISTRICT during the terms of this Agreement. All references to GENERAL MANAGER in this Agreement refer to BRUCE BUEL.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1. DUTIES

DISTRICT hereby agrees to employ BRUCE BUEL as GENERAL MANAGER of the DISTRICT. A general description of the duties

and responsibilities of the GENERAL MANAGER are set forth in a Board-adopted job description, attached hereto as Exhibit "A". BRUCE BUEL agrees to perform the function and duties of the position and to perform other duties specified by statute and any additional duties as may be assigned from time to time by the Board.

SECTION 2. TERMS

This Agreement shall take effect forty (40) days from the date the GENERAL MANAGER signs this Agreement, and shall remain in effect indefinitely until terminated as provided for in the following provisions:

A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of DISTRICT to terminate the services of BRUCE BUEL at any time, subject only to the provisions set forth in Section 3, Paragraph A, of this Agreement.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of BRUCE BUEL to resign at any time from his position with DISTRICT, subject only to the provisions set forth in Section 3, Paragraph B, of this Agreement.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. The GENERAL MANAGER shall serve at the will and pleasure of the DISTRICT Board of Directors, and may be terminated without cause. In the event the GENERAL MANAGER is terminated without cause within six (6) months of commencing employment with DISTRICT, the GENERAL MANAGER shall receive a lump sum cash payment (severance pay) equal to three (3) months base salary. Thereafter, the severance package will increase to six (6) months base salary, in addition to any

accumulated leave entitlement pursuant to Section 6 of this Agreement. However, in the event BRUCE BUEL is terminated for good cause, DISTRICT shall have no obligation to pay such severance pay. For the purpose of this Agreement, "good cause" shall include, but not necessarily be limited to, any of the following:

1. A material breach of the terms of this Agreement;
2. A failure to perform his duties in a professional and responsible manner consistent with generally accepted standards of the profession;
3. Conduct unbecoming the position of GENERAL MANAGER or likely to bring discredit or embarrassment to the DISTRICT;
4. Violation of the DISTRICT'S harassment policies and/or substance abuse policies;
5. Conviction of felony;
6. Incapacity due to mental or permanent physical disability rendering the GENERAL MANAGER unable to perform job duties. Termination under this provision is without prejudice to disability claims, if any, the GENERAL MANAGER may have resulting from the incapacity.

B. In the event BRUCE BUEL voluntarily resigns his position with DISTRICT, BRUCE BUEL shall give DISTRICT thirty (30) days notice in advance, unless the parties otherwise agree.

SECTION 4. COMPENSATION/ BENEFITS

4.1 Salary. DISTRICT agrees to pay GENERAL MANAGER for his services at a base salary of Sixty-five Thousand Dollars (\$65,000.00) per annum, payable in installments at the same time as other employees of DISTRICT are paid. DISTRICT agrees

to evaluate the GENERAL MANAGER'S compensation as part of the annual budget process.

4.2 Automobile. GENERAL MANAGER'S duties require that he have the use of an automobile at all times during his employment with DISTRICT. The DISTRICT, in its sole discretion, may at any time during the term of this contract:

(a) Provide the GENERAL MANAGER with an automobile;

or

(b) Reimburse the GENERAL MANAGER Two Hundred Eighty-three Dollars (\$283.00) per month for use of his personal automobile, plus \$.31 per mile for travel outside of the County of San Luis Obispo.

4.3 Health Insurance. DISTRICT agrees to provide GENERAL MANAGER with a Cafeteria Plan for health, dental and vision insurance at the rate of Four Hundred Sixty-two Dollars (\$462.00) per month).

4.4 Retirement. DISTRICT agrees to contribute One Hundred Percent (100%) of both the employer's and the employee's contribution to the PERS Retirement Program.

4.5 The GENERAL MANAGER may participate in DISTRICT'S Section 125 and Section 457 Plans, as provided to other DISTRICT employees.

4.6 GENERAL MANAGER shall be reimbursed for expenses incurred by him for packing and moving himself, his family and his personal property from his home in McKinleyville. Said reimbursement shall be made in full with a one time payment within one month of submission of his invoices, bills or receipts to the DISTRICT.

SECTION 5. PAYMENT OF ADDITIONAL EXPENSES

5.1 GENERAL MANAGER'S Expenses. DISTRICT will pay the GENERAL MANAGER'S reasonable expenses to participate in and

attend meetings where the GENERAL MANAGER'S attendance is a benefit to the DISTRICT. The payment of GENERAL MANAGER'S expenses under this paragraph is subject to Board review.

5.2 DISTRICT agrees to budget and to pay the professional dues and subscriptions of GENERAL MANAGER necessary for his continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of DISTRICT in an amount not to exceed the amount approved by the DISTRICT in its annual budget.

SECTION 6. VACATION, SICK LEAVE AND ADMINISTRATIVE LEAVE

6.1 Commencing on the 183rd day of employment, GENERAL MANAGER shall accrue, and have credited to his personal account, vacation time at the rate of ten (10) working days per annum. GENERAL MANAGER'S vacations shall not be scheduled when it would leave the DISTRICT without appropriate management.

6.2 Commencing on the 1st day of employment, GENERAL MANAGER shall accrue, and have credited to his personal account, sick leave at the rate of ten (10) working days per annum.

6.3 GENERAL MANAGER shall be entitled to five (5) days administrative leave. Administrative leave shall not be scheduled when it would leave the DISTRICT without appropriate management.

SECTION 7. VALUATIONS

7.1 The DISTRICT Board of Directors shall evaluate the GENERAL MANAGER during the months of May and June of each year.

SECTION 8. MISCELLANEOUS

8.1 GENERAL MANAGER shall comply with all local and state requirements regarding conflicts of interest and shall avoid personal involvement in a situations which are inconsistent or incompatible with a position of GENERAL MANAGER or give rise to the appearance of impropriety.

8.2 The DISTRICT may set such other terms and conditions of employment as it may determine from time to time, relating to the duties of the position of GENERAL MANAGER of the DISTRICT, providing such terms and conditions are not in conflict with the provisions of this Agreement, or any state or local law.

8.3 DISTRICT shall provide the defense of GENERAL MANAGER in any action or proceeding alleging an act or omission within the scope of employment of the GENERAL MANAGER in conformance with State law (Government Code Section 995 et.seq.).

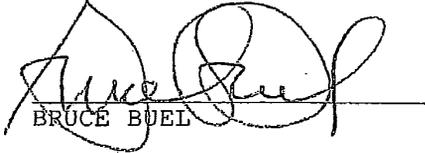
8.4 This Agreement constitutes the entire understanding of the parties hereto. This Agreement supersedes all previous contracts between the parties, and GENERAL MANAGER shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and approved by Board action taken at a regularly scheduled meeting.

8.5 If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

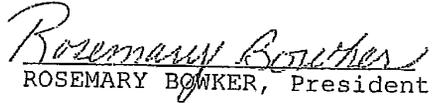
8.6 This Agreement shall be governed by the laws of the State of California. The parties agree that in the event any legal action is taken to enforce/interpret any provisions of this Agreement, said action shall be filed in the court of proper jurisdiction within the County of San Luis Obispo.

IN WITNESS WHEREOF, the parties have executed this Agreement on October 22, 1999.

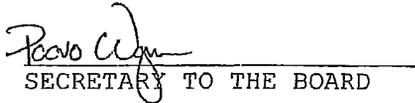
GENERAL MANAGER:


BRUCE BUEL

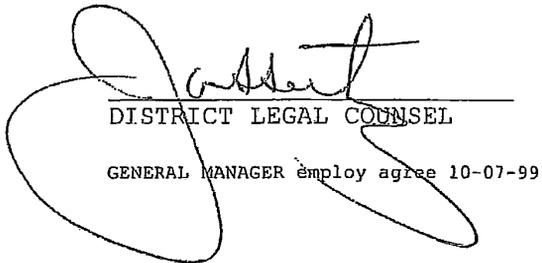
DISTRICT:


ROSEMARY BOWKER, President

WITNESS:


SECRETARY TO THE BOARD

Approved as to form:


DISTRICT LEGAL COUNSEL
GENERAL MANAGER employ agree 10-07-99

CHAPTER SEVEN - JOB DESCRIPTIONS

7000 – GENERAL MANAGER

1. DEFINITION:

The General Manager is the Executive Officer of the District and for the Board of Directors. The position has full-time management status, and is FLSA exempt. He/she administers the District and has exclusive management and control of the operations and works of the District, subject to approval of the Board of Directors, and provides day-to-day leadership for the District. He/she has general charge, responsibility and control over all property of the district. He/she shall:

- attend all meetings of the District's Board, and such other meetings as the Board specifies from time to time.
- employ such assistants and other employees as he/she deems necessary for the proper administration of the District and the proper operation of the works of the District.
- delegate authority at his/her discretion and has authority over and directs all employees, including terminating for cause.
- provide a motivating work climate for District employees.
- maintain cordial relations with all persons entitled to the services of the District.
- attempt to resolve all public and employee complaints.
- encourage citizen participation in the affairs of the District.
- seek to carry into effect the expressed policies of the Board of Directors, including planning the short, medium and long term work program for the District, facilitating constructive and harmonious Board relations.
- translate the goals and objectives of the Board to the community.
- prepare and manage the District budget, conducting studies, making oral and written presentations.
- supervise and perform a variety of duties related to the recording, classifying, examining and analyzing of District financial transactions and associated data and records.
- supervise and perform a variety of duties relating to maintenance of the District's accounting system by interpreting, supplementing and revising the system as necessary.
- supervise and perform a variety of duties relating to the resolution of customer problems, and providing information requested by customers and other members of the public having an interest in District affairs.
- serve as the District Treasurer upon appointment by the Board of Directors.
- oversee the District's investment policy.
- oversee the District's personnel policies, including vacation scheduling, discipline, termination, etc..

EXHIBIT "A" TO
GENERAL MANAGER'S EMPLOYMENT
AGREEMENT

- supervise and maintain the District's various insurance policies to ensure appropriate coverage.

2. REQUIRED QUALIFICATIONS:

Education and experience to include possession of a bachelor's degree in public administration or a related field and five (5) years' experience in an increasingly responsible public agency management position. Possession of a valid California driver's license is required.

3. DESIRABLE QUALIFICATIONS:

Education to include possession of a master's degree in public administration or a related field. Also desirable are the abilities to: 1) administer personnel policies; 2) administer the delivery of sewer and water services; 3) prepare annual budgets and long-term revenue/outlay plans efficiently; 4) implement major capital improvement projects; 5) communicate effectively, both in writing and verbally, with the constituents and other agency personnel; and 6) meet and serve the public courteously and efficiently.

EXHIBIT "A" Page 2 of 2

March 8, 2006

Mr. Steve Brown, Esq.
Senior Deputy District Attorney
San Luis Obispo County District Attorney's Office
County Government Center
1035 Palm Street, 4th Floor
San Luis Obispo, CA 93408

Re: Los Osos Community Services District Investigation

Dear Mr. Brown:

Thank you for your letter dated March 2, 2006 in which you decline to investigate allegations of falsification of public records by certain employees of the Los Osos Community Services District (the "District"). We understand that you contend that although falsification of public records by a public employee is a felony under California law, prosecution of Mr. Buel and/or Ms. Vega is barred by the statute of limitations set forth in Penal Code Section 801. You also appear to contend that because other public officials were aware that work was being done for the District by Montgomery, Watson Harza, Inc. ("MWH") without approval of a final contract, those public officials were on notice of subsequent falsification of the contract and execution by an unauthorized public employee.

I must admit that I am somewhat perplexed by your response to our inquiry. While Section 801 would impose a three year limit from commission of a criminal act, Section 801 clearly does not apply to the circumstances presented to your office for review. Those actions are subject to the provisions of Section 803 which provide as follows:

“(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to , the following offenses:

Mr. Steve Brown, Esq.
May 2, 2009
Page 2

- 1) Grand theft of any type, forgery, **falsification of public records**, or acceptance of a bribe by a public official or a public employee.”

Clearly this statute of limitation applies to violation of Penal Code Section 424 and Government Code Section 6200, both of which prohibit falsification of public records such as the backdated contract involved in the matter referred to you. As such, the statute of limitations does not commence to run until the violation of law was discovered .

Your position seems to be that because the Board of Directors, legal counsel and other concerned parties knew that MWH had commenced work prior to approval of its contract with the Board, the “victim” had knowledge of the crime and did nothing to address it within the statutory period.

To evaluate your position, it must first be determined who the victim is in this case. The case you cite to support barring any action at the current time, *People v. Lopez* (1997) 52 Cal. App. 4th 233, is instructive in this regard. As noted there,

“We hold therefore that in cases involving fiscal crimes against government, a victim for purposes of the discovery provisions of Penal Code section 803, subdivision (c), is a public employee occupying a supervisory position who has the responsibility to oversee the fiscal affairs of the governmental entity and thus has a legal duty to report a suspected crime to law enforcement authorities. n6

n6 In the unlikely event that there is no such supervisor or in cases in the which the supervisor either is the accused or aided and abetted the accused or conspired with him, **the statute starts to run upon discovery by law enforcement authorities.**” (*Id* at 247-248)

The problem in this case is that the “unlikely event” contemplated in the *Lopez* case has occurred. Mr. Buel was the highest level supervisory public employee charged with a legal duty to report a suspected crime to law enforcement authorities. He was, however, also the apparent perpetrator of the crime. It appears that you believe that the members Board of Directors in place at the time of this illegal activity were somehow supervisory public employees. Assuming that that were true, If Board members knew about the illegal activity, their vote approving the final contract affirmed and condoned it and all subsequent actions approving warrants and amendments to the contract simply continued the fraud on the public. They essentially participated in the

Mr. Steve Brown, Esq.
May 2, 2009
Page 3

criminal activity. Conversely, If they did not know that the contract would be falsified in order to pay the contractor for work performed without an approved contract and simply believed that the contract would take effect on the date it was executed by the parties, then they were not on notice of suspicious criminal activity and would have no duty to report anything.

The standard for determining whether law enforcement or the victim had notice as required to start the running of the statute of limitations is stated succinctly in *People v. Lopez, supra*, as follows:

“On that question, “[t]he crucial determination is whether law enforcement authorities or the victim had actual notice of circumstances sufficient to make them suspicious of [criminal activity] thereby leading them to make inquiries which might have revealed the [criminal activity].” (*People v. Zamora, supra*, 18 Cal. 3d at p. 571, italics omitted.) The victim has the requisite actual notice when he has knowledge of facts sufficient to make a reasonably prudent person suspicious of criminal activity. (*Id.* at p. 562.)“ (*Id.* at 248)

The fact that work was underway prior to final approval of the contract would not in itself give rise to a suspicion that a contract had been or would be illegally falsified and backdated if and when it was approved. A reasonably prudent person would have assumed that the contract, when approved, would be a legal and binding document signed at an appropriate time by authorized individuals that in some way provided compensation for all work to be performed to the satisfaction of the parties.

In fact, as demonstrated in extensive detail in various email communications between Mr. Buel and Directors Schicker and Tacker beginning in late 2004, Mr. Buel refused to provide copies of the relevant documents to either newly elected member of the Board of Directors despite repeated requests. This correspondence and the resistance of Mr. Buel to disclosure of the falsified contract did in fact put the newly elected members of the Board on notice in late 2004 that something was wrong, potentially criminally wrong, which is why through persistence and over the objections of Mr. Buel and other Board members the falsified contract was uncovered. Copies of that correspondence will be available upon request should your office choose to reconsider its position on this matter.

Finally, again citing from the case on which you predicate your determination not to pursue prosecution of this matter, the *Lopez* court expressly limited the scope of who might be considered a victim

Mr. Steve Brown, Esq.
May 2, 2009
Page 4

The court began by noting that "[n]o California reported decisions have specifically addressed whose discovery triggers the operation of the statute or the scope of the term 'victim.' " (*People v. Kronemyer, supra*, 189 Cal. App. 3d at p. 331.) Defendant in that case contended that "the statute should begin to run on discovery by anyone who, because of some special interest in the victim or the subject matter, is reasonably likely to discover and report the offense. He contends that only when no such other person discovers the crime should the statute be deferred until discovery by law enforcement." (*Id.* at p. 332.) The court rejected the argument. "We do not believe fairness and common sense require a class of 'discoverers' to include all members of the general public, neighbors, residuary beneficiaries or nieces-in-law of victims who fail to investigate or advise law enforcement officials of mere suspicions of wrongdoing." (*Id.* at p. 333.) Instead, the court concluded the **benefits of a discovery statute "should extend no further than those persons who are direct victims, persons having a legal duty to report and investigate crime, and those persons who are clothed with a status imposed by law as guardian, conservator or equivalent, in the absence of express statutory direction."** n5 (*Id.* at pp. 334-335.) (*Id.* at 248.)

Thus the fact that someone generally interested in the matter might have known about the falsification of public records but did not report it is not sufficient to start the running of the statute of limitations in this case.

So, it appears that there are two errors underlying your decision not to prosecute this matter. First, the statute of limitations set forth at Penal Code 803 applies rather than the one set forth at Penal Code Section 801. Section 803 provides that the statute of limitations only begins to run upon discovery of the crime. The crime alleged here was not discovered by any victim prior to November of 2004, assuming that the public and the newly elected members of the CSD Board might be considered "victims" under the law. Further, because there was no public employee in a supervisory position obligated to report the matter who was not involved in the alleged criminal activity, under the provisions of Section 803, the statute only began to run once your office was informed of the matter in December of 2005.

To summarize:

1. Nothing that occurred in the public forum, and specifically work performed by the contractor prior to approval of the contract, was

Mr. Steve Brown, Esq.
May 2, 2009
Page 5

sufficient to alert anyone to the possibility that a public record had been falsified.

2. There was no supervisory employee charged with a duty to oversee the finances of the District who had an obligation to report the crime who was not himself or herself involved in it.
3. The only possible victim, i.e., any non-involved supervisory public employee or the public, had no actual knowledge of the crime until after the November 2004 election when new members of the Board who had not participated in the falsification of the contract were elected and, after extensive demands, were finally given access to a copy of the falsified contract.
4. The statute of limitations in this case began to run at the earliest in November of 2004, and at the latest upon notice to your office.

Rather than declining to investigate this situation as it relates to former General Manager Bruce Buel and District Clerk Karen Vega, your office should be investigating the involvement in these illegal activities by the public officials then in charge of the Los Osos Community Services District. Given the statement you have sent us, however, it seems very unlikely that your office will in fact reconsider this matter. As a result, we will be forwarding all of these materials to the Attorney General for consideration of future action.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP

Julie Hayward Biggs

cc: Bill Lockyer, Attorney General

March 8, 2006

Hon. Bill Lockyer, Attorney General
State of California
Public Inquiry Unit
Post Office Box 944255
Sacramento, California 94244-2550

Re: Los Osos Community Services District Investigation

Dear Mr. Lockyer:

Enclosed is correspondence from our office to the District Attorney's office in San Luis Obispo regarding the decision by the District Attorney not to prosecute the falsification of a public record by the former General Manager of the Los Osos Community Services District. We believe this is a matter of significant importance to the community and would appreciate your review and consideration of bringing legal action.

The materials submitted are relatively self-evident. The issue involves a contract purportedly entered into in 1999 by the District and Montgomery Watson Harza for services related to construction of a wastewater sewer facility. The contract was not signed by the President of the Board of Directors as authorized by the Board. Instead it was signed by the then General Manager, Bruce Buel, and it was dated September 1, 1999. Mr. Buel did not start working for the District until December of 1999. The contract was also attested to by the District Clerk, Ms. Karen Vega who was also a new employee at the time.

Mr. Buel has stated in public comments to the press that he was directed to backdate the contract by the Board and that he also directed Ms. Vega to backdate the contract. As we have noted in the correspondence, a contractor may not constitutionally be paid retroactively for work done for a public entity.

In any event, we would very much appreciate your investigation of this matter. Please do not hesitate to contact me if there is any way that I may be of assistance.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP

Julie Hayward Biggs

Enclosures



President

Lisa Schicker

Vice-President

John Fouche

Director

Chuck Cesena

Steve Senet

Julie Tacker

Interim General Manager

Daniel M. Bleskey

Utilities Manager

George J. Milanés

**Administrative
Services Manager**

Patricia J. McClenahan

Fire Chief

Phill Veneris



Offices At:

2122 9th Street

Los Osos, California 93402

Mailing Address:

PO Box 6064

Los Osos, California 93412

Phone 805/528-9370

Fax 805/528-9377

www.losososcso.org

December 8, 2005

Advance Copy by FAX
Certified Mail/Return Receipt Requested

Marshall W. Davert
Vice President
MWH Americas, Inc.
3321 Power Inn Road, Suite 300
Sacramento, California 95826

Subject: NOTICE OF ILLEGAL CONTRACT AND CLAIM
FOR REIMBURSEMENT: VIOLATION OF
GOVERNMENT CODE §12650

Dear Mr. Davert:

This letter is the Los Osos Community Services District's (LOCSO) notification of Montgomery Watson Harza's (MWH) violation of Government Code 12650, the California "False Claims Act". Specifically the LOCSO has investigated the circumstances related to a defective contract between MWH and the LOCSO dated September 1, 1999 including all amendments (Contract). A copy of this contract is included as Attachment A.

The Contract was purportedly signed on September 1, 1999, by Bruce Buell for the LOCSO and attested to by Karen Vega purportedly on the same date. Carol Tate, a Vice President for MWH also purports to have executed the Contract on September 1, 1999. The Contract was amended eight times. The total amount paid on these contracts was \$1,841,987.27.

LOCSO staff has reviewed the circumstances of the award of the Contract and determined that the Contract was not executed in accordance with the LOCSO Board action of November 4, 1999, specifically:

- On November 4, 1999, the LOCSO Board of Directors approved Agenda Item No. 13, "Consideration and approval of Montgomery Watson's contract for Wastewater Project

- Management Services in an amount not to exceed \$288,145.00.” Review of the November 4, 1999, LOCSD Board meeting minutes indicate that the Board authorized, by a 3 to 2 vote, the Board President to execute an agreement with Montgomery Watson upon final preparation by legal counsel, see Attachment B and Attachment C.
- The date of execution of the Contract is September 1, 1999. It appears that the date of execution of the Contract is in conflict with the date of the Board’s November 4, 1999 authorization. There is no provision in the Board’s authorization to back-date the Contract.
- There is no record of the LOCSD Board of Director’s taking any action to ratify the Contract.
- On November 5, 1999, LOCSD received MWH’s Invoice Number 262856, dated October 29, 1999 in the amount of \$29,979.90 and the period of services for this invoice was August 10, 1999 through October 29, 1999, Attachment D.
- The period of the services and the date of the invoice precede the date of the Contract as well as the date of the LOCSD Board’s authorization to enter into the Contract.
- On October 22, 1999, the LOCSD entered into a contract that established an employment relationship with Mr. Bruce Buel as the General Manager, Attachment E. Mr. Buel’s first day of service as the General Manager was November 16, 1999.
- The only person authorized to execute the Contract was the Board President. The Contract was executed by Bruce Buel as the General Manager in violation of the LOCSD’s Board November 4, 1999, action;
- Mr. Buel was not the General Manager of the LOCSD until November 16, 1999. Since Mr. Buel was not employed by the District until November 15, 1999, he was not an agent for the District and had no authority to execute the Contract and he had no authority to backdate the Contract.

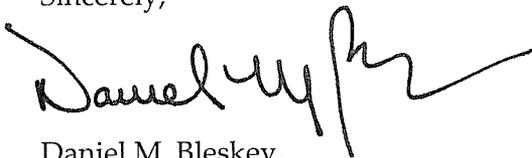
Persons dealing with California public agencies are charged with knowledge of the limitations of authority of its officers and agents; contracts made without authority are invalid and cannot be the subject of ratification or estoppel. (*City of Pasadena v. Estrin* (1931) 212 Cal. 231; *Foxen v. City of Santa Barbara* (1913) 166 Cal. 77, 82 [“all persons

contracting with a municipal corporation must at their peril inquire into the power of the corporation or its officers to make the contract."].) Failure to abide by those procedures and then seek payment from that entity constitutes a violation of the "False Claims Act," specifically Government Code Section 12650.

MWH billed the LOCSD on fifty-seven separate occasions for services falsely claimed under the Contract. Government Code Section 12650 provides the LOCSD with right for reimbursement of three times the amount of the damages plus \$10,000 for each false claim made, plus other damages including but not limited to legal fees, staff costs and other real and punitive damages as may have been incurred. Therefore, the LOCSD is seeking reimbursement from MWH in the amount of \$5,525,961.81 plus \$10,000 for every false claim submitted and attorney fees and interest for the full amounts. Therefore, the LOCSD demands that MWH immediately submit payment to the LOCSD in the amount of \$6,095,961.81 as the first installment of the amounts due the LOCSD. LOCSD staff is continuing to investigate the Legal fees, putative damages and staff time incurred as a result of MWH's violations, including any other currently unidentified amounts that the LOCSD and the citizens of the Los Osos Community Services District are rightfully due.

The LOCSD reserves the right to amend this claim pending further investigation and reserves all civil and criminal remedies available resulting from MWH's violation of the California "False Claims Act"

Sincerely,



Daniel M. Bleskey,
Interim General Manager

Attachments

Cc: LOCSD Board of Directors
John McClendon, Interim District Counsel
Julie Biggs, Special District Counsel
Steve Onstot, Special District Counsel
Alexis Strauss, Director US EPA Region IX
Inspector General of the US EPA
SLO, District Attorney
Attorney General of the State of California

Attachment A

11/15/11 Contract
Project Manager
Project Report
Buel/Pon

Los Osos Community Services District
P.O. Box 6064
Los Osos, CA 93412

AGREEMENT FOR SERVICES OF INDEPENDENT CONSULTANT

Project Description: FACILITY PLAN (the "Project")

Project Location: Los Osos Community Services District

THIS AGREEMENT (hereinafter referred to as "Agreement") is made by and between the Los Osos Community Services District, a community services district duly existing and operating pursuant to the provisions of Government Code Section 61000 et seq. (hereinafter referred to as "LOCSD") and Montgomery Watson Americas, Inc., having a principal place of business at 1340 Treat Blvd, Suite 300, Walnut Creek, CA 94596 (hereinafter referred to as "Consultant"), wherein Consultant agrees to provide the LOCSD and LOCSD agrees to accept the services specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVES. Bruce Buel, District General Manager at telephone number (805) 528-9370 is the representative of LOCSD and will administer this Agreement for and on behalf of LOCSD. Mark Ysusi, Project Manager, at telephone number (805) 528-9370 or (559) 261-9555 is the authorized representative for Consultant. Changes in designated representatives shall be made only after advance written notices to the other party.

2. NOTICES. Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first-class mail, postage prepaid, or otherwise delivered as follows:

LOCSD: Los Osos Community Services District
P.O. Box 6064
Los Osos, CA 93412
Attn: Bruce Buel, District General Manager
Facsimile: (805) 528-9377

CONSULTANT: MONTGOMERY WATSON AMERICAS, INC.
516 West Shaw Ave., Suite 200
Fresno, CA 95204
Attn: Mark Ysusi
Facsimile: (805) 528-9377 and (559) 261-9688

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. ATTACHMENTS. Attached to this Agreement are the following Exhibits. Said Exhibits shall be initiated by Consultant upon request of LOCSD or by LOCSD directly. Said Exhibits are incorporated herein by reference:

A. Description of scope of services (the Project) to be performed by Consultant, including a timeline for Project completion..

B. A listing of hourly rates of Consultant's personnel and Consultant's agents and contractors applicable to providing services under this Agreement, a definition of reimbursable costs with a maximum limit for reimbursable costs, along with a contract budget for the services described in Exhibit "A".

4. SCOPE OF SERVICES.

A. Consultant agrees to provide the services to LOCSD in accordance with Exhibit "A".

B. The Consultant shall perform its services in character, sequence and timing so that they will be coordinated with the requirements of LOCSD and other consultants of LOCSD for the Project and so that Consultant's services shall conform to LOCSD's original or revised schedule and budget for the Project. Except as authorized by LOCSD in writing, LOCSD shall be informed of all substantive communications between the Consultant and contractors or other consultants of LOCSD for the Project, and shall be copied with all written communications between Consultant and other contractors and consultants.

5. TERM. Consultant shall commence performance within 365 days of LOCSD's Notice to Proceed, and end performance upon completion, as provided in Exhibit "A", unless otherwise directed by LOCSD or unless earlier terminated.

6. COMPENSATION OF CONSULTANT.

A. The Consultant will be paid for services provided to LOCSD on a time and material basis in accordance with the schedule set forth in Exhibit "B".

B. Payment of undisputed amounts are due within 60 days of receipt of invoices. Invoices shall reflect the phase to which the request for payment is being invoiced in accordance with the "Scope of Service" (Exhibit "A") and the percentage of completion of each phase.

C. The contract budget, as stated in Exhibit "B" shall not be exceeded without the written authorization of LOCSD.

D. Payment to Consultant shall be considered as full compensation of all personnel, materials, supplies, and equipment used in carrying out the services as stated in Exhibit "A".

E. LOCSD's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of LOCSD's right to:

1. Require Consultant to correct such work or billings; or
2. Seek any other legal remedy.

7. REIMBURSABLE COSTS. Consultant shall be reimbursed at cost for reimbursable costs as provided in Exhibit "B".

8. EXTRA SERVICES. Should services be requested by Consultant which are considered to be beyond the scope of Basic Services in this Agreement by the Consultant, the Consultant shall provide a written request for consideration of Additional Services to the LOCSD Contract Administrator.. The LOCSD Contract Administrator will make due consideration of this request for Additional Services and will forward his/her recommendation to the LOCSD Board of Directors for approval. Consultant shall not provide any Additional Services until Consultant has received written approval by the LOCSD to perform same. Should the Consultant elect to proceed prior to receiving written approval by the LOCSD for Additional Services, the Consultant does so at Consultant's own risk.

9. INDEPENDENT CONTRACTOR. Consultant, its agents and contractors, are independent contractors, responsible for all methods and means used in performing the Consultant's services under this agreement, and are not employees, agents or partners of LOCSD.

10. PERFORMANCE STANDARDS.

A. Compliance with laws.

(1) Consultant shall (and shall cause its agents and contractors), at its sole cost and expense, to comply with all District, County, State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the Project and this Agreement. The judgment of any court of competent jurisdiction, or the admission of Consultant in any action or proceeding against Consultant, whether LOCSD be a party thereto or not, that Consultant has violated any such ordinance or statute, shall be conclusive of that fact as between Consultant and LOCSD. Any corrections to Consultant's instruments of professional service which

become necessary as a result of the Consultant's failure to comply with these requirements shall be made at the Consultant's expense.

(2) Should these requirements change after the date of design or drawing preparation, Consultant shall be responsible for notifying LOCSD of such change in requirements. Consultant will bring the instruments of professional service into conformance with the newly issued requirements at the written direction of LOCSD. Consultant's costs for providing services pursuant to this paragraph shall be submitted to LOCSD as Additional Services..

B. **Standard of Performance.** Consultant represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Consultant shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Consultant is engaged. All products of whatsoever nature which Consultant delivers to LOCSD pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Consultant's profession. Consultant shall correct or revise any errors or omissions at LOCSD's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Consultant without additional compensation throughout the term of this Agreement.

C. **Professional Seal.** Consultant shall have documents stamped by registered professionals, at Consultant's cost, for the disciplines covered by Consultant's instruments of professional service when required by prevailing law, usual and customary professional practice, by LOCSD, or by any governmental agency having jurisdiction over the Project.

11. TAXES. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant

12. CONFLICT OF INTEREST. Consultant covenants that Consultant presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under the Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Consultant.

13. RESPONSIBILITIES OF LOCSD. LOCSD shall provide all information reasonably necessary by Consultant in performing the services provided herein.

14. OWNERSHIP OF DOCUMENTS. All drawings, specifications, data, and other instruments of professional service prepared by Consultant during the performance of this Agreement shall become the property of LOCSD. However, Consultant shall not be

liable for LOCSD's use of documents and instruments of professional service if used for other than the Project or scope of services contemplated by this Agreement.

15. RECORDS, AUDIT AND REVIEW. Consultant shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. LOCSD shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice.

16. INDEMNIFICATION.

A. Consultant shall defend, indemnify and save harmless LOCSD, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the negligent performance or attempted performance of this Agreement or occasioned by the negligent performance or attempted performance of the other independent contractors and consultants directly responsible to Consultant; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of LOCSD.

B. Neither termination of this Agreement or completion of the Project under this Agreement shall release Consultant from its obligations referenced in subsections A, above, as to any claims, so long as the event upon which such claims is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by Consultant, its employees, agents or consultants, or the employee, agent or consultant of any one of them.

C. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve Consultant from liability referenced in subsection A, above. The obligations of this article shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

17. INSURANCE.

A. Consultant shall procure and maintain, in insurance companies authorized to do business in the State of California and assigned an A.M. Best's rating of no less than A-(IX), the following insurance coverage, written on the ISO form shown below (or its equivalent) at the limits of liability specified for each:

Commercial General Liability Insurance	\$ 1 Million per occurrence
(ISO Form CG 0001 10/93)	\$ 2 Million in the aggregate

Commercial Automobile Liability Insurance (ISO Form CA 0001 6/92 or 12/93)	\$ 1 Million per accident
Workers' Compensation Insurance	Statutory
Employer's Liability Insurance	\$ 1 Million policy limit
Professional Liability Insurance	\$ 1 Million per claim \$ 1 Million in the aggregate

B. The Commercial General and Commercial Automobile liability policies shall be endorsed to include the following:

(1) LOCSD, its officers, directors, employees and agents shall be named as Additional Insureds under ISO Form CG 2010 11/85 or its equivalent; and

(2) the coverage afforded LOCSD shall be primary and non-contributing with any other insurance maintained by LOCSD.

(3) If not covered separately under a business automobile liability policy, the general liability policy shall also be endorsed to include non-owned and hired automobile liability.

C. Prior to commencing work under this Agreement, Consultant shall provide LOCSD with Certificates of Insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements. Certificates of Insurance for automobile liability, workers' compensation/ employer's liability, and professional liability insurance shall specify that the insurer shall give LOCSD an unqualified thirty (30) days advance written notice by the insurer prior to any cancellation of the policy.

D. All insurance coverage required hereunder shall be kept in full force and effect for the term of this Agreement. Professional liability insurance shall be maintained for an additional, uninterrupted period of three (3) years after termination of this agreement, provided such insurance is commercially available at rates reasonably comparable to those currently in effect. Certificates of Insurance evidencing renewal of the required coverage shall be provided within ten (10) days of the expiration of any policy at any time during the period such policy is required to be maintained by Consultant hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.

18. PERSONNEL. The Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by the Consultant or under

Consultant's supervision, and all personnel engaged in the work shall be qualified to perform such services.

19. NONEXCLUSIVE AGREEMENT. Consultant understands that this is not an exclusive Agreement and that LOCSD shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Consultant as the LOCSD desires.

20. ASSIGNMENT. Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of LOCSD and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

21. TEMPORARY SUSPENSION. The LOCSD's Contract Administrator shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as he/she deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for services performed through the date of temporary suspension. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant's compensation shall be subject to renegotiation.

22. TERMINATION.

A. Right to terminate. LOCSD retains the right to terminate this Agreement for any reason by notifying Consultant in writing thirty (30) days prior to termination. Upon receipt of such notice, Consultant shall promptly cease work and notify LOCSD as to the status of its performance. LOCSD shall pay Consultant for its reasonable costs and expenses through the date of termination. However, if this Agreement is terminated for fault of Consultant, then LOCSD shall be obligated to compensate Consultant only for that portion of Consultant services which are of benefit to LOCSD, up to and including the day Consultant receives notice of termination from LOCSD.

B. Return of materials. Upon such termination, Consultant shall immediately turn over to the District copies of studies, drawings, mylars, computations, computer models and other instruments of professional services, whether or not completed, prepared by Consultant, or given to Consultant in connection with this Agreement. Consultant, however, shall not be liable for LOCSD's use of incomplete materials or for LOCSD's use of complete documents if used for other than the project or scope of services contemplated by this Agreement.

C. Should LOCSD fail to pay Consultant undisputed payments set forth in Section 6, above, Consultant may, at Consultant's options, suspend its services or terminate this agreement if such failure is not remedied by LOCSD within thirty (30) days of written notice to LOCSD of such late payment.

23. DISPUTE RESOLUTION. The following procedures apply only to disputes where the amount in controversy is less than \$50,000.00.

A. LOCSO and Consultant agree that disputes between them arising out of or relating to this Agreement where the amount in controversy is less than \$50,000.00 shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise. If the dispute is not settled by mediation, then the parties agree to submit the dispute to binding arbitration as provided in subsection B, below.

B. Either party may demand arbitration by filing a written demand with the other party within thirty (30) days from the date of final mediation, in accordance with the prevailing provisions of the California Arbitration Act at the time of written demand. The arbitration procedures are as follows:

(1) The parties may agree on one arbitrator. If they cannot agree on one arbitrator, there shall be three: one named in writing by each of the parties within five days after demand for arbitration is given, and a third chosen by the two appointed. Should either party refuse or neglect to join in the appointment of the arbitrator(s) or to furnish the arbitrator(s) with any papers or information demanded, the arbitrator(s) may proceed ex parte.

(2) A hearing on the matter to be arbitrated shall take place before the arbitrator(s) within the County of San Luis Obispo, state of California, at the time and place selected by the arbitrator(s). The arbitrator(s) shall select the time and place promptly and shall give each party written notice of the time and place at least sixty (60) days before the date selected. The procedures of the California Arbitration Act are incorporated herein by reference.

(3) If there is only one arbitrator, his or her decision shall be binding and conclusive on the parties, and if there are three arbitrators, the decision of the two shall be binding and conclusive. The submission of a dispute to the arbitrator(s) and the rendering of a decision by the arbitrator(s) shall be binding on the parties. A judgment confirming the award may be given by any Superior Court having jurisdiction, or that Court may vacate, modify, or correct the award in accordance with the prevailing provision of the California Arbitration Act.

(4) If three arbitrators are selected, but no two of the three are able to reach an agreement regarding the determination of the dispute, then the matter shall be decided by three new arbitrators who shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is agreed on by two of the three arbitrators selected.

(5) The costs of the arbitration shall be borne by the losing party or shall be borne in such proportions as the arbitrator(s) determine(s).

24. LOCSD NOT OBLIGATED TO THIRD PARTIES. LOCSD shall not be obligated or liable for payment hereunder to any party other than the Consultant.

25. NON-DISCLOSURE AGREEMENT. Unless waived in writing by District, prior to commencing work, Consultant shall enter into a non-disclosure agreement with Oswald Engineering regarding proprietary technology of Oswald Engineering.

26. COSTS AND ATTORNEY'S FEES. The prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

27. SECTION HEADINGS. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

28. SEVERABILITY. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

29. REMEDIES NOT EXCLUSIVE. Except as provided in Sections 22 and 23, no remedy herein conferred upon or reserved to LOCSD is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

30. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement and each covenant and term is a condition herein.

31. NO WAIVER OF DEFAULT. No delay or omission of LOCSD to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to LOCSD shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of LOCSD.

32. ENTIRE AGREEMENT AND AMENDMENT. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended

or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

33. SUCCESSORS AND ASSIGNS. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

34. CALIFORNIA LAW. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

35. EXECUTION OF COUNTERPARTS. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

36. AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Consultant is obligated, which breach would have a material effect hereon.

37. PRECEDENCE. In the event of conflict contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

38. FORCE MAJEURE. Neither party shall hold the other responsible for damages or delays in performance caused by force majeure (acts of nature) or other events beyond the reasonable control of either party.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by the LOCSD.

CONSULTANT

By: Carol H. Tate

Name: Carol H. Tate

Title: Vice President

Date: 9/1/99

LOS OSOS COMMUNITY SERVICES DISTRICT

[Signature]

General Manager

Date: 9/1/99

ATTEST:

[Signature]

Date: 9/1/99

form consultant agree 7-30-99
File 57

EXHIBIT A

SCOPE OF WORK

Los Osos Community Services District Wastewater Project Management

Introduction

The Los Osos Community Services District (LOCSD) is embarking upon a major capital project to provide wastewater treatment and disposal facilities for the community. This project will be consistent with the vision established in the Comprehensive Resource Management Plan prepared by The Solutions Group.

To assist in delivering the project LOCSD has retained Montgomery Watson (MW) to be the Wastewater Project Manager (WPM). The key functions of the WPM will be to provide leadership and to coordinate the activities of the various project participants including the LOCSD, design consultant, environmental, financial and other consultants and regulatory and funding agencies. The goal of this coordination is to aid the LOCSD in ensuring that the project proceeds on schedule and budget and that effective reporting and communication are maintained among all project participants through project completion.

Mark Ysusi will serve as MW's WPM. The WPM will serve as the project focal point and will be the LOCSD's agent during the planning and design phases of the project. He will also coordinate and determine with the LOCSD the need for MW's support staff as required for project assignments.

LOCSD has retained the firm of Oswald Engineering, Inc. (Design Engineer) to provide design-engineering services for the project. The initial design engineering services include preparation of a Facilities Plan to be submitted to the State Regional Water Quality Control Board in January 2000. It is understood and agreed that the Design Engineer will be solely responsible for the completeness and accuracy of its own activities and work products including reports, technical memoranda, facilities plans, preliminary designs, designs, estimates, schedules and other items. Similarly, the LOCSD's other consultants shall be responsible for the completeness and accuracy of their own work products. Project communication and management direction (chain of command) is generally shown on Attachment "A" – Los Osos Community Services District, Chain of Command, Management Direction.

The WPM's time commitment to the Los Osos wastewater project and MW's commitment for the WPM to be in Los Osos is generally detailed in Attachment "B" – Los Osos Wastewater Project, Project Management Commitment.

MW will perform the following project management services.

Task 1 – Administration

Task 1.1 - Project Management

Task includes work related to the management, administration and coordination of activities for the project management contract.

- Prepare Project Management Plan including organization, schedule, communications, reporting, documentation and project procedures.
- Prepare Work Plans for each work order as it is authorized, including work tasks, labor required, individuals responsible for each task and the budget by task.
- Track and document work progress and budget expenditures for MW and its subconsultants efforts.
- Track and document work progress and budget expenditures for LOCSD in-house and LOCSD consultants efforts.
- Administer the contract by providing assistance with monthly status reports, invoices, and managing LOCSD consultants and MW subconsultants.
- Attend and provide minutes for regular project management meetings with the LOCSD related to management of this contract.
- Prepare cost proposals for change orders and amendments to this contract.

Task 1.2- Monthly Status Report

Using the information developed under Task 1.1 as well as supplemental information, MW will prepare a detailed Monthly Status Report for the LOCSD. Master schedule and budget status will be reported. The report will include progress and budget status information for the WPM, MW subconsultants and each LOCSD consultant. Key Project Journal information including action items completed will also be provided. Problem areas and suggested solutions will be included. Key upcoming activities and milestones will be identified. Agency contacts and status will be summarized. An executive summary of each Monthly Status Report will be provided on the Project Journal.

Task 1.3 - Program Assistance Services

As requested, assist LOCSD staff in management of contracts and project issues. This would include the WPM attending project coordination meetings, preparation of analyses of technical issues, assistance in developing construction contract packages, preparation of a construction management plan, and related services. This assistance will also include development of a master project schedule and budget. Assist the LOCSD in reviewing LOCSD consultants scopes of work and budgets. Assist the LOCSD in assessing the quality of progress and completed work products. The consultant will also prepare level of effort estimates for engineering change orders and contracts for work to be performed under LOCSD consultant contracts, as necessary. MW will assist LOCSD staff as requested during the preparation of construction contract documents and the bidding process.

Task 1.4 – Permit and Easement Acquisition Support and Agency Coordination

Our team will coordinate work performed by the environmental, permitting and easement consultants. We will review the documents and assist in gathering drawings as needed and provide input based on experience to assist in expediting permits and easements. Maintain regular liaison with all affected regulatory and funding agencies including SWRCB, RWQCB, Department of Fish and Game and DOHS. Prepare a project binder containing all permitting and approval documents.

Task 1.5 – Inter/Intranet Site (Project Journal)

Establish and maintain an inter/intranet Project Journal that can be accessed by LOCSD and other project participants. The Journal will include e-mail, general project information, project directory, project calendar, meeting minutes, status reports, technical issue discussions and related materials. As part of

community outreach, this site may also be expanded to provide public access to general project information.

Task 1.6 – Master Filing System/Document Control

Prepare a master filing system to organize all project documents to and from the LOCSD. MW will review a selection of commercial document control products and recommend a document control system to provide document retention and tracking for appropriate documents during the design period. MW can also provide it's own Access-based document control system.

Task 1.7 – Technical Focus Workshops/Liaison

Working in close conjunction with LOCSD staff and the design team, involve MW's and subconsultant resources with specific experience in needed areas in focused workshops. Suggested subject areas are listed below. These areas can be modified during the initial project meetings.

- Design Criteria
- Effluent Disposal/Groundwater Quality
- Permits and Easements
- Project Financing
- Cost Estimating
- Scheduling and Construction Packaging
- Constructability/Biddability
- Community Outreach Strategy

Brief meeting minutes and/or technical memoranda will be prepared.

Maintain regular contact and dialog with the project design team so that appropriate questions are asked and issues raised in a timely manner in order to maintain progress and the project schedule.

Task 1.8-Master Consultants Budget, Schedule and Deliverables

Prepare a master budget and schedule showing all LOCSD consultant services including those of the WPM. This will facilitate proper consultant services tracking and coordination. The schedule will also show all major deliverables to be provided by each consultant. Identify all deliverables required from each consultant. Consultants invoices/expenditures will be tracked under Task 1.1 and reported under Task 1.2.

Task 1.9- Action Items Calendar

Prepare an action items calendar for LOCSD and consultants efforts. This will be based upon the master schedule generated under Task 1.8 and will be included in the Project Journal so that all parties will be able to assess the progress of each participant and tasks that need to be completed prior to the next milestone.

Task 1.10- Assessment District Engineering Coordination and Funding Considerations

Maintain regular contact and coordinate with the project Assessment District Engineering consultant. Assist the LOCSD and Assessment District Engineer in conducting public meetings required for the assessment district process. Assist the LOCSD in assessing the adequacy of overall project funding, coordination with State Revolving Fund loan requirements and other associated considerations. Assist the LOCSD in assessing the viability of alternative funding sources. Assist the LOCSD in developing project cash flow requirements consultant services and construction.

Task 2 – Review Existing Information

Montgomery Watson will establish a project library so that project team members can become familiar with existing project planning and environmental documents, regulatory and permitting agency requirements and other pertinent existing information. The library will incorporate existing documents compiled by the LOCSD.

Task 3- Project Facilities Plan and Environmental Documentation Coordination

Task 3.1- Coordinate Draft Facilities Plan and Environmental Document Preparation

MW will meet with the project design consultant to assist in developing a Facilities Plan table of contents acceptable to the LOCSD, the SWRCB and the RWQCB. MW will assist the LOCSD in reviewing the draft Facilities Plan. MW will also meet with the project environmental consultant to assist in developing a table of contents for necessary environmental documentation acceptable to regulatory and permitting agencies and will assist in reviewing the draft document. MW will track the progress of each effort to monitor compliance with the master schedule milestones. MW will assist the LOCSD and design and environmental consultants in responding to SWRCB and RWQCB review comments. Following draft Plan acceptance, MW will assist the LOCSD and design consultant in developing additional design consultant scope necessary to complete the facilities planning predesign process.

Task 3.2- Coordinate Final Facilities Plan and Environmental Documentation Preparation

MW will track the progress of the final Facilities Plan and final environmental documentation preparation to monitor compliance with the master schedule milestones. MW will monitor Facilities Plan project scope changes and environmental mitigation requirements to assess impacts upon the project estimated construction cost. MW will assist the LOCSD in reviewing the final Facilities Plan and the final environmental documentation prior to their submittal to the SWRCB and the RWQCB.

Task 4-Assess Design-Build Approach (Optional Service)

At the LOCSD's request, MW would assess the appropriateness of employing the design-build delivery system for one or more project elements. Compatibility with project funding and LOCSD institutional requirements would also be assessed.

Task 5 --Design Quality Monitoring

Task 5.1 – Technical Reviews

As appropriate, perform technical reviews of design phase work completed by the design consultant. The intent of these reviews is not to duplicate the design consultant's own QA/QC reviews, but to supplement reviews by LOCSD staff to address project-wide issues, interfaces between construction contracts, consistency (e.g., specifications, standard details), and related issues such as system hydraulics, construction contract packaging, etc. Reviews will consider overall consistency of the documents with particular consideration to minimizing exposure to potential construction claims. Technical reviews will be conducted at the preliminary design (Facilities Plan preparation), mid-point design and 90 percent design completion steps for each contract. Review comments will be documented along with agreed upon resolution and circulated to the design teams and LOCSD staff. An operability review would also be completed in conjunction with the LOCSD's Utilities Manager.

Task 5.2 – Value Engineering Services/Constructability Review

Under this task, MW will plan, organize, facilitate, and document a value engineering/constructability review workshop focusing on the preliminary design for each contract. These workshops will address the preliminary design work. At the 90 percent level of design, the consultant will plan, organize, facilitate and document a constructability review.

Task 6 – Construction Cost Estimates and Schedules

Task 6.1 – Design and Construction Schedule

Coordinate with the design team and LOCSD staff to create a comprehensive design schedule. The design team is responsible for its own schedule commitments within the established project milestones. This schedule will be used to coordinate information and permitting/approvals needs and identify interdependencies between project elements. Our team will manage the schedule to minimize schedule impacts due to informational needs.

Prepare a comprehensive construction schedule at the preliminary, midpoint, and 90 percent levels of design. Scheduling will be performed with Primavera Project Planner for Windows.

Task 6.2 – Construction Cost Estimate

Prepare a comprehensive construction cost estimate at the preliminary, midpoint, and 90 percent levels of design. Unit prices, estimating methods and related information will be provided. Cost estimates will conform to a standardized work breakdown structure/cost code to be determined. Cost estimates at each milestone will be prepared in a format that facilitates comparison between the current estimate and all previous estimates, so that major differences between the estimates can be identified. Prepare an engineer's estimate for each contract package, based on the 90 percent design estimate with any final review comments and market adjustments, prior to advertisement for bids.

To facilitate the tracking of changes between estimates, the cost estimator will perform estimates of the work, including possible design alternatives, and work with the design consultants to identify likely cost impacts from each design change. Major changes beyond a cost or schedule impact threshold (to be determined) will be documented and presented to the LOCSD and design consultants. The LOCSD will make the decision whether or not to approve such changes and "trend" them into the baseline estimate as part of the ongoing design.

Task 7 – Bid Period Assistance (Optional Service)

Provide assistance during bid period including coordinating advertisement, conducting prebid conferences, fielding bidders telephone calls, soliciting input from the design engineer, coordinating responses and coordinating preparation of addenda to the Contract Documents. Such assistance will be provided for each bid package.

Assist the LOCSD in determining the apparent low bidder(s) and in preparing the package(s) for submittal to the SWRCB. Assist the LOCSD in receiving SWRCB approval to award (ATA) to enable LOCSD execution of each construction contract.

Task 8- Construction Management Services (Optional Service)

At the LOCSD's request, MW will submit a scope of work and budget estimate to perform construction management services. These services would consist of construction contract administration and inspection and materials testing.

Task 9 – O&M Manual Quality Assurance (Optional Service)

Provide quality assurance for operations and maintenance (O&M) manuals prepared by the design team for the new facilities. Check the manuals for conformance with the project documents and with any agreed upon O&M procedures from project workshops. Also check for compliance with LOCSD

standards and NPDES permit requirements. Coordinate with LOCSD's Utilities Manager. Upon the LOCSD's request, as an optional service MW could also prepare the O&M manual.

Task 10 –Record Drawings Quality Assurance (Optional Service)

At the completion of construction, provide quality assurance for the preparation of Record Drawings. Actual Record Drawings preparation will be by the design team. This will include all changes to the contract documents resulting from addendum items, change orders and other changes made during construction.

Task 11 – Community Relations Program (Optional Service)

Upon the LOCSD's request, using a public relations/information firm or individual acceptable to the LOCSD, MW would prepare a community relations/information plan. The community outreach staff will coordinate, prepare and distribute materials to keep the public informed about the project and to maintain community support. MW would also assist the LOCSD in preparing for and conducting public meetings.

Task 12- Additional Services (Optional Service)

Upon the LOCSD's request MW would meet with the LOCSD to identify additional services to address project needs. MW would then develop scopes of work and budgets necessary to provide those services. These would be added to the existing agreement by contract amendment.

END OF EXHIBIT A

EXHIBIT B

COMPENSATION FOR SERVICES

Los Osos Community Services District Wastewater Project Management

This Exhibit B is attached to, and made a part of and incorporated by reference with, the Agreement for Services of Independent Consultant (with its exhibits and attachments, all as defined therein, the "Agreement"), made between the Los Osos Community Services District (LOCSD) and Montgomery Watson America's, Inc. (Consultant), providing wastewater project management services.

1. Amount of Compensation for Services.

1.1. Consultant shall be paid for its services rendered based upon:

- 1.1.1. Billing Rates of personnel employed directly on the project shall be calculated on the basis of Actual salary (raw salary excluding all other salary related and/or fringe benefit costs of any type, nature or description) times a multiplier of 2.97 (The multiplier includes 130.8% overhead for costs such as indirect labor, employee fringe benefits, occupancy, non-project related travel, and training; 15.7% general and administrative expenses such as corporate management, professional liability insurance, legal, marketing, bad debt, and interest charges; and 10% profit. The multiplier also includes interest on invested capital, readiness to serve, and all other contingencies and other considerations for the work of this agreement).
- 1.1.2. Consultant shall also receive an allowance for "Associated Project Costs" (APC) of \$7.25 times each direct labor hour of Consultant's professional staff, times 115.7% (= \$8.39/direct labor hour).
- 1.1.3. Consultant shall be reimbursed for subconsultant costs times 115.7%. Subconsultant cost is the reimbursable cost invoiced to Consultant at a multiplier basis or an hourly rate dependent on the subconsultant's established billing structure. Subconsultants' billing rates or multiplier must be approved writing in, in advance by both Consultant and LOCSD.
- 1.1.4. Consultant shall be reimbursed for Reimbursable Expenses at cost times 115.7%.
- 1.1.5. Consultant shall be reimbursed for eligible mileage at a rate of \$0.32/mile times 115.7% (= \$0.37/mile).

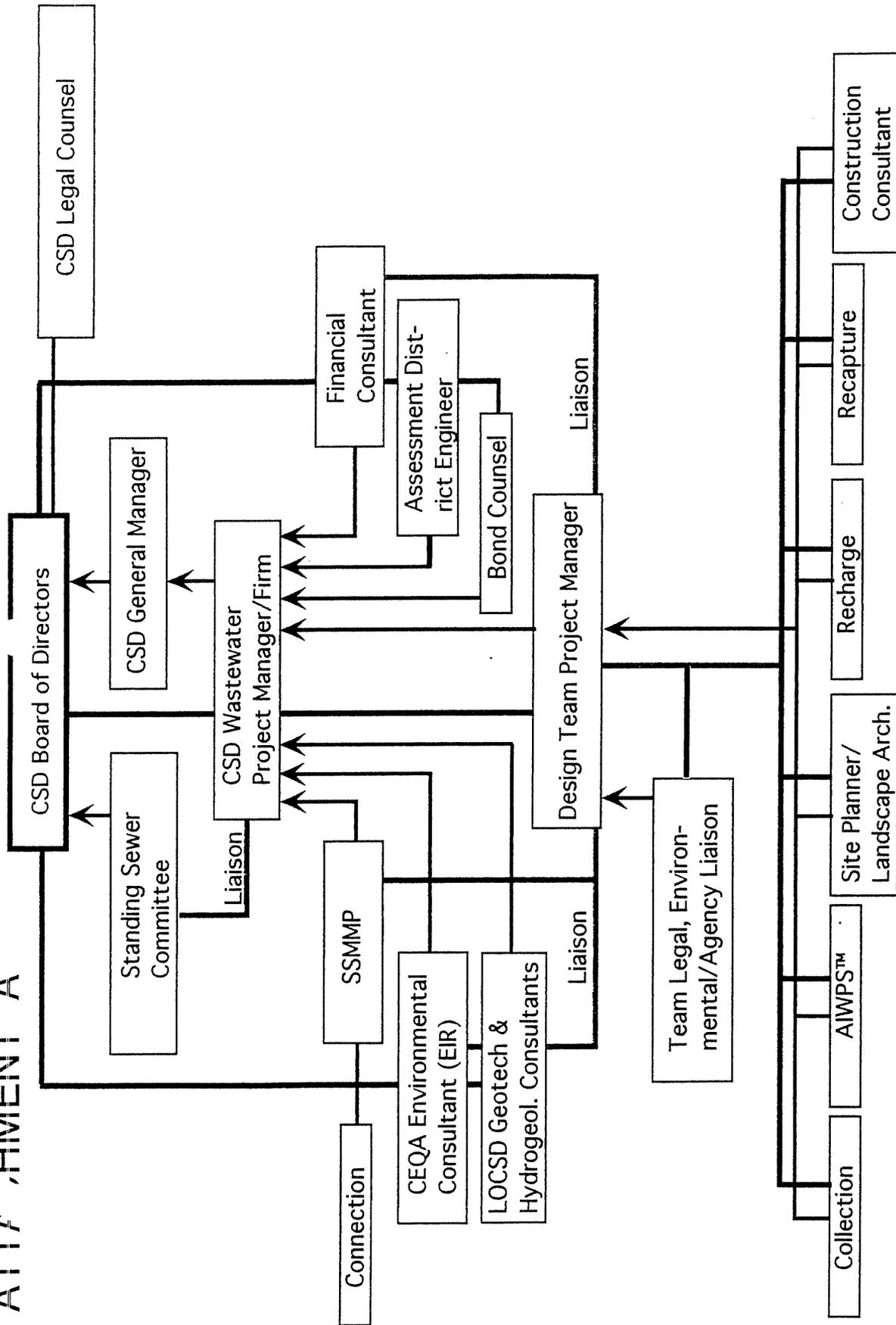
2. Contract Budget.

- 2.1. The contract budget for the services, described in the agreement, is hereby established at **\$288,145**. The contract budget includes all costs, including Reimbursable Expenses (as described below) and shall not be exceeded without the written authorization of LOCSD.

3. Methods of Payment for Services and Expenses of Consultant.
 - 3.1. For Basic Services on the project, Consultant shall submit monthly invoices with reasonable detail of the time incurred by personnel assigned to the project, along with a schedule of Reimbursable Expenses incurred, supported by invoices and appropriate backup documentation in a form acceptable to the LOCSD. Each invoice shall report on Consultant's total billings and Reimbursable Expenses to date.
 - 3.2. For Extra Services as defined below, the LOCSD shall pay Consultant as follows:
 - 3.2.1. General. For Extra Services of Consultant's professional staff engaged directly on the project, on the basis of a lump sum negotiated between the parties, or at LOCSD's option, at Consultant's billing rates.
 - 3.2.2. Subconsultants and Subcontractors. For Extra Services of subconsultants or subcontractors employed by Consultant to render Extra Services, the amount billed to Consultant therefore times 115.7%.
 - 3.2.3. For Extra Services on an hourly basis, Consultant agrees that all subconsultant and subcontractor billing will be limited to a not-to-exceed amount upon prior written approval of the LOCSD.
 - 3.2.4. For Reimbursable Expenses, LOCSD shall pay Consultant the actual cost of all Reimbursable Expenses times 115.7%.
4. Definitions.
 - 4.1. "Extra Services" means services beyond the scope of services defined in this agreement.
 - 4.2. The Billing Rates used as a basis for payment apply to all of Consultant's professional personnel (including with limitation project managers, estimators, schedulers, support staff, and field personnel) engaged directly on the project. Billing Rates may increase up to 4% per year maximum consistent with Consultant's established salary review schedule, subject to written approval by the LOCSD in advance of any adjusted billing rate adjustment.
 - 4.3. "Reimbursable Expenses" means actual expenses incurred by Consultant for only the following costs: 1) reasonable and necessary project-related travel expenses, while travelling on behalf of the Project beyond a 30-mile radius of Los Osos, for trips authorized in advance by LOCSD; 2) mileage costs for automobile use by Mr. Ysusi between Fresno and Los Osos ("commute"); 3) other Reimbursable Expenses not included in "APC" which are authorized in advance in writing by LOCSD.
 - 4.4. "Associated Project Costs" or "APC" include telecommunications, postage/express mail, convenience copying (in-house printing, printing for communication between LOCSD and between LOCSD consultants, and printing other than for bid packages or major printing efforts), Consultant's network, standard personal computers and software, faxes and general office supplies.

END OF EXHIBIT B

ATTACHMENT "A"



Los Osos Community Services District
 Chain of Command
 Management Direction
 Recommendations by Standing Comm.
 3/23/99 Rev: 10/28/99

- = Management Path (Chain of Command)
- = Contractual Path for CSD commitments
- = Contractual Path for Design Team
- = Liaison

ATTACHMENT B

PROJECT MANAGEMENT COMMITMENT

Los Osos Community Services District Wastewater Project Management

The following statements describe Montgomery Watson's project management time commitment to the Los Osos Wastewater Project. Specific items, relating to working conditions and eligible reimbursable costs, are also described.

1. The weekly workload is anticipated to vary between 3 and 5 days per week, depending on project requirements at the time. The project budget has been developed assuming that the Wastewater Project Manager (WPM) will, on average, devote 3-1/2 days per week working on the Los Osos Wastewater Project.
2. In general, the WPM will be in Los Osos two or more days per week. Monday and Tuesday are the regular days for the WPM to be in residence in Los Osos.
3. The WPM will customarily attend the meetings of the LOCSD Wastewater Committee and report project status and provide project information to committee members. The LOCSD Wastewater Committee currently convenes the second and fourth Tuesday of each month.
4. The WPM's daily location will be posted on the project management journal to facilitate contacting him when he is not working in the LOCSD office. The WPM's anticipated working locations will be posted one week in advance. The LOCSD office staff will be notified of the communication location and phone number of the WPM when not in residence in Los Osos. WPM will provide for project and public contact access at his location(s) during the work week.
5. The LOCSD will provide office space in the CSD offices at 2122 9th Street, Los Osos, California. The LOCSD will also provide a phone for project-related business. Montgomery Watson will pay long distance phone costs, not related to the Los Osos Wastewater Project.
6. The WPM's time commuting between Montgomery Watson's Fresno office and Los Osos is not chargeable. Travel time required for other project-related business is chargeable.
7. Mileage reimbursement between Fresno and Los Osos will be limited to one round trip per week, or more if pre-approved by LOCSD's General Manager.
8. Mileage costs within a 30-mile radius of LOCSD offices will not be charged.

END OF ATTACHMENT B



August 14, 2006

Advanced Copy By Fax
Registered Mail/Return Receipt Requested

President

Lisa Schicker

Vice-President

John Fouche

Director

Chuck Cesena
Steve Senet
Julie Tacker

Interim General Manager

Daniel M. Bleskey

Utilities Manager

George J. Milanés

Fire Chief

Matt Jenkins

Marshall W. Davert
Montgomery Watson Harza, Americas, Inc.
3321 Power Inn Road, Suite 300
Sacramento, CA 95826

**SUBJECT: TERMINATION OF CONTRACT FOR DEFAULT:
WASTEWATER PROJECT MANAGEMENT AND
PREPARATION OF PROJECT REPORT (AS
AMENDED)**

Dear Mr. Davert:

This letter is official notification that the subject Contract, as amended, has been terminated effective immediately.

Montgomery Watson Harza (MWH) has knowingly violated numerous contract provisions and failed to correct these deficiencies in accordance with the contract agreement.

The Los Osos Community Services District (District), during the course of the analysis of MWH's performance related to the subject contract, has determined that MWH is in material breach of certain contract terms and has failed to perform in accordance with the contract provisions as promised by MWH. The termination for default is based on the following:



Violation of Section 4 entitled "Scope of Services", in that MWH:

- Has had numerous substantive contacts and communications with contractors, regulators, governmental agencies, litigants and other third parties and has not copied the District, despite the District's request for such copies, minutes and transcripts of such contacts and communications.

Violation of Section 6 entitles "Compensation of Consultant", in that MWH and individuals employed by MWH:

- Have submitted invoices not in accordance with the Agreement;
- Have submitted invoices and has been compensated multiple times for the same work;
- Has knowingly submitted multiple false claims in violation of Government Code (GC) §12650.

Offices At:

2122 9th Street
Los Osos, California 93402

Mailing Address:

P.O. Box 6064
Los Osos, California 93412
Phone 805/528-9370
Fax 805/528-9377
www.losososcsd.org

Violation of Section 10 entitled “Performance Standards”, in that MWH:

- Calculated an effluent application rate for the Broderson Leach Fields was not in compliance with normally accepted standards and guidelines as established by the United States Environmental Protection Agency (USEPA) and the State Water Resources Control Board (SWRCB). On July 7, 2006, the District requested that MWH explain the discrepancy and justify the application rates used in the Project Report and that served as the basis of design. On July 15, 2006, MWH refused to provide this information (Section 10(A) and (B));
- Has knowingly submitted multiple false claims in violation of GC §12650 (Section 10(A));
- Has knowledge of said false claims and not disclosed said false claims in violation of GC §12651(Section 10(A));
- Submitted inaccurate, false and misleading information to the District, local and state agencies in support of, but not necessarily limited to, regulatory requirements, permits, financing and licenses (Section 10(A) and (B));
- Failed to have documents stamped by a registered professional engineer that was in responsible charge of the work at the time of submission of critical reports in violation of the Business and Professions Code (BPC) § 6735 (Section 10(A), (B) and (C));
- Failed to provide a project manager for the period of March 3, 2000 through January 30, 2002 that was a registered professional engineer in responsible charge of the work in violation of BPC §6700 through §6706.3 and BPC §6785 through §6788 and the rules of professional conduct as established by the BPC and administered by the California Department of Consumer Affairs.

Violation of Section 12 entitled “Conflict of Interest”, in that MWH has aggressively acted, on numerous instances, in a manner that is a clear conflict of interest but at a minimum is the appearance of a conflict of interest as follows:

- Has knowingly and with malice actively worked with regulatory agencies in a manner that is not in the best interests of the District;
- Has knowingly and with malice actively worked with third parties in a manner that is not in the best interests of the District;
- Has knowingly and with malice actively worked with contractors in a manner that is not in the best interests of the District;
- Has knowingly and as a matter of public record made financial contributions to entities that are litigating against the District in an effort to stop the project;
- Has knowingly and as a matter of public record made financial contributions to government officials in a manner so as to influence courses of actions that are not in the best interests of the District;
- Has knowingly and as a matter of public record made financial contributions to special interest groups in a manner that are not in the best interests of the District;
- Has knowingly and with malice had inappropriate contacts and communications with parties litigating against the project and said contacts and communications are not in the best interests of the District
- Failed to notify the District of the above described conflicts of interest or the appearance of a conflict of interest.

The numerous actions that violate Section 12 were clearly designed to benefit parties at the District's risk, including but not limited to MWH, third parties and the contractors in such a manner to demonstrate MWH's loss of objectivity in representing the best interests of the District.

Violation of Section 14 entitled "Ownership of Documents" and Section 15 entitled "Records, Audit and Review", in that MWH:

- Has not provided copies of all electronic data as requested by the District including but not limited to e-mails, data files, CAD data, etc.;

Violation of Section 17 entitled "Insurance", in that MWH:

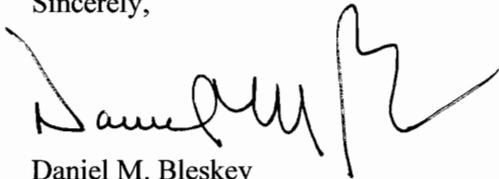
- Has not provided a copy of the original Certificates of Insurance;
- Has not provided any proof of Professional Liability Insurance;
- Has not provided any Certificates of insurance evidencing renewal of coverage.

The District is continuing its investigation into the circumstances regarding MWH's contract performance and reserves all rights and remedies per Section 29 of the Contract Agreement.

As provided under Section 34 of the contract agreement, MWH is directed to provide all requested documents immediate upon receipt of this notice of termination for default.

The District is formulating a claim for reimbursement of all costs incurred and anticipated to be incurred as a result of MWH's default.

Sincerely,



Daniel M. Bleskey
Interim General Manager

Cc: Board of Directors
Interim General Counsel
Special Counsel, S. Onstot
Special Counsel, J. Biggs
MWH Surety
Attorney General
Regional Water Quality Control Board, R. Briggs
State Water Resources Control Board, C. Cantu
USEPA Region 9
USEPA Inspector General
Office of Management and Budget



August 17, 2006

Advanced Copy By Fax
Registered Mail/Return Receipt Requested

President

Lisa Schicker

Vice-President

John Fouche

Director

Chuck Cesena
Steve Senet
Julie Tacker

Interim General Manager

Daniel M. Bleskey

Utilities Manager

George J. Milanés

Fire Chief

Matt Jenkins

Marshall W. Davert
Montgomery Watson Harza, Americas, Inc.
3321 Power Inn Road, Suite 300
Sacramento, CA 95826

SUBJECT: NOTIFICATION OF POTENTIAL CONTRACT TERMINATION FOR DEFAULT: PROJECT DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE LOS OSOS COMMUNITY SERVICES DISTRICT WASTEWATER PROJECT, AS AMENDED

Dear Mr. Davert:

This letter is official notification that Los Osos Community Services District (District) is considering terminating the subject Contract, for default.

Montgomery Watson Harza (MWH) has failed to perform in accordance with the contract provisions, failed to control the management of the construction effort and failed to correct known deficiencies in accordance with the contract agreement. The potential termination for default is based on the following:

Violation of Section 4 entitled "Scope of Services", in that MWH:

- Has had numerous substantive contacts and communications with contractors, regulators, governmental agencies, litigants and other third parties and has not copied the District, despite the District's request for such copies, minutes and transcripts of such contacts and communications.

Violation of Section 7 entitles "Compensation of Consultant", in that MWH and individuals employed by MWH:

- Has submitted invoices not in accordance with the Agreement;
- Has submitted invoices and has been compensated multiple times for the same work;
- Has knowingly submitted multiple false claims in violation of Government Code (GC) §12650.



Offices At:

2122 9th Street

Los Osos, California 93402

Mailing Address:

P.O. Box 6064

Los Osos, California 93412

Phone 805/528-9370

Fax 805/528-9377

www.losososcsd.org

Design Phase Services

Violation of Section 12 entitled “Performance Standards”, in that MWH:

- Utilized as the basis for design an effluent application rate for the Broderon Leach Fields that is not in compliance with normally accepted standards and guidelines as established by the United States Environmental Protection Agency (USEPA) and the State Water Resources Control Board (SWRCB). On July 7, 2006, the District requested that MWH explain the discrepancy and justify the application rates used in the Project Report and that served as the basis of design. On July 15, 2006, MWH refused to provide this information (Section 12(A) and (B));
- Prepared an affordability report, a requirement of the application for the SRF loan and would serve as a tool in applying for grants and loan programs, that MWH claimed was in compliance with United States Environmental Protection Agency’s (USEPA) affordability analysis requirements, when the report was not prepared in accordance with the USEPA Guidelines on affordability;
- Has knowingly submitted multiple false claims in violation of GC §12650 (Section 12(A));
- Has knowledge of said false claims and not disclosed said false claims in violation of GC §12651(Section 12(A));
- Submitted inaccurate, false and misleading information to the District, local and state agencies in support of, but not necessarily limited to, regulatory requirements, permits, financing and licenses (Section 12(A) and (B));
- Commenced critical phases of work, including but not limited to design, based on analysis and documents that were not stamped by a registered professional engineer that was in responsible charge of the work in violation of the Business and Professions Code (BPC) § 6735 (Section 12(A), (B) and (C));

Violation of Section 12 entitled “Performance Standards” and 40 CFR 31.36; in that MWH:

- Represented to the District that they were experts in the services to be provided and that the District relied on these representations;
- Knew that the project was funded under the State of California as a grantee of USEPA grant funds;
- Knew that the District was a subgrantee as defined by the USEPA and 40 CFR 31.3;
- Knew that 40 CFR 31.36 requires full and open competition;
- Did not structure the bid documents in such a manner so as to promote full and open competition.

Violation of 40 CFR 31.36 (c)(5) (i)–(iii); in that MWH:

- Represented to the District that they were experts in the services to be provided and that the District relied on these representations;
- Knew that the project was funded under the State of California as a grantee of USEPA grant funds;
- Knew that the District was a subgrantee as defined by the USEPA and 40 CFR 31.3;
- Knew that 40 CFR 31.36 requires that the construction contracts prepared by MWH for the District were subject to “Buy American” procurement requirements;
- Did not include in the bid or construction documents, provisions for “Buy American”.

Bid-Phase:

Violation of Section 12 entitled “Performance Standards”, in that MWH:

- Failed to structure the bid schedules so as to promote full and open competition;
- Structured bids in such a manner so as to favor larger pipeline construction firms;
- Recommended contractor prequalification when such prequalification served to limit competition and denied the District the benefit of price competition through full and open competitive bidding;
- Recommended that all work be commenced simultaneously when it was not necessary thereby putting the District, the State and the Federal Government at great financial peril due to the risk of front loaded contracts, bids and schedules;
- Had full knowledge of a recall election in which three board members were up for recall and an initiative that dealt with project siting criteria had a high probability of success and of which if any one of the four events were successful (when in fact all four were successful) that the character of the Board would have changed in such a manner that relocating the treatment plant portion of the work would have been highly likely if not a certainty;
- Acted outrageously by failing to prudently and reasonably utilize the contract tools available; recklessly put at risk millions of dollars of District, State and Federal funds;
- Promised that all engineer’s estimates of construction cost would be +/-10% accurate;
 - That the construction bids were in the range of 40 to 60% over MWH’s estimate;
 - That MWH had knowledge that the Regional Water Quality Control Board took no exceptions to rebidding the construction contracts;
 - That MWH initially recommended rebidding the construction contracts but than, without explanation, reversed itself and recommended the award of the construction contracts;

Post Award Phase;

Violation of Section 12 entitled “Performance Standards”, in that MWH:

- Collaboratively issued and enforced the provisions of a “Conditional Notice to Proceed”, a procedure and contract action that is not provided for in the contracts;
- Collaboratively issued and enforced the provisions of a “Conditional Notice to Proceed” prior to a commitment of project funding;
- Enforced the “Conditional Notice to Proceed” with no explanation other than to commence work prior to the looming recall election;
- Enforced the “Conditional Notice to Proceed” thereby imprudently and unreasonably exposed the District and community to unprecedented risks;
- Did not act in accordance with the normally expected standards of conduct for the engineering profession and failed to implement any one of a plethora of administrative and contractual tools that the catastrophic impacts to the District that were reasonably foreseeable would have been avoided.
- Had full knowledge that the San Luis Obispo County Department of Public Works had required that in light of the uncertainty of the situation in Los Osos and with the impending risks that were reasonably evident due to the pending recall election, required the contractors to take out a site restoration bond;
 - Understood that the bond was to be obtained for separate contractors performing separate contracts;

- Knew that the District Board had passed a resolution specifically authorizing the bond could only be taken out with the Surety know as Insko Dico and that this authority would meet the County restoration bond requirement to cover both of the separate construction contractors;
- Knowingly collaborated with one of the contractors, Monterey Mechanical, to obtain the SLO County Public Works required restoration bond with the firm of Safeco, in violation of the District Boards resolution;
- Knowingly collaborated with Monterey Mechanical to obtain the SLO County Public Works required restoration bond for another contractor, Barnard Construction without District Board authority and without a duly authorized change order to the construction contracts to do so;
- Knowingly collaborated with Monterey Mechanical, illegally and without authority, to obtain the SLO County Public Works required restoration bond with the intention of starting the work in advance of the looming recall election and to further MWH, Monterey Mechanical and Barnard’s economic interest at the expense and risk of the District;
- In violation of Section 01505 of the construction contracts titled “Mobilization” allowed some of the contractors to mobilize prior to the start date as stated in the NTP;
 - Allowed some of the contractors to move-in;
 - Allowed some of the contractors to install temporary power, wiring and lighting facilities;
 - Allowed some of the contractors to establish field offices and place field trailers;
 - Allowed some of the contractors to arrange and erect their work and storage yard;
- Failed to enforce the provisions of GC Article 2.3 titled “Commencement of Contract Times; Notice to Proceed”;
- Failed to enforce the provisions of GC Article 2.4 titled “Starting the Work”;
- Failed to enforce the provisions of GC Article 2.5 titled “Preconstruction Conference”, specifically in the MWH processed Contractor Payment Applications without having obtained the required submittals including but not limited to the Project Schedule and the Schedule of Prices;
- Failed to enforce the provisions of Article 3 of the Construction Contract Agreements titled “Liquidated Damages”;
 - Failed to enforce the requirement that the contractor’s provide CPM schedules;
 - Failed to enforce the requirement that the contractor’s provide a Schedule of Prices;
 - Failed to enforce the requirement that the contractor’s provide Record Drawings.
- Failed to enforce the provisions of Article 5 of the Construction Contract Agreements titled “Payment Procedures”;
 - Knowingly processed certain of the contractor’s payment requests early and without contractual authority and in advance of the start date as specified in the Notice to Proceed;
 - Knowingly processed certain of the contractor’s payment requests early and without authority in Violation of GC Article 14 titled “Payments to Contractor and Completion”.

Construction Phase

Violation of Article 3 of the Agreement titled “Exhibits” as amended by Amendment No. 7, Exhibit C, “Scope of Engineering Services during Construction and Construction Management Services” and violation of Section 12 entitled “Performance Standards”, in that MWH

- Has failed to live up to its promises to administer and manage the work;
- Has failed to perform the Services promised under Amendment No. 7, Exhibit C, Task 2.11 titled “Payment Applications”;
- Has failed to perform the Services promised under Amendment No. 7, Exhibit C, Task 2.12 titled “Schedules”;
- Has failed to perform the Services promised under Amendment No. 7, Exhibit C, Task 2.14 titled “Claims and Disputes”;
- Has failed to enforce the requirements of the Construction Contracts as follows:
 - MWH failed to implement the conditions of the requirements of the Construction Agreements Article 3, titled “Liquidated Damages” for some contractor’s failure to provide Record Drawings;
 - MWH failed to implement the conditions of the requirements of the Construction Agreements Article 3, titled “Liquidated Damages” for some contractor’s failure to provide CPM Schedules;
 - MWH failed to implement the conditions of the requirements of the Construction Agreements Article 3, titled “Liquidated Damages” for some contractor’s failure to provide Schedule of Values;
 - MWH Failed to control the work by allowing the contractors to mobilize prior to the start date as declared in the Notice to Proceed,
 - MWH allowed the ordering and delivery of materials to the site in advance of the start date;
 - MWH allowed the contractors to move-on to the site;
 - MWH knew that by allowing the Contractors to mobilize prior to the start date as stated in the NTP that the costs for those actions were at the contractor’s risk;

Improper Progress Payment Processing

- MWH failed to implement the conditions of the requirements of the Construction Agreements Article 5 titled “Payment Procedures”: and GC Article 14 entitled “Payment to Contractors and Completion”, specifically:
 - MWH did not enforce the requirements of GC 14.1 titled “Schedule of Values (Lump Sum Price Breakdown)”;
 - MWH did not enforce the requirements of GC 14.3 (A) (1) through (8);
- MWH failed to enforce the requirements of GC 14.5 titled “Review of Applications for Progress Payment”;
 - MWH knew that the Project was funded by a State SRF Loan;
 - MWH understood that funds available to the District for contractor payments were contingent upon SRF Disbursements;
 - MWH had detailed knowledge of District Board resolutions confirming that the first SRF disbursement was not for the payment of contractors work;

- MWH knew that the first SRF Agreement with the District that specified that the first disbursement was not for the payment of Construction costs, but rather to reimburse the District for pre-construction activities;
- MWH knew that the SRF did not advance the District any funds for the payment of the contractors and that the SRF would reimburse the Contractors for work completed in accordance with the disbursement schedule contained in the SRF Agreement with the District;
- MWH knew that the character of the funds from the first SRF disbursement meant that funds were not available for contractor payments;
- MWH knowingly allowed the contractors to submit payment requests that did not conform to the requirements of GC Section 17.19(D) (2) titled “Timely Progress Payments; Interest; Payment Request” and Public Contract Code §20104.5;
- MWH knew that under the terms of GC Section 17.19(D) (2) and Public Contract Code §20104.5 that the payments submitted by the contractors were not properly executed;
- MWH improperly certified the improperly executed progress payments in breach of Amendment No. 7, Exhibit C, Task 2.11(c) to MWH’s Agreement with the District;
- MWH imprudently accelerated the first progress payment and allowed the contractors to be improperly paid early without authority or consideration for the District’s financial well being and in violation of numerous contract provisions:
 - As stated above, MWH knew that the progress payment applications were not properly executed in accordance with GC Section 17.19(D) (2) and Public Contract Code §20104.5;
 - GC 14.5 (A) allowed MWH 7 days to review any application for payment and provided that all properly executed contractor payment requests were due and payable in 30 days;
 - MWH turned the first contractor payment applications around in less than one day;
 - GC 14.5 (A) provides that a “properly executed” Application for Payment was due in 30 days;
 - MWH improperly accelerated the approval of the first progress payment without obtaining any concessions from the contractors for early payment as is customary practice or recommending to the District to do so;
 - MWH accelerated the payments due to the immanency of a recall election that had a high certainty of changing the project and jeopardizing the contractor’s and MWH’s economic interests;
 - MWH lobbied the SRF to pay the first disbursement in less than the thirty days provided for in the contract documents;
 - The SRF disbursed the funds in three days in violation of the disbursement schedule and customary practice;
 - MWH’s failure to properly process the progress payments financially damaged the District and the State of California. in the interest lost.

Other Violations and Performance Deficiencies

Violation of Section 14 entitled “Conflict of Interest”, in that MWH has aggressively acted, on numerous instances, in a manner that is a clear conflict of interest but at a minimum is the appearance of a conflict of interest as follows:

- Has knowingly and with malice actively worked with regulatory agencies in a manner that is not in the best interests of the District;
- Has knowingly and with malice actively worked with third parties in a manner that is not in the best interests of the District;
- Has knowingly and with malice actively worked with contractors in a manner that is not in the best interests of the District;
- Has knowingly and as a matter of public record made financial contributions to entities that are litigating against the District in an effort to stop the project;
- Has knowingly and as a matter of public record made financial contributions to government officials in a manner so as to influence courses of actions that are not in the best interests of the District;
- Has knowingly and as a matter of public record made financial contributions to special interest groups in a manner that are not in the best interests of the District;
- Has knowingly and with malice had inappropriate contacts and communications with parties litigating against the project and said contacts and communications are not in the best interests of the District
- Failed to notify the District of the above described conflicts of interest or the appearance of a conflict of interest.

The numerous actions that violate Section 14 were clearly designed to benefit parties at the District’s risk, including but not limited to MWH, third parties and the contractors in such a manner to demonstrate MWH’s loss of objectivity in representing the best interests of the District. MWH’s behavior during specific periods of performance clearly illustrate MWH’s various conflicts of interest and breach of its fiduciary responsibility to protect the District from unnecessary risk including but not necessarily limited to the post-design/pre-bid period, the post-bid/pre-award period, the post-award/pre-Notice To Proceed period

Violation of Section 16 entitled “Ownership of Documents” and Section 17 entitled “Records, Audit and Review”, in that MWH:

- Has not provided copies of all electronic data as requested by the District including but not limited to e-mails, data files, CAD data, etc.;

Violation of Section 19 entitled “Insurance”, in that MWH:

- Has not provided a copy of the original Certificates of Insurance;
- Has not provided any proof of Professional Liability Insurance;
- Has not provided any Certificates of insurance evidencing renewal of coverage.

It is a fact that MWH is not a party to the SRF Agreement between the SRF and the District. MWH is fully aware of SRF agreement between the State and the District, and that the SRF is the source of project funding. The District contends that MWH would economically benefit if MWH could induce the SRF to bring pressure of any sort on the District to inhibit the District from relocating the wastewater treatment plant, including but not limited to the contractors inducing the State to breach the SRF contract. It is clear that MWH intended to disrupt the

relationship between the District and the SRF for MWH's economic gain. MWH's actions caused an actual disruption of the relationship between the District and the SRF; and MWH's actions have damaged the District.

MWH has submitted a claim and initiated litigation in violation of Section 43 of the Agreement titled "Force Majeure" in that MWH knows that the District has been damaged by the State of California's Breach of the conditions of the SRF Agreement between the District and the State. Furthermore, MWH's claim and litigation violate the provisions of Public Contract's Code §20104.5.

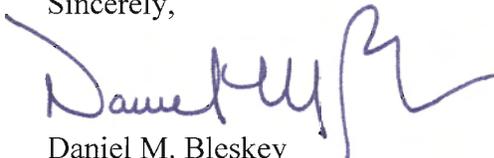
MWH has not performed the Design or the Construction Management services in accordance with the Agreement. Therefore, as provided for under Section 7 of the Agreement titled "Compensation to the Consultant", specifically paragraph C, MWH is not entitled to payment.

The District is continuing its investigation into the circumstances regarding MWH's contract performance and reserves all rights and remedies per Section 33 of the Contract Agreement.

The District is formulating a claim for reimbursement of all costs and damages incurred and anticipated to be incurred as a result of MWH's potential default.

The District is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether MWH's failure to perform arose from causes beyond MWH's control and without fault or negligence on MWH's part. Accordingly, MWH is given the opportunity to present, in writing, any facts that satisfactorily correct the situation within 7 days after receipt of this notice. MWH's failure to present any excuses within this time may be considered as an admission that none exist.

Sincerely,



Daniel M. Bleskey
Interim General Manager

Cc: Board of Directors
Interim General Counsel
Special Counsel, S. Onstot
Special Counsel, J. Biggs
MWH Surety
Attorney General
Regional Water Quality Control Board, R. Briggs
State Water Resources Control Board, C. Cantu
USEPA Region 9
USEPA Inspector General
Office of Management and Budget



To print this article open the file menu and choose Print.

<< [Back](#)

Attorney general faults Cape Coral utilities project Bidding may have violated state law, opinion finds

By Don Ruane
druane@news-press.com
Originally posted on February 28, 2007

The City of Cape Coral may have violated a state law when it negotiated two contracts for major utilities projects, Florida's attorney general concluded in an opinion released on Tuesday.

The attorney general's report said the city was wrong to negotiate the price for complex utilities contracts in phases rather than all at once.

The findings could have far-reaching implications that could affect how future utilities projects are bid, how lawsuits are resolved, how quickly the utilities expansion program continues and how much confidence citizens have in the city's government.

"Any time the attorney general finds fault in the contractual process it doesn't argue well for what they're doing," said resident Bill Diele, who has a utilities-related lawsuit pending against the city.

Mayor Eric Feichthaler said the council needs to take the attorney general's opinion seriously.

"The big question is has the city done anything wrong. If the city has done anything incorrect, we need to correct it," Feichthaler said.

Councilman Tim Day, who has called for a new way to bid utilities projects, wants to talk about the issues at next Monday's council meeting.

"I don't know if anybody is going to step up to the plate," said Day.

Feichthaler said the issue will be on Monday's agenda.

He said he wonders whether the city could bid design work for a project separately and bid construction later.

Construction costs depend on the design, Feichthaler said.

First impact

Residents who live in areas where projects to install water, sewer and irrigation lines are pending, known



Cape Coral Councilman Day

CAPE OFFICIAL REACTS

Statement from City Manager Terry Stewart on Attorney General's Opinion on Construction Manager at Risk

"The State Attorney General's Office has rendered an opinion on the Construction Manager at Risk program delivery method and opined that state statutes did not "contemplate" this type of contractual arrangement.

This opinion does not state that the construction manager at risk method is prohibited by state statutes. Nor does it render our existing contracts null and void. More specifically, the Attorney General writes that negotiating "each phase of a multi-phase project" with a construction manager at risk does not comply with the intent of section 287.055(9)(c) Florida statutes.

The construction manager at risk method has been in place within the City of Cape Coral since 1999. This method also is widely used by other Florida cities and counties, as well as the state of Florida. This Attorney

as Southwest 6 and 7, are likely to be the first to feel the impact of any changes prompted by the attorney general's nonbinding report, Feichthaler said.

Work on the next project in line, called Southwest 5, may be too far along, he said.

The council approved the design phase of Southwest 6-7 on Feb. 19. Before it could make any changes, the council would have to calculate the costs of killing a contract with a firm called MWH Americas to manage the construction phase, the mayor said.

Work is under way in Southwest 4, where residents are paying \$17,992 for a typical two-lot building site to receive the utilities lines.

Audits critical

Three audits have criticized how the city is managing the program.

One of those is the 2006 state audit that led to the request for an attorney general's opinion.

A separate audit by Kessler & Associates has led to a U.S. Department of Justice investigation into possible bid rigging in three prior projects.

The third audit, by auditor R.L. Townsend in 2005, said the city was paying too much to run the expansion program. City officials rejected most of his findings.

Attorney General Bill McCollum's opinion on Tuesday addressed an issue raised in the state audit concerning utilities operations between Oct. 1, 2000, and March 31, 2005.

Projects in areas known as Southwest 1, 2, 3 and along Pine Island Road were under construction at the time.

"Accordingly, it is my opinion that separately negotiating each phase of a multiphase project that has been awarded to a construction manager at risk or program manager at risk does not comply with the plain language or intent of section 287.055(9)(c), Florida Statutes," McCollum concluded in his five-page opinion.

City Manager Stewart released a 220-word statement that largely ignored the main issue of how contracts are negotiated.

He defended the city's method of managing projects and devoted just one sentence to the issue of negotiating prices in phases.

"This opinion does not state that the construction manager at risk method is prohibited by state statutes. Nor does it render our existing contracts null and void," Stewart wrote.

The state audit said negotiating each project phase separately limits the city's ability to determine total estimated cost.

The city's response was that it could better ensure a competitive and fair price for each phase. Contractors also were more likely to ask for more money since it's hard to predict labor and material costs five years in advance, officials said.

State impact possible

Stewart said the overall impact of Tuesday's report is unclear and the city's staff is standing by to help the

General's opinion may have significant repercussions for communities and agencies beyond the City of Cape Coral. Because of this widespread impact, one option may be to pursue legislation that will clarify the intent of these statutes.

It is too early to establish what course of action that Cape Coral should follow since the overall impact of this opinion is yet unclear. However, staff stands ready to provide our City Council with all information necessary on existing construction manager at risk projects to help them determine the direction they wish to proceed."

WHAT'S NEXT?

- What: Report by City Manager Terry Stewart and City Attorney Dolores Menendez on the impact of the state attorney general's opinion
- When: Monday at 5:30 p.m.
- Where: Council chamber, City Hall, 1015 Cultural Park Blvd.
- Online: news-press.com updates
- Television: Cape TV Channel 14 on Comcast

ALSO FROM NEWS-PRESS.COM

- ▶ [Help us investigate: Cape utilities project](#)
- [Transcript: Attorney general's opinion of Cape sewer bidding process](#)

DELIVERING YOUR WORLD

- [Subscribe to The News-Press](#)
- [Place a classified ad](#)
- [Printer friendly version](#)
- [Email this article](#)

..... ADVERTISEMENT

council determine how to proceed.

The impact could stretch beyond Cape Coral, so one option might be to ask the Legislature to clarify the intent of the statutes.

Day said the attorney general appears to have researched the intent of the statute.

"He's clear. It's very short, and he's clear," Day said of the opinion.

Going to the Legislature could take another year, Day said.

The lawsuits

The city is involved in at least four lawsuits related to the utilities projects, and the attorney general's opinion could have an impact on them.

"People have a shot at starting a class-action suit against the city. Some doors have been blown off here," said John Sullivan, one of those who sued. He founded the Cape Coral Minutemen, a group of residents devoted to lowering the costs of the utilities projects.

McCollum's opinion just raises more questions, Sullivan said.

"Are these contracts illegal? If they are, what recourse do citizens have? Are our public officials responsible for this?"

"This is just going to shore up those lawsuits," Sullivan said.

[<< Back](#)



To print this article open the file menu and choose Print.

<< [Back](#)

One city, one firm, fat profits

By Jeff Cull

jcull@news-press.com

Originally posted on December 31, 2006

Imagine \$100 million — or maybe a little more.

For that amount of money you can build a new three-mile causeway to connect Sanibel and Captiva islands to the mainland.

Or you can lay plastic water and sewer pipe for about 2 percent of the city of Cape Coral.

Those lines are being laid in a part of the Cape known as Southwest 4 and will cost each of nearly 4,000 residents of the area \$25,000 to \$40,000.

And Southwest 4 is only one piece of an overall utilities expansion plan to cost \$1 billion or more by the time it's finished.

The program began in 1999 and has brought utilities to nearly 8,000 homesites in the southwest part of Cape Coral. Others who don't have utilities will get them in phases over the next 12 years.

But citizens' outrage has never been as high as in the current area where property owners are paying about \$22,000 plus additional fees for a two-lot homesite. Assessment in areas done earlier were between \$11,000 and \$15,000.

Leslie McGarry was "speechless" when she imagined the cost of the new causeway compared to the price of the water and sewer lines being installed in her neighborhood.

"I don't know what to say," said the 1982 Cape Coral High School graduate who will pay about \$25,000 for the new utilities. "It makes no sense. There's something wrong somewhere."

Cape Councilman Tim Day belly-laughed at the comparison.

"I rest my case," said Day, one of two council members opposed to the utility expansion program as it exists. The other is Councilman Mickey Rosado.

"It's like living in the twilight zone. It's outrageous."

ALSO FROM NEWS-PRESS.COM

- ▶ [Special section: Complete coverage the Cape utilities expansion, including documents, forums and more](#)
- ▶ [Up next, Southwest 5 homeowners brace for costs](#)
- ▶ [Cape has done things its way, its way only](#)
- ▶ [Photo Gallery: Cape Utilities](#)

DELIVERING YOUR WORLD

- [Subscribe to The News-Press](#)
- [Place a classified ad](#)
- [Printer friendly version](#)
- [Email this article](#)

..... ADVERTISEMENT

Cape officials are steadfast that the program is necessary and that they're doing all they can to save residents money.

"It's all about water independence," said City Manager Terry Stewart. "It's not one thing. It's an accumulation of things that affect the availability of water resources. Our system is strained."

Cost-laden

The Southwest 4 utility extension is just one of nearly 30 utility construction projects under way in the city. Others include a new water treatment plant, renovations to two existing sewer plants and a variety of related projects.

Research by The News-Press has found the following hidden within the contracts for the utility lines and the water plant:

- Layers of management fees.
- Huge contractor profits.
- No incentives to lower costs.
- Contract clauses that make it difficult for outsiders — or even city auditors — to get an accurate view of how the money is spent.

In September, for example, Colorado-based Montgomery Watson Harza — the city's sole contractor — billed more than \$16 million for work on about 30 city utility contracts. Among those bills was one for \$438,000 in program management fees.

That was for roughly 17 MWH employees — some paid more than \$200 an hour — to oversee the entire building program.

The bill was for management, scheduling, permitting, document control, health and safety and accounting. It also included time for secretaries and customer service representatives.

If the city had used that same money to hire people to do the work, it could have added 20 workers to the city payroll and paid each of them what City Manager Terry Stewart makes — \$157,560 a year plus benefits.

The News-Press research indicates when the amount the contractor said it paid its employees plus their benefits is deducted from its bill, MWH is left with a profit of 55 percent.

While MWH is authorized to get a 4.5 percent construction fee on the Southwest 4 project, The News-Press found the firm also earns a \$3.5 million program management fee, a \$3.2 million construction management fee and a \$3.7 million design fee.

Estimated profits on those fees add up to more than \$8 million or about 8.5 percent. MWH spokesman Paul Lonnegren said those fees are really "budget estimates."

"The city will only be charged for the actual costs incurred in each of those categories. If costs are less than estimated, all of the savings revert to the city," Lonnegren said.

In comparison, MWH charged Collier County a 5 percent fee to build a nearly \$39 million water treatment plant

in 2005. That contract didn't include additional money for program management or design. Construction management labor was reimbursed at MWH's actual labor cost.

Lonnegren said the Collier contract is not comparable to the Cape deal because MWH was retained only to build the facility, not do design or management. On the Sanibel Causeway, the contractor's billing rates for management services are about 69 percent lower than what MWH charges to Cape Coral.

So why doesn't the Cape get cheaper fees?

For one thing, in a move contrary to the way other Florida cities handle large public works projects, Cape staffers decided — and city council agreed — to hire one firm to manage, coordinate, permit, design, bid and build the utility projects.

That put all the city's utility expansion eggs in one basket with only a small city staff to monitor the work.

"If I thought we could bring it in-house and do the project successfully we would," said Cape Mayor Eric Feichthaler.

City officials said they wanted someone to shoulder all the risk of price increases to avoid lawsuits similar to those that plagued utility projects completed in the 1990s.

Then, the city tried to build a \$209 million utility expansion by hiring an engineering firm to design the project and bid the work.

Three of four contractors involved sued the city, claiming the engineers created drawings that resulted in huge cost overruns.

The city, in turn, sued the engineers, Massachusetts-based Camp, Dresser & McKee Inc., and settled in 2000 for \$1.3 million. The city, however, paid nearly \$16.2 million to settle the contractors' claims and spent another \$1.2 million on attorney's fees.

"The city lost that money because the assessments had already been delivered to the homeowners," said City Manager Terry Stewart.

That prompted the city to lay the risk on one company when it started additional utility expansions.

In fact, the city hired the firm that stands to profit the most, MWH, to tell it what it should build and when. In 2005, MWH charged the city more than \$600,000 for that assessment.

City officials said six firms, including MWH, were interviewed before the next phase of the contract was awarded. They said a contract and prices were negotiated after MWH was selected as the best contractor for the work.

Other issues

The News-Press researched thousands of public records, reviewed similar projects in other communities throughout Florida, asked readers for their thoughts, spoke with experts and found:

- MWH pays about 75 percent of its staff — some earning more than \$200 an hour — less than what it told the city when it negotiated its billing rates, according to notes from a September city audit that are available at news-press.com.

Neither the city staff nor council has raised an objection.

The contractor charges the city based on labor rates it said it pays its employees, then marks it up by a factor of 2.65 or 3, depending on the work being done.

City staff agreed to this billing formula.

They have asked MWH for comparable rates from other firms, but MWH has provided only rates for engineering companies. No construction companies were surveyed.

When individual labor rates were compared, nine out of 12 MWH employees were paid less than the company told the city, the audit notes said.

However, when auditors used MWH “average” labor rates over the entire project, the rates complied, said city auditor Dona Newman.

A clause allowing “average” rates was inserted into the contract at MWH’s request nearly one year after the original contract was signed. The original contract called for a comparison of individual labor rates.

Newman told council that using “average” rates made it nearly impossible to audit or enforce.

“It was never defined in the contract what the average labor rates were — by category or all the rates,” she said.

- The city’s contract with MWH — agreed to in 2004 — allows it to pay its people up to 5 percent less than the negotiated rate in the contract without having to return any money.

In addition, if MWH overbills the city by more than 1 percent of its total billings for the program, the company has to repay the city for the audit that found the discrepancy.

However, MWH would have to overbill the city by as much as \$7 million before the penalty clause kicks in. Billings on the program are likely to total at least \$700 million.

City officials have said they will review those contract terms, along with the “average” labor rate for audits. The contract can be changed by mutual agreement or the city can terminate it for any reason with 60 days notice to the contractor.

“We’re working on something to clear up that language,” said Wayne Wolfarth, the city’s utility expansion manager.

- MWH earns contractor fees of 4.5 to 7 percent of the cost, depending on the project, plus 3.5 to 4.2 percent to manage the city’s overall utility expansion program. That includes major plants, transmission lines and well fields. The firm gets additional fees for design and construction management.

That makes the contractor’s average fees 8.5 to 11 percent or higher.

Independent auditor R.L. Townsend told the city last year that the average fee for 25 construction manager-at-risk projects he surveyed was about 3 percent.

- A new well and septic system in Cape Coral typically costs between \$16,000 and \$21,000, said Annette Carrasquillo, of Portofino Homes in Cape Coral.

That's nearly what new utilities cost on a typical two-lot site. With city utilities, most lots can handle larger homes because space is not reserved for the septic tank and drain field.

But 54 percent of the homes in Southwest 4 — bounded roughly by Skyline and Chiquita boulevards and Veterans and Mohawk parkways — are already built.

That means people who have already paid for a well and septic system will, in effect, have to pay double for utilities, said John Sullivan, a Southwest 4 resident and active critic of the city.

"The sad part is they're asking people to throw that money away," he said. "Now the assessment's not \$20,000, it's \$40,000. That's the real cost."

- A federal audit of New Orleans found that city officials there awarded a contract to MWH that violates federal rules.

The audit said the deal with MWH tied profits to costs, an arrangement that violates federal rules because it provides no incentive to keep costs low.

MWH's contract with the Cape ties profits to costs.

MWH spokesman Lonnegren defended the New Orleans contract.

He said city and state officials are satisfied that the process in the wake of Hurricane Katrina was competitive and "a determination was made that the contracting methodology was appropriate."

One contractor

The city of Cape Coral and MWH entered into a contract in 2004 that gives the firm the leadership role in all areas of Cape construction work relating to utilities and plants until 2011.

City officials said at least four new expansion areas will be built in that timeframe along with other projects such as the new water and wastewater plants.

The Cape uses a project delivery method called "program manager-at-risk." It's used when one entity oversees a number of different projects at the same time, said Bruce D'Agostino, executive director of the Construction Management Association of America in McLean, Va.

"It's becoming common, especially in school construction," D'Agostino said.

MWH oversees all management, design, permitting, and construction for five underground utility projects and other facilities worth more than \$500 million. That includes expanding the city's wastewater treatment plants on Everest Parkway and the Southwest Cape.

The city pays MWH a fee to manage the overall project of 4.2 percent but recently reduced that to 3.5 percent, Wolfarth said.

About 30 projects are in various stages of completion.

City officials said that having one engineering/design firm puts all the risk for cost overruns on them. Plus, they said, the city doesn't have the staff to do the work in-house.

Fighting back

The Cape utility project and the new Sanibel Causeway have one thing in common. Both have been controversial and both have spurred lawsuits.

At this point, though, debate over the causeway and its \$6 tolls has subsided.

In the Cape — where nearly 4,000 landowners face bills of \$25,000 or more to pay for the latest utility expansion project — a grass-roots protest is gaining momentum.

Citizens have formed opposition groups, filed lawsuits and paraded before City Council weekly with lists of complaints.

One group, the Cape Coral Minutemen, has a Web site and its members have been going door-to-door to tell residents who don't have utilities yet when they're likely to face assessments. More than 30,000 property owners will be affected in the future.

"The actions of the City Council to continue to implement high-cost and over-priced water and sewer services — over the objections and reasoned input from the public — has created an urgent need to both inform and organize property owners," said Larry Barton, a member of the Minutemen and a newly appointed citizen member of The News-Press editorial board.

Other residents contend the city is paying too much for the project and say elected officials are listening to contractors instead of residents.

"I think this City Council has terrorized citizens," said Lee Mars, who lives in Southwest 4. "We're afraid to speak at council meetings for fear of retribution."

And the city may be reacting to the outcry.

MWH has recently found some savings by moving pipes closer to the street.

The city, for its part, changed the way it assesses large properties and decided to pay for some improvements with other funds. The price to residents for the utility lines dropped from about \$22,000 to about \$18,000.

However, it still costs about \$6,000 to hook up to the system.

City officials argue that a new well and septic system costs nearly what the utility assessment charges, that the project is necessary and that they're doing all they can to keep costs down.

"The council and the majority of our citizens want this," said Mayor Eric Feichthaler.

<< [Back](#)

DATE: June 8, 2006
AGENDA ITEM NO: B
 APPROVED
 DENIED
 CONTINUED TO

RESOLUTION NO. 2006-11

**A RESOLUTION OF THE LOS OSOS COMMUNITY SERVICES DISTRICT
SAN LUIS OBISPO COUNTY, CALIFORNIA
REQUESTING SAN LUIS OBISPO COUNTY ASSISTANCE
ON THE LOS OSOS WASTEWATER PROJECT**

WHEREAS, on February 16, 2006, the Los Osos Community Services District adopted a resolution requesting that the County of San Luis Obispo provide assistance; and

WHEREAS, concurrent with its requests for outside assistance, the Los Osos Community Services District has worked tirelessly and has awarded a contract to update the Wastewater Project Facility Plan (completion in August 2006), expanded ground water testing and new wells installed to reduce nitrates and manage water appropriate for irrigation, installed pilot technology at the Fire Station; developed a voluntary community Septic System Management Program (SSMP); developed an aggressive water conservation plan/program with shower retrofits and plans for a toilet retrofit program; in the process of revising the water rates in alignment with conservation goals; continued replacement schedule of substandard and leaking service connections, awarded contracts for the formal update with SSMP onsite program to comply with existing and new regulations (AB 885) and to test innovative technologies; adopted EPA NEW Voluntary Guidelines for Septic-Management, public education and inspection program, and continues to work to revise the Memorandum Of Understanding with the County for the septic management, a requirement in 83-12 not addressed during the past 23 years; and

WHEREAS, the Los Osos Community Services District has consistently reiterated its commitment to take the necessary steps to develop the cooperative and collaborative relationships required for the successful design and construction of a wastewater system acceptable to the community; and

WHEREAS, the Los Osos Community Services District Board of Directors believes that the community will be collectively harmed in the immediate and the foreseeable future by a failure to rise above the divisive conflicts and seek compromises; and

WHEREAS, the Los Osos Community Services District Board of Directors seeks an outcome that is accepted by all parties as fair, reasonable and in the best interest of the community; and

WHEREAS, the Los Osos Community Services District Board of Directors and San Luis Obispo County both agree that dissolution would produce many harmful and costly unintended consequences; and

WHEREAS, the Los Osos Community Services District Board of Directors is unwavering in its commitment to deliver a timely and prudent wastewater system; and

WHEREAS, completion of public works projects of this magnitude requires the close collaboration of all involved agencies; and

WHEREAS, the County of San Luis Obispo's experience with large scale public works projects provides an opportunity for the Los Osos Community Services District to leverage that experience to benefit the community of Los Osos;

NOW, THEREFORE, LET IT BE RESOLVED THAT THE LOS OSOS COMMUNITY SERVICES DISTRICT REQUESTS THAT SAN LUIS OBISPO COUNTY:

Seek and support legislation that allows the County of San Luis Obispo to assist the Los Osos Community Services Board of Directors, on a temporary basis, by providing the administrative, technical and funding assistance necessary to review, design, construct and initially operate a community wastewater treatment system; and

Agree to a fair and transparent process that will collaboratively review the District's anticipated Updated 2001 Wastewater Facilities Report and a site alternative analysis, establish a technical advisory team, including appropriate representation from the community and the Los Osos Community Services District, to provide input with regard to a comprehensive wastewater project; and

Agree to actively seek support from the state and regional water boards, on behalf of the Los Osos community, to hold enforcement actions and fines related to this matter in abeyance; and

Agree to collaborate with the Los Osos Community Services District to develop options for addressing the Los Osos Community Services District's current funding obligations; and

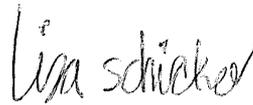
Agree that work will be consistent with the Los Osos Community Services District's mission to obtain community input and support for a wastewater treatment system.

The District Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

On the motion of **Director Schicker**, seconded by **Director Cesena** and on the following roll call vote, to wit:

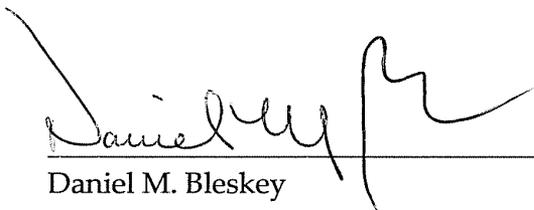
AYES: Directors	<u>Senet, Cesena, Tacker, Fouche, Schicker</u>
NOES:	<u>NONE</u>
ABSENT:	<u>NONE</u>
CONFLICTS:	<u>NONE</u>

The foregoing resolution is hereby passed, approved and adopted by the Board of Directors of the Los Osos Community Services District this 8th day of June 2006.



Lisa Schicker
President, Board of Directors
Los Osos Community Services District

ATTEST:



Daniel M. Bleskey
Interim General Manager and Secretary to the Board

[Skip to Menu](#) [Skip to Content](#) [Skip to Footer](#)

- [Register Free](#)
- [User Area](#)

[Show Login](#)

“Filling the void with **all** the *news* that’s missing.”

THE ROCK

- [Home](#)
- [News](#)
- [Features](#)
- [P.O.V.](#)
- [Entertainment](#)
- [Contact Us](#)

[Show Search](#)

Weather for San Luis Obispo

Sat	Sun	Mon	Tue	Wed
				
72F	79F	85F	81F	82F

Saturday, May 09th

PDF	Print	Email
---------------------	-----------------------	-----------------------

Written by Rock News Wire Saturday, 09 May 2009 10:23

ROCK EXCLUSIVE: BOS Clears MWH, Paavo Ogren of Conflict of Interest in Los Osos Sewer; Schicker Stands Firm

Former LOCSD President Lisa Schicker calls perfunctory dismissal of her complaint by the Board of Supervisors and County Counsel “troubling” and “premature.”

Construction engineering giant MWH was green-lighted to lead the two short-lists of all-gravity and treatment contractors bidding for the Los Osos Wastewater Project, and Public Works Director Paavo Ogren was given a clean bill of legal health by County Counsel Warren Jensen in Jensen’s May 5th preliminary report to the Board of Supervisors on conflict of interest complaints lodged against MWH and Ogren.

Jensen’s unusual televised response was prompted by a detailed, sourced complaint from former LOCSD president Lisa Schicker regarding allegations and potential conflicts that would disqualify MWH from the bidding process and bump Ogren from further managing of the project. Schicker’s complaint was filed with the Board on April 7th, but the lack of a promised response from the Board and repeated calls to address the complaint by Schicker and others during public comment apparently forced Supervisor Gibson to call for Counsel backup.

Even after Schicker presented additional written materials to support the complaint during public comment that afternoon, Chairman Gibson appeared to have already prepared a response, and it was apparent he intended to go forward with it.

Gibson said, “Mr. Jensen is in the process of finalizing a written report, and feels he is close enough to the final version of that written report that he would feel comfortable discussing the findings of that analysis publicly at this point. We think it’s appropriate.”

Jensen acknowledged receiving new material from Schicker that day and that he would include it in his written analysis for public release due in one to two weeks.

However, after analyzing Schicker's initial submission of materials, Jensen said, "The ... main point that was raised was that there's a belief that Montgomery Watson Harza is disqualified from participating in the design-build process because of the work they did as a subconsultant to Carollo, apparently starting back in about 2006, and we believe that that is not a disqualifying situation under that Public Contract Code 21033D1(b). Actually, that (code) only applies to a contractor who is retained by the County to prepare project specific documents, and that's not what Montgomery Watson Harza was doing back in 2006."

Rushed Conclusions

Schicker was equally troubled by the premature, incomplete report given by the County, ignoring "the key concerns that were listed in the complaint," she said. "From Counsel's report, it was apparent that he had not researched all of the referenced materials that were mentioned."

Most troubling about the Counsel's report for Schicker was that "he completely ignored the reporting of a felony committed by the public works director for falsifying a public record, one that involved the same engineering firm – MWH – a firm the County was now considering for the wastewater project."

Jensen also ignored reporting on Schicker's other concerns about Ogren and MWH. Ogren hired MWH in the fall of 2006, after he had asked the LOCS D to sign a waiver to release MWH, a waiver that he did not receive. The LOCS D board refused to issue the legally required waiver because MWH was suing them. The LOCS D offered to give Ogren all of the MWH project plans and engineering documents to assist him -- work that the citizens had already paid for." Ogren ignored both the offer of assistance and the required waiver and hired MWH against the LOCS D's request.

Because the County is requiring the use of the MWH collection design for use by all of the competing consultants in February 2009, Schicker also raised additional design-build code violation concerns that were not addressed.

Continued Jensen, "Beyond that there were a number of reasons set forth in Ms. Schicker's complaint as to why Montgomery Watson Harza should be removed from the short list, or that certain people, including Paavo Ogren, Carollo Engineers, Lou Carella and the Wallace Group, should be recused from the process. My review of the materials that were submitted determined that there simply wasn't any substantial basis for the board to do that, based on the materials submitted. I found nothing substantial in the materials that were submitted that indicated that the process was tainted." Jensen did not disclose as to whether he researched any of the referenced documents listed in Schicker's materials.

Even though Schicker offered to assist, she was never contacted by any County staff. She was also denied any access to the Supervisors. When she called to make appointments, she was told she would be unable to have any appointments until after the County Counsel concluded a review of her materials.

Ogren's Medals

Gibson then directed Jensen to the subject of Ogren's prior role as Interim General Manager of the LOCS D and his association with MWH during that time. "My conclusions," said Jensen, "were that the materials that were submitted do not prove that there was any wrongdoing by Mr. Ogren." This comment was made despite the fact that it already had been proven and verified that backdating a contract is a felony.

"In fact," said Schicker, "Mr. Jensen and Mr. Ogren didn't address the allegations at all; they did not refute them, nor did they deny that Mr. Ogren directed the backdating of the MWH contract, which is a fact, according to former LOCS D General Manager Bruce Buel."

Ogren responded to Counsel's remarks with bold confidence. "County Counsel has obviously indicated that his review has been limited to the information that has been submitted to him. If individuals out in the public or otherwise have more information," he said, "I would certainly urge them to submit that as well, because unequivocally I have not engaged in any illegal or unethical activities."

"In fact," Ogren added, "I think that this is simply more of a pattern of behavior associated with the Los Osos Wastewater Project... There are some public references to other projects Montgomery Watson has worked on and that they should essentially be blacklisted from this project. It certainly would not be my recommendation to blacklist any firm in terms of their qualifications overall... In response to the very concept that we would blacklist any firm, that's very troubling to me. That would be the type of action that I believe would be significantly unethical, and I would not engage in or support."

Commented Schicker, "It was troubling as well, that Mr. Ogren would use the word 'blacklisting' so many times in his comments, as this was never a request that I made in my complaint, but Ogren is notorious for his long-winded explanations and embellishing his soliloquies."

Ogren noted for the record that among the nation's top design firms, MWH "was No. 14 last year, No. 16 this year. In terms of top design-build firms nationwide, they were No. 29 last year, No. 27 this year, and in terms of the top 200 environmental firms for 2008, they were No. 10 last year, No. 8 this year."

"MWH rankings were not an element of my complaint," Schicker commented, "their unethical business practices in Florida were, but these were also ignored by Counsel and Ogren, as well as the lack of any discussion about the prior and continuous relationships with and between key project personnel."

In response to a number of public records request, Ogren confirmed that MWH was also, in fact, employed as construction manager by the County on the Lopez Seismic Remediation Project, for which Ogren was project director. Lou Carella, now of Carollo Engineering (the current consulting Project Manager), and then, as a part of RMC Engineering, was also employed for the same project. Ogren proudly cited the Lopez project as an award-winning project, and even showed off his medals.

Lou Carella was also on the five-person County review panel for the selection of a short list of engineering firms who would continue to compete for the wastewater project. This panel interviewed and numerically ranked all candidates, reducing the selection down to three firms, MWH ranking first.

Carella was the sole panel member to conduct the telephone (and additional) checks on all of the prospective firms. According to the County's 'FOIAA'-released engineering-team score sheet, none of the other four panel members conducted reference checks, and Carella was solely responsible for 35% of each member's final ranking score – that alone might have biased the results to put MWH on top. Schicker raised the question as to whether MWH disclosed to the panel their problems in other states, and asked how the review team could have missed all of this -- unless Carella didn't tell them or unless MWH didn't disclose this info as is required.

Questioned Schicker, "Lou Carella used to work for MWH, and Carella and MWH worked together on the Lopez project under Ogren – how can 'friends' objectively interview 'friends'? With this long-term and apparently very cozy relationship between Ogren, MWH and Carella, will the county taxpayers eventually get the best project for the best price? Perhaps this is how it works in the private sector, but this is the community paying for this public project, not a private developer.

"How will the County taxpayers be guaranteed both a fair process and a competitive price if the process appears to be unfair, and that certain consultants are treated differently? What other competent contractors will ever compete in this County for work if the appearance of favoritism is so blatantly obvious to even the casual observer?"

Angry Gibson

An angry Gibson admitted restraining his comments for public consumption. "Suffice it to say," he said, "I think the word I'd use in public session is that I'm troubled by these submissions. They are rife with a number of unsubstantiated assertions of illegal activity by Mr. Ogren and corruption by Mr. Ogren, and I take considerable offense at those assertions, especially when the pattern is quite clear, that some information from here or there, a dramatically incomplete record of information, is thrown out and a great leap is made clearly in the direction of asserting some malfeasance on behalf of any individual who in my estimation conducted himself with impeccable integrity through this very long and arduous process."

Schicker never mentioned the word 'corruption' – Gibson did.

"I see nothing of substance, nothing in any way credible about the material Miss Schicker has brought forward," Gibson continued. "It seems mostly (in) regard (to) the inner actions between the Los Osos CSD and Montgomery Watson Harza (and) has no credible assertion, much less proof of anything to do with Mr. Ogren's conduct or anything the County has done, and I think we can safely, simply dismiss them as anything significant we have to weigh in terms of our consideration."

Schicker responded to both Gibson and Jensen's final statements by stating that she was equally troubled by the County's complete lack of response to the most serious items described in her complaints: "Counsel did not address the key issues I raised about Montgomery Watson Harza suing the LOCSD or about them being hired by the County without the required legal waivers or the long and financially beneficial relationship between Ogren, Carella and MWH on projects paid for, not by the private sector, but by County taxpayers.

"We, the community of Los Osos via the LOCSD, are in litigation with MWH, and there is an LOCSD cross-complaint alleging serious charges," she said. "It is beyond me how the County can short-list a contractor to work in our community that's suing us, a firm that designed a failed project that it appears that no one ever wanted in the first place, at least according to the County Survey.

"Why did County Counsel omit speaking to the public about these elements of the complaint, instead focusing on MWH as one of the bankruptcy creditors? That wasn't even an issue listed as a concern in my complaint, and didn't require any explanation – and it was also confusing to the public who were looking for answers."

Schicker was deeply troubled by Gibson's apparent lack of understanding about the roles and responsibilities of current or previously elected public officials. "It was my legal responsibility to come forward and report any suspected unethical or criminal behavior," she said, "and I was compelled to do so because of my unique position as a previously elected official with first-hand knowledge."

Schicker was also troubled that Gibson had to resort to what amounted to a verbal "public flogging," one which Schicker or anyone else could respond to, as a result of Schicker's willingness to come forward as a former elected official and state her concerns to the Board for the record in order to safeguard the public.

"All he had to say was, 'It appears that Miss Schicker's complaints have no merit – so far.' He should have waited and reviewed everything before giving legal opinion on the record," she said, "rather than appearing to be judging me or the carefully sourced and referenced information I presented in good faith as a responsible citizen and former elected district officer."

Jensen said his written report should be available to the public within two weeks.

"I look forward to County Counsel providing the public with a more thoughtful, balanced written review of all the submitted material," Schicker said, "one that more accurately reflects the many remaining issues of concern."

This article belongs to category: [News Wire](#)

- [News](#)
- [Features](#)
- [P.O.V.](#)
- [Contact Us](#)

Archives

The Guardian of the Coast is back online. Please don't mind the random sample data. We're currently organizing our content. As you probably noticed already, the articles that we had on the previous site have been removed, but now

we have the articles archived in PDF format for your viewing pleasure.

Our previous issues of The ROCK can now be downloaded in full. You *must* have the latest version of [Adobe Reader](#) to read the issues.

- [March-April 2006](#)
 - [May-June 2006](#)
 - [July-August 2006](#)
 - [September-October 2006](#)
 - [February-March 2007](#)
 - [May-June 2007](#)
 - [July-August 2007](#)
 - [September-October 2007](#)
 - [February-March 2008](#)
 - [April-May 2008](#)
-
- [Sports](#)
 - [World](#)
 - [Opinion](#)
 - [Technology](#)
 - [Travel](#)
 - [Art & Design](#)
 - [Sports](#)
 - [Technology](#)
 - [Travel](#)
 - [Art & Design](#)

Copyright © 2009 The ROCK. All Rights Reserved.

- [Valid XHTML](#)
- [Valid CSS](#)

[Go to Top](#)

- [Local](#)
 - [State](#)
 - [National](#)
 - [World](#)
 - [News Wire](#)
-
- [Rock Report](#)
 - [Rock Interviews](#)
 - [Profiles](#)
 - [Humor](#)
 - [Perspective](#)
 - [Analysis](#)
-
- [Columnists](#)
 - [Top of the Rock](#)
 - [Ochs Nation](#)
 - [Point-Counterpoint](#)
 - [Commentary](#)

County of San Luis Obispo

County Government Center, R.M. D-430 – San Luis Obispo, California 93408 – (805) 781-5011



DAVID EDGE
COUNTY ADMINISTRATOR

To: Board of Supervisors

From: Gail Wilcox, Deputy County Administrative Officer

Date: June 19, 2006

Subject: Discussion about possible options for County involvement in the Los Osos Wastewater Project

Recommendation:

It is recommended that the Board:

- 1) Support legislation that allows the County, **at its discretion and upon confirmation of conditions as outlined in this report**, to assume responsibility for the design, construction and temporary operation of a community wastewater treatment system in Los Osos; and
- 2) Approve the key elements of a legislative solution outlined in this report as **required conditions** for the County's agreement to assume responsibility for this project; and
- 3) Approve the Los Osos Wastewater Treatment Project strategy and objectives included in this report in order to minimize County taxpayers' risk and provide the highest probability for success on this project.

Background:

Please review the attached "Report on Policy and Legislative Considerations Related to the Los Osos Community Wastewater Treatment Project" as it contains a significant amount of background information on this issue.

Discussion:

County staff have been in discussions with Assemblyman Sam Blakeslee and other state representatives for the past several months about what role, if any, the County might play in resolving the wastewater issue in Los Osos. The County has no legal obligation to be involved in this matter and staff entered these discussions with the understanding – and overriding concern - that any agreement to become involved carries with it the potential for adversely impacting the County's financial status and the important services we provide to the public. However, a number of factors – including the LOCSD's deteriorating financial status, the possible dissolution of the LOCSD, and the continued delay in addressing the community's water quality issues – resulted in the initiation of these discussions. The goal of these discussions has been to develop information and prepare recommendations for the

Board to determine whether the County should consider playing a role in this matter and, if so, under what conditions.

In reviewing options for the County's involvement in this issue, a legislative solution – coupled with agreement by various other governmental agencies to support the County - appears to be the route that could provide the most protection for the County's general taxpayers. To that end, and in response to Mr. Blakeslee's inquiry, staff crafted what we believe are required elements of any solution that involves the County. We appreciate Mr. Blakeslee's agreement to incorporate most of our key elements in the proposed legislation and understand that the legislative environment in Sacramento does not appear to allow for a solution that guarantees the County absolute protection should the Board decide to become involved. Those key required elements, which we recommend your Board approve today are:

1. An opportunity for property owners within the affected area to demonstrate (via a Proposition 218 election) their willingness to fund, through property assessments, the cost of this project; and
2. Agreement that, in the absence of property owners' commitment to pay for this project, **the County has no responsibilities or obligations in relation to this project**; and
3. State water board agreement to expedite processing of a low-interest loan; and
4. State and/or regional water boards agreement to hold enforcement actions in abeyance based on an agreed upon schedule for completion of this project; and
5. Agreement that the LOCSD's current liabilities remain their obligation (i.e. not transferred to the County); and
6. Agreement that the LOCSD will immediately suspend further actions on this project to avoid duplicative or cross purpose efforts and, in the event the Board agrees to assume project responsibility, the County will develop the project in the manner that it deems appropriate within the confines of applicable laws and regulations

In addition to legislation, Mr. Blakeslee has drafted a "framework" for a solution to this issue. Based on the outcome of today's discussion with the Board, staff will prepare a response to Mr. Blakeslee's request that the County review his proposed framework and identify legal, fiscal or operational constraints that must be addressed prior to moving forward.

On June 8, 2006, the LOCSD approved a resolution requesting that the County assist them "on a temporary basis, by providing the administrative, technical and funding assistance necessary to review, design, construct and initially operate a community wastewater system." The legislation introduced by Mr. Blakeslee calls for the County, at its discretion and contingent upon certain assurances, to assume responsibility for this project. **It is critical to emphasize that, if and when the County assumes responsibility for this project, we must have sole and final authority within the confines of existing laws and**

regulations. The County Public Works Department has prepared strategies and objectives for completion of this project (included in the attached Report on Policy and Legislative Considerations) should the Board elect to pursue this. **These objectives are essential for controlling County taxpayers' risk and creating the highest probability for a successful project.** Additionally, these objectives were designed to:

- Reflect the LOCSD's "compromise" agreement with the State (Fall 2005)
- Encourage community involvement and input
- Utilize existing/updated analyses
- Ensure completion of this project in as timely a manner as possible to prevent further escalation of costs for property owners

If the Board approves staff's recommendations, "next steps" include:

1. Legislation with sufficient protections for the County must be approved by the state legislature and signed by the Governor.
2. The LOCSD must suspend all work on this project and provide County staff with information and analyses completed to date.
3. If/when legislation is approved, County Public Works staff would begin the process of preparing for a Proposition 218 election (alternative site analyses, engineering reports, assessment analyses, etc.). This would require a mid-year budget adjustment to appropriate up to \$2 million from General Fund contingencies to pay for engineering analyses and Prop 218 election costs. Additionally, Public Works would require staffing adjustments to address this workload increase.
4. The County would conduct a Proposition 218 election to determine if property owners are willing to approve assessments to pay for this project.
5. If the 218 election fails, LOCSD would resume responsibility for this project unless/until the state assumes responsibility for this project.
6. If the 218 election passes, the County would enter into a "due diligence" period to ensure that necessary agreements or actions are taken by other involved agencies (e.g. low-interest loan is approved by state, enforcement actions are held in abeyance, etc.)
7. If/when those necessary agreements or actions are in place, the Board of Supervisors would consider adopting a resolution to assume responsibility for the design, construction and temporary operation of the wastewater system
8. If approved by Board of Supervisors via resolution, design and construction would begin (date depends largely on how long it takes to gain necessary assurances as outlined in #6 above)
9. After a minimum of three years of operation, County and LOCSD – with concurrence from Regional Water Board – may agree to return operational authority to the LOCSD

Conclusion

A recent newspaper article on this topic labeled the proposal to have the County assume responsibility for this project as a potential "compromise" under which the County would have "the most responsibility". The latter comment significantly understates the situation. The staff recommendation on this matter was not arrived at easily and we know that your Board is faced with a decision of great magnitude. Unlike the state and the LOCSD, the

County has no legal authority or obligation in this matter. However, we are aware that two different agencies – the Local Agency Formation Commission (LAFCo) and the State of California – may be able to force the County to assume responsibility for this project regardless of the merits of arguments against such an action. Since the majority of LAFCo members represent governmental agencies within San Luis Obispo County, we are confident they would take great care to evaluate the potential negative impacts of dissolving the LOCSD. The state, however, has many times demonstrated its willingness and ability to impose “solutions” that are detrimental to local governmental agencies. With this in mind, staff is presenting you with recommendations that we believe will provide us the most opportunity to manage this risk.

If, as a result of today’s discussion, a favorable Proposition 218 election and the other required actions outlined in this report, the County does assume responsibility for this project, the County Public Works Department will be assigned responsibility for ensuring its successful completion. The many hours of work and effort that have gone into this project so far pale in comparison to the work ahead. Public Works staff have repeatedly demonstrated their competency and success in delivering complex public works projects in recent years. A critical prerequisite for success on this highly problematic and contentious project, however, is your Board’s approval of the strategies and objectives outlined in this report. Without that approval, this project will likely suffer from continued delays. Further delays will exacerbate water quality issues and significantly increase the “price tag” associated with completion of this project.

Other Agency Involvement:

County Counsel, Public Works and the Auditor-Controller participated in this analysis and the preparation of this report. We are particularly appreciative of the efforts made by Deputy County Counsel Warren Jensen, who was charged with reviewing many complex legal issues with very little lead time. Please note that County Auditor-Controller Gere Sibbach has disagreements with the recommended action before you today. A letter explaining his concerns and recommendation is attached for your review.

Financial Considerations:

Preliminary estimates done by the Public Works Department indicate that the County would incur up to \$2 million in costs to prepare the analyses and reports necessary to conduct a Proposition 218 election. This estimate includes the cost of conducting the election. If the 218 fails (meaning that it fails to get approval from a majority of voters to impose property assessments to pay for this project) it is highly unlikely that the County will recover these costs, despite the fact that we would be conducting the election as a result of a state directive.

Based on a review of the financial documents that are available, it appears that approximately \$30 million has been spent over the past 30 years in an effort to get this project going. About \$6 million of that was paid by the County, approximately \$4.8 of which came from the County General Fund.

The total cost of this project – and the amount individual property owners will have to pay – depends on a number of factors, including:

- The extent to which the County is allowed/able to use prior analyses, contracts and permits
- The length of time before construction begins (construction costs have skyrocketed in the past couple years and it is expected that they will continue to increase at a rate that far exceeds typical inflationary rates). **Each month of delay on this project is projected to add at least \$400-500,000 to the total cost.**
- The state’s willingness to expedite approval of a low-interest loan for this project (County staff is concerned that “conditioning” their approval on the LOCSD’s repayment of their loan will impede progress on this project)
- The location of the wastewater treatment facility

Results:

This report is intended to provide the Board of Supervisors and the public with an overview of issues pertaining to the County’s potential involvement in resolving the Los Osos wastewater treatment issue.

County of San Luis Obispo
Office of the Auditor-Controller
1055 Monterey Street Room D220
San Luis Obispo, California 93408
(805) 781-5040 FAX (805) 781-1220



GERE W. SIBBACH, CPA
BILL ESTRADA, Assistant
JAMES ERB, CPA, Deputy
LYDIA CORR, CPA, Deputy

TO: HONORABLE BOARD OF SUPERVISORS
FROM: GERE W SIBBACH, AUDITOR-CONTROLLER
DATE: JUNE 19, 2006
SUBJECT: AUDITOR'S VIEWS REGARDING LOS OSOS LEGISLATION

I have worked over the past few months with a small group of County staff that have prepared today's report and recommendations for your consideration. They deserve the thanks of your Board for the work they have done to bring this discussion to today's meeting. In every regard I respect and support their judgments, but do not support every recommendation. The purpose of this memorandum is to offer my views as the independently elected Auditor-Controller, where they may differ from the staff.

I was initially asked by the Assistant County Administrator to assist in a study of the possible ramifications of dissolution of the Los Osos CSD. It became clear to me that the results were likely to be negative financially for the County and also unlikely to provide a timely solution to the wastewater problems in Los Osos. We then found out that LAFCO staff was interested in exploring possible compromise solutions short of dissolution, and that Assemblyman Blakeslee was exploring a possible legislative solution. I was asked to help study and respond to those efforts.

San Luis Obispo County has already spent approximately \$6.1 million toward a wastewater project for the community of Los Osos. As a result of the vote to form the Los Osos CSD, about \$4.8 million of that amount was never recovered by the County General Fund. Perhaps I am overly sensitive to this fact because I was the official that had to sign the checks. Notwithstanding my possibly jaded view, your Board must carefully consider the possibility that the Los Osos voters might choose to vote against the Prop 218 assessments required under the proposed legislation. Their vote will be difficult because the cost will be high, and because for some of them a delayed project is nearly as desirable as no project at all. Accordingly, I will not recommend that your Board accept the risk of another \$2 million of General Fund monies under these circumstances.

Staff has repeatedly requested that the legislation include an automatically triggered State imposed revenue source in the event the Prop 218 fails. We have been told that this is either unnecessary or not achievable in the current legislative environment. I believe the onus should be on the state regulators demanding this project to provide such an imposed revenue source if they wish the County to participate. Otherwise, let the state agencies run the project themselves at their own risk, or wait patiently until the people of Los Osos come to the consensus necessary to solve their problems.

**Report
on
Policy and Legislative Considerations
Related to the
Los Osos Community Wastewater Project
for the
San Luis Obispo County Board Of Supervisors**

**County Administrative Office
and
County Department of Public Works**

June 2006

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

Table of Contents

A.	Background	3
	Los Osos - A Divided Community.....	4
B.	Current Status	6
C.	Alternatives – Looking to the Future	8
	No change / No County involvement at this time	8
	Alternatives developed through mutual agreement.....	8
	Alternatives developed through LAFCo.....	8
	Alternatives developed through State legislation.....	8
D.	Legislative Options	9
	A State Implemented Legislative Option.....	9
	A County Implemented Legislative Option	10
E.	County Project Objectives and Strategies	11

Report on Policy and Legislative Considerations Related to the Los Osos Community Wastewater Project – June 2006

A. Background

On November 3, 1998, Measure K98 – an initiative to create the Los Osos Community Services District (District) – was approved by 86.8% of the Los Osos’ voters who cast their vote on this matter. On May 21, 1998, the Local Agency Formation Commission (LAFCo) had previously adopted Resolution 98-6, which approved the formation of the District subject to the voters’ approval of Measure K98. Among its various provisions, LAFCo Resolution 98-6 approved the transfer of the “rights, duties and obligations” of the following list of services from San Luis Obispo County Service Area No. 9 (CSA No.9/County) to the District.

- Water
- Wastewater
- Fire and Emergency Medical Response
- Drainage
- Street Lighting
- Open Space Maintenance

The voter approved “reorganization” of CSA No. 9 to the District included the transfer of all real and personal property, including cash on hand and money due to CSA No. 9 but uncollected (water bills awaiting payment, for example). No unfunded obligations were transferred from the County to the District. In total, the reorganization transferred approximately \$3.5 million in budget reserves from the County to the District. In addition to revenues from user charges and special taxes, the reorganization also transferred approximately \$915,000 in annual property taxes to the District, which now totals about \$1.5 million annually.

Prior to the above actions, the County had expended approximately \$6.1 million on the project, including \$4.8 million in contributions from the County General Fund. County adopted assessments levied on Los Osos property owners in 1990 resulted in approximately \$1.6 million in pre-paid assessments at that time, but after the District’s creation (on June 15, 1999), the County Board of Supervisors approved refunds to property owners for those prepaid assessments, including interest, of nearly \$2.5 million.

The District efforts to develop a community wastewater project began in 1999. After spending over six years and nearly \$24 million¹ on their project, the District *temporarily suspended* construction of its wastewater facilities shortly after a special election on September 27, 2005 approved the recall of three (3) of the District’s Board members and the passage of Measure B, which intended to establish requirements for siting the wastewater treatment plant that was already under construction. Subsequently, San Luis Obispo County Superior Court Judge Martin Tangeman ruled that Measure B is invalid. At this time, Judge Tangeman’s ruling is still subject to appeal.

In addition to suspending construction of its wastewater facilities, the number of cases of litigation involving the District has significantly increased, including litigation with the State Water Resources Control Board (State Water Board) concerning \$6.4 million in State

¹ Districts Audited Financial Statements for the Year Ended June 30, 2005; Page 22; Note 7: Sewer Fund

Report on Policy and Legislative Considerations Related to the Los Osos Community Wastewater Project – June 2006

Revolving Fund loans advanced to the District for the suspended project, and \$28 million in payment disputes from contractors hired to construct the project. In addition, the Central Coast Regional Water Quality Control Board (Regional Water Board) has fined the District \$6.6 million as a result of suspending their project. The District is also appealing the fines. Between December 1, 2005 and April 1, 2006, the District spent nearly \$1 million on legal and engineering services relating to the litigation, personnel issues, administrative and managerial services, and the wastewater project.²

On February 17, 2006, a petition was submitted to LAFCo by a group identifying itself as the “Taxpayers Watch” requesting the dissolution of the District. On March 7, 2006, the San Luis Obispo County Clerk-Recorder certified 1,687 signatures of registered voters of the District on the petition (17.4%) which was sufficient to require that LAFCo consider dissolving the District at a public hearing in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. That hearing was originally scheduled for June 15, 2006, but due to a noticing error, will be continued to July 6, 2006.

In April 2006, the District’s credit rating was downgraded by Standard and Poors from BB to CCC.

On May 3, 2006, the District’s audit firm issued their Independent Auditors’ Report referencing the recall election, the suspension of the wastewater project and other subsequent events that “could involve the devaluation of certain district assets and may even cause *going concern* problems for the District.” In essence, the report reflected substantial doubt concerning the District’s ability to continue its existence. We have no reason to disagree with the District auditors’ opinion.

On May 4, 2006 San Luis Obispo County Superior Court Judge Roger Piquet appointed a Certified Public Accountant to examine the Districts records and submit a report to the court on the amount of State Revolving Loan Fund moneys that remain in District hands, an amount that will most likely be frozen for the benefit of the construction contractors who brought this action. That audit has not been completed.

Los Osos - A Divided Community

The recall election, the passage of Measure B by the District voters, and the subsequent petition filed by the community’s “Taxpayers Watch” group and signed by 17.4% of the District’s registered voters to dissolve the District are just a few of the indicators that the community is deeply divided on the wastewater project, its impact, and the ability of the District to continue to function. It is clearly arguable that the District may be in an untenable situation and may be paralyzed without the County’s help and special legislation crafted to help solve the District’s problems.

² The Tribune (San Luis Obispo, Calif); 5/30/2006 – see Exhibit “A”- obtained from:
<http://www.highbeam.com/library/docfreeprint.asp?docid>

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

In correspondence to County staff dated June 1, 2006, the District's Interim General Manager, Dan Blesky, stated to Gail Wilcox, Deputy County Administrative Officer that:

"I am frustrated by the pressure on LAFCO in that the recalled Board members, those that failed to represent this community and so they want to take their ball and go home. I do not envy you or your staff being stuck in the middle of this morass."

Adding to the District's financial, legal and wastewater project challenges, the *personal attacks* associated with the District, its prior Boards, its new Board, and even attacks on County Supervisor Shirley Bianchi illustrate the emotional challenges of the "morass" that exists. We, County staff, do not believe it is appropriate for us to distinguish between the District's old Boards or its new Board as Mr. Blesky has done; it would not be appropriate for County staff to "take sides."

In contrast, we believe that, in some respects, the community's civic involvement should be acknowledged. It is all too easy to forget that community debate is a cornerstone to democratic forms of government; emotions are a normal part of debate. Nevertheless, the ability to resolve problems requires compromise and concessions, and rational dialogue is more likely to lead to resolutions than emotional attacks.

It is also important to distinguish between the District's willingness to resolve the current situation versus its ability to do so. Certainly we believe that the community's extensive civic involvement indicates its willingness to face its issues and pursue solutions. Both current and prior District Board members are actively involved in community debates. Individual citizens routinely spend countless hours of effort researching issues and expressing their opinions and recommendations. Yet, willingness is only one component of the prerequisites to implementing solutions.

We believe that although it is more than willing, and while we respect the District as an autonomous local agency, we are deeply concerned that it will be unable to resolve its problems – which now extend well beyond just a wastewater project. In addition, unless the current path is changed, the District's inability to resolve its problems might so negatively impact its overall condition that, consistent with the concerns of the District's auditor, the District may not be able to function at all. To reiterate a point of emphasis, though, our conclusions in this report recognize that Los Osos is divided and we do not believe it is appropriate for County staff to take sides on who is to blame – we simply believe that everyone must look to the future so that rational dialogue can prevail in pursuing a resolution to the current and long embattled situation.

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

B. Current Status

The District is currently evaluating alternative approaches to a community wastewater project. Outcomes of the District's litigation could significantly jeopardize their already precarious financial status. Other unknowns include, but are not limited to, the following:

- The feasibility of project alternatives that the District is currently evaluating
- The ability of the District to resume work on the project it is holding in suspense if it became the District's desire to do so
- The District's basic ability to fund or implement any wastewater project
- The District's ability to fund the liquidated and contingent liabilities it faces as a result of its past and future conduct

In a letter to Dan Blesky and Gail Wilcox dated May 12, 2006 regarding "Collaborative Options to Dissolving the District" Paul Hood, Executive Officer for LAFCo, stated:

"The County appears to be in a better position in terms of resources and financial standing to complete the sewer project."

Subsequently, in the correspondence to Gail Wilcox dated June 1, 2006, Mr. Blesky stated that the wastewater project is "not the County's problem":

"This (the wastewater project) is not the County's problem and there are so darn many potential resolutions to it that it is sickening when we think about the time wasted on dissolution."

We agree with Mr. Blesky from the standpoint of formal legal roles and responsibilities. The community wastewater project is not formally or legally the responsibility of the County. The responsibility for the project is directly that of the District, and as a special district that is *independent* from the County, the District is, in fact, an autonomous local agency of the State of California. The Regional and State Water Boards, as agencies of the State of California, also have direct responsibilities for the project in their capacity to protect the quality of the State's waters.

We also believe it is important to recognize, that although Mr. Hood considers the County to be in a "*better position*" to implement a community wastewater project, that the County, as a local agency, is still constrained by the same laws and regulation that face the District. For example, when Proposition 218 (1996) was approved by state-wide voters and incorporated into the California State Constitution as Articles XIII C and XIII D, the previous ability of local elected officials to override a protest on an assessment district, on the basis of health and safety needs, was eliminated. Thus, the County does not have sufficient authority under existing laws to implement a project with certainty (i.e. unless it can get assessments approved by property owners in accordance with Article XIII D, and unless permits and other regulator approvals are obtained). The current status of significant uncertainty for the District's project would also exist for a County project - that uncertainty is impossible to mitigate through existing laws and regulations - the framework under which all LAFCo

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

alternatives must be considered. As a result, County staff is extremely concerned about any solution that could be developed through LAFCo.

Although we appreciate Mr. Blesky's intent in indicating that the Project is not the County's problem, the District's actions and inactions do in fact create potential risks to County-wide taxpayers and County services and programs that benefit County-wide stakeholders. If a bankruptcy occurred, or the District was dissolved in a hasty manner, it could require significant County expenditures to wind up the affairs of the District.

In addition, although we are extremely concerned over options available to LAFCo under existing laws and regulations, we believe that the time and efforts spent on the dissolution and other alternatives has not been "time wasted," but rather, it has been "productive time" spent considering overall options that may be utilized to change the path that the District is clearly heading. Furthermore, we believe that the democratic principles of self governance rely on individuals and associations to seek changes in their government when that government is failing to protect and serve its constituents, and while we do not support a dissolution, we do understand the concerns of citizens who have signed the dissolution petition that is currently driving LAFCo's work efforts in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

In conclusion, the District's current status is so filled with uncertainty that its current path must change; the District is at risk of soon becoming effectively paralyzed. As demonstrated in the deterioration of the District's credit rating, the opinion of the auditor hired by the District, and as illustrated in growing litigation, among other issues, the District's current path is contrary to the best interests of the community of Los Osos and to avoid a total collapse, alternatives to the future should be considered.

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

C. Alternatives – Looking to the Future

The following is a list of the alternatives for your Board’s consideration regarding policy and legislative solutions for Los Osos.

- No change / No County involvement at this time
- Alternatives developed through mutual agreement
- Alternatives developed through LAFCo
- Alternatives developed through State legislation

As previously stated, we believe that the District’s current path needs to change. Expedient resolution of the wastewater dilemma is critical. The “no change” alternative simply does not seem viable.

In addition, we do not believe that solutions that might be developed through LAFCo, or those solely relying on mutual agreement between the District and the County, would be productive to pursue. We are especially concerned about the unprecedented nature of the proposed dissolution and believe that, if approved by LAFCo, it would cause us to recommend that your Board direct us to evaluate the legal ability to seek bankruptcy for the District, in the County’s role as “successor in interest,” prior to distribution of District assets and payment of District obligations required by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

Since non-legislative solutions inherently rely on existing laws and regulations, we are not optimistic that non-legislative solutions would succeed. Past efforts to develop a community wastewater project for Los Osos, without special legislation, over the past 30+ years has resulted in approximately \$30 million expended and no project.

In summary, of the various alternatives, we can only possibly favor those that are developed through special legislation. To support a legislative solution, we also believe that some specific and focused terms of a mutual agreement between the District and the County could be helpful in developing a final solution to the wastewater project. In the Fall of 2005, Assemblyman Sam Blakeslee was attempting to help develop a solution between the District and the State Water Board. We believe that the discussions at that time, and the terms agreed upon by the District, continue to point to possible compromises between local and state agencies in seeking a solution to the wastewater problem and developing a semblance of certainty for the community.

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

D. Legislative Options

Regarding legislative solutions, the following two basic options exist:

- State Implemented - Authorizing State Agencies to take direct control of the project with new regulatory fee authority to fund the necessary efforts.
- County Implemented – Authorizing the County to conduct a vote of property owners in accordance with Prop. 218 (1996) to decide whether they wish to authorize the funding for a community wastewater project and overall legislative support for a collaborative solution.

A State Implemented Legislative Option

This legislative option would establish greater certainty if it could be approved by the Assembly, the Senate and the Governor. It would entail the State of California taking control of the wastewater project through an appropriate *state agency*, enacting a *regulatory fee* authority for that agency, and authorizing a solution funded through those regulatory fees. Since the regulatory fees would be authorized for a State agency to impose (presumably only under special circumstances) those fees would not be subject to Article XIID of the State Constitution that restricts *local agencies* from, among other actions, imposing assessments or special taxes without a vote of either property owners or registered voters. This approach could possibly use the County as an “*Implementing Agency*” – in a special role that would be legislatively established and that would contrast from the County’s normal role as a locally authorized agency. In essence, the County (if needed) would act on behalf of a specified state agency and would be paid by that State agency through fees authorized in the legislation.

While we believe that this approach may be legislatively permissible, legislative findings should be established that consider the health and safety issues, the current regulatory enforcement actions, and the history of extensive community review and debate, but that no solution has been developed by the community despite over 6 years of efforts and approximately \$24 million expended since the District took over the project.

Although we believe that this option would be the most expeditious to resolving the wastewater dilemma and setting the District on a path to resolution of its overall issues, we were told it is less legislatively viable because it would require development of new roles and responsibilities for State agencies against the perception that Los Osos is a “local” problem, and this legislative approach would also require specific legislative approval of a new regulatory fee authority. An additional challenge to this approach is the argument that a State implemented project should be the option of last resort.

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

A County Implemented Legislative Option

While the State legislature should consider a State implemented project-approach if the Prop 218 election fails, the alternative of a County implemented solution appears more viable at this time. Combined with cooperative local policies aimed at turning the corner on the negative circumstances surrounding the current situation, and supported by mutual agreement between the District and County, it would be our hope that a successful Prop 218 vote of property owners, and cooperation from state agencies, would lead to the resolution of the wastewater project dilemma in the near future.

In considering details, we strongly believe that local policies and strategies that will be needed should begin with the discussions between the District and State officials that occurred during the Fall of 2005. In other words, despite the impasse that resulted last Fall, the concessions that the District did agree to, during discussions with the staff of the State Water Board, must be a prerequisite to County assistance. Specifically, resuming the construction of the conventional gravity collection system while also considering alternative treatment plant locations are important project-specific strategies that must be supported by all agencies for a County implemented solution to have a reasonable chance of obtaining property owner support.

As previously stated, resolving the wastewater dilemma is foremost in restoring the District's financial and legal condition. We are hopeful that the District would agree. In Mr. Blesky's June 1st correspondence, he also stated:

"I think that the County could help get all the parties back to the table, specifically the Regional Board and this District."

Under a County implemented project-approach, the County could consider taking an active role in developing a solution for Los Osos provided that sufficient legislative protection is afforded the County and provided that we receive assurances from other involved agencies as outlined elsewhere in this report. Any financial support provided by the County under a County implemented solution should be minimized in the event of an unsuccessful Prop. 218 election; and ultimately, all current liabilities, obligations and litigation of the District should remain the responsibility of the District.

Even with a resolution to the wastewater dilemma, the District could still find itself with continuing challenges as a result of existing litigation. Insufficient information exists at this time to know the extent to which the District's potential liabilities could be minimized through a County implemented approach to the wastewater project. It is our hope that cooperation between the County and the District could help minimize the liabilities and obligations of the District by, for example, considering whether existing collection system contractors can resume work and thereby minimizing existing payment disputes. **Under no circumstances, however, should your Board consider delegating or relinquishing any of your existing powers or authority – instead, the legislation must authorize new powers for the County, while holding the District accountable for their current and potential liabilities, and provide a framework for interagency cooperation.**

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

E. County Project Objectives and Strategies

The County's project objectives for its involvement, if any, in the Los Osos wastewater project are those recommended for inclusion in special legislation for the project. The following list was included in correspondence from Gail Wilcox to Assemblyman Sam Blakeslee dated June 9, 2006 in response to his request for comments about a possible legislative solution to the Los Osos wastewater issue. The following objectives and project specific strategies if implemented by the County, are essential for controlling County taxpayer risk and for creating the highest probability for a successful project.

County project objectives for inclusion in special legislation:

1. An opportunity for property owners within the affected area to demonstrate (via a Proposition 218 election) their willingness to fund, through property assessments, the cost of this project
2. Agreement that, in the absence of property owners' commitment to pay for this project, **the County has no responsibilities or obligations in relation to this project**
3. State water board agreement to expedite processing of a low-interest loan
4. State and/or regional water boards agreement to hold enforcement actions in abeyance based on an agreed upon schedule for completion of this project
5. Agreement that the District's current liabilities remain their obligation (i.e. not transferred to the County)
6. Agreement that the District immediately suspend further actions on this project to avoid duplicative or cross purpose efforts and, in the event the Board agrees to assume project responsibility, the County will develop the project in the manner that it deems appropriate within the confines of applicable laws and regulations

County project strategies for inclusion in Board policy and/or an agreement with the District when specified:

- A. County expenditures prior to a Prop 218 hearing - not to exceed \$2.0 million.
- B. Scope strategies:
 - a. **Based on District's Fall 2005 compromise:**
 - i. Conventional gravity collection; essentially as designed
 - ii. Analysis of alternative treatment plant sites
 1. Conventional technologies
 2. Confer with District Board on developing objectives for alternatives review

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

- b. Supplemental Scope strategies:
 - i. Community input –
 - 1. Utilize technical advisory committee (FTAC) for alternatives site review with representation from community and the District by including the District's engineer
 - 2. Conduct a community advisory election on top site alternatives
 - 3. With FTAC providing pro/con evaluations but not a final recommendation;
 - 4. Board of Supervisors makes final site and technology determination while considering community advisory election
 - ii. Co-equal analysis under CEQA for top site alternatives;
 - 1. Anticipate a supplemental Environmental Impact Report (EIR)
 - 2. Findings developed so that any of the top alternatives may be carried out (i.e. implemented).
 - iii. Discharge alternatives
 - 1. Input from District board on water management objectives;
 - 2. Timeliness in obtaining Regional Water Board permit approvals;
 - 3. Timeliness in other agency approvals.
 - iv. Prop 218 assessments proceedings
 - 1. Based on prohibition zone
 - 2. Substantially utilizing methodologies established by District's assessment engineer.
 - 3. Boundaries may be expanded through separate hearings
 - v. Employment of consultants:
 - 1. Will need sole source contracting to proceed quickly
 - 2. Intent to utilize District consultants through County professional services agreements, and District contractors through assignment agreements, if possible, for the following:
 - a. Assessment engineering
 - b. Collection system
 - c. Environmental Review
 - d. Municipal Finance team
 - e. District Engineer – for representation on technical advisory committee
 - 3. Intent to utilize existing or additional County consultants for the following:
 - a. Alternatives analysis, updated cost estimates and overall project management
 - b. Property acquisition and disposition evaluations
 - c. Other needed services
 - vi. Utilize County staff – need for additional position(s) to be determined

**Report on Policy and Legislative Considerations Related to the Los Osos
Community Wastewater Project – June 2006**

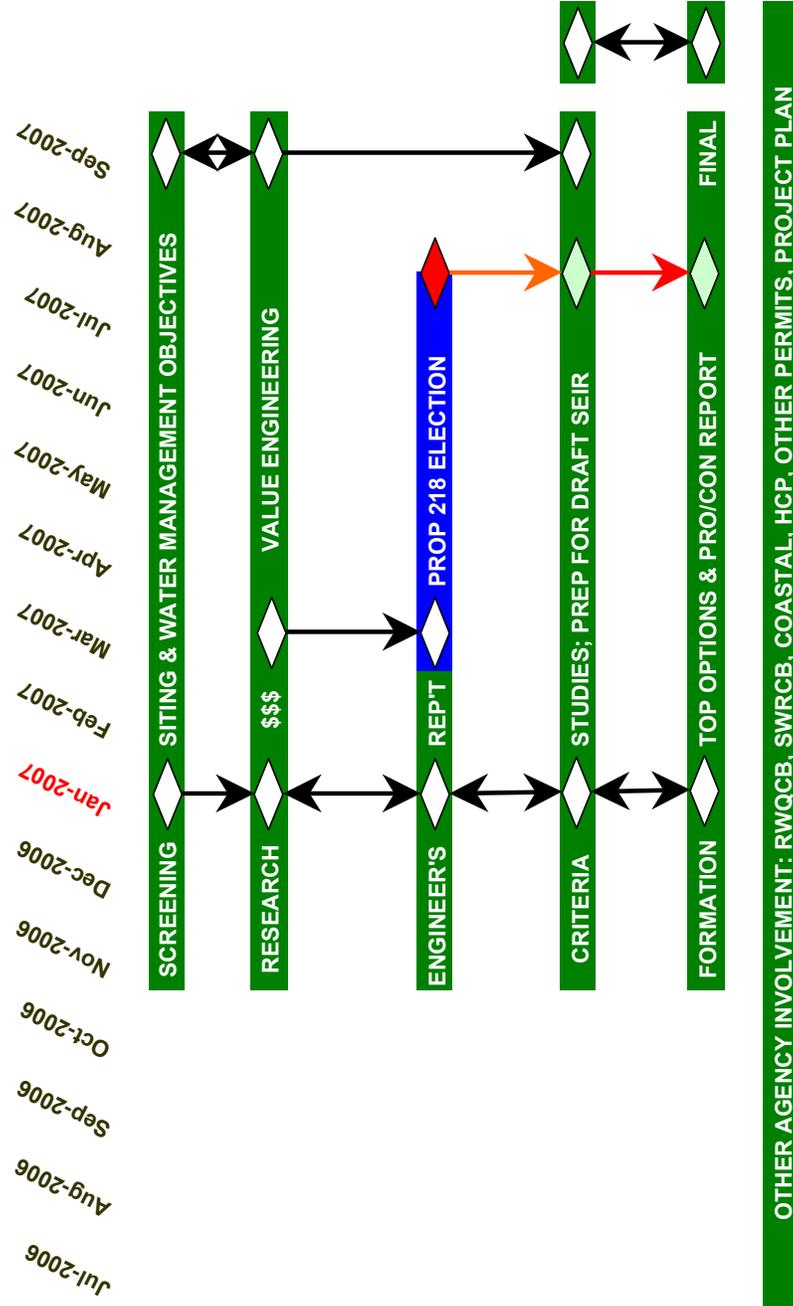
C. Schedule Strategies

- a. Proceed as expeditiously as reasonably possible
- b. Attached schedule based on the following:
 - i. Concurrent efforts
 - 1. Prop. 218 proceedings
 - 2. Alternative site review
 - 3. CEQA
 - 4. Permitting
 - 5. Other agency involvement
 - ii. Sequence of milestones
 - 1. Sequence of Legislative and Policy milestones (timing is currently indeterminable but could proceed relatively quickly with mutual cooperation by District)
 - a. Special legislation approved
 - b. Confer with District board on scope related objectives stipulated above
 - c. Confer with District board on County/District agreement; adopted by District then County if recommended
 - d. Technical advisory committee formation
 - 2. Sequence of consultant and technical milestones
 - a. Prop. 218 assessment vote and re-initiate collection system construction when first possible (subject to funding – i.e. SRF or Assessment bonds); approach to employing contractors to be determined
 - b. Supplemental EIR with top alternatives treated co-equally; appropriate findings; ability to carry-out any of top alternatives
 - c. Community Advisory Election
 - d. Final Project Implementation Recommendations

D. Budget Strategies

- a. Do not exceed \$2.0 million in “at-risk” County funds
- b. Full recovery of County funds
- c. Develop detailed project approach so that consultant efforts, compensation and County costs are minimized if the Prop. 218 election fails.
- d. Pursue grant revenues to
 - i. Specifically seek funding for disadvantaged constituents;
 - ii. Utilize District resources where possible;
 - iii. Cooperate where possible to minimize District project and other administrative and legal costs

Los Osos Wastewater Project



Alternatives Analysis

Engineering Estimates

Funding Authorizations - State Constitution Article XIII D (Proposition 218 of 1997)

Environmental Studies and Reports - California Environmental Quality Act (CEQA) Compliance

Advisory Committee and Advisory Election

Due Diligence

Cost Escalation (\$ Millions)

\$ 0.5 \$ 1.0 \$ 1.5 \$ 2.0 \$ 2.5 \$ 3.0 \$ 3.5 \$ 4.0 \$ 4.5 \$ 5.0 \$ 5.5 \$ 6.0

Assumptions: (1) See Project Objectives and Strategies (2) No litigation

OTHER AGENCY INVOLVEMENT: RWQCB, SWRCB, COASTAL, HCP, OTHER PERMITS, PROJECT PLAN

From: lisa schicker ()
To: Lisa Schicker-Hotmail
Date: Tuesday, May 12, 2009 11:29:31 AM
Subject: Fw: May 12 Addendum to May 5, 2009: Formal Complaint, Continued - Mr. Ogren's MWH Contracts, Conflict of Interest and Flaws with Shortlist and Design-Build Procurement Process for the County Los Osos Wastewater Project

this was filed as an addendum to my complaint regarding the shortlist and procurement process, elevating the MWH firm onto the short list - fyi.....

Lisa Schicker
 805-528-3268

--- On **Tue, 5/12/09**, **lisa schicker** <lisaschicker@sbcglobal.net> wrote:

From: lisa schicker <lisaschicker@sbcglobal.net>
 Subject: Fw: May 12 Addendum to May 5, 2009: Formal Complaint, Continued - Mr. Ogren's MWH Contracts, Conflict of Interest and Flaws with Shortlist and Design-Build Procurement Process for the County Los Osos Wastewater Project
 To: "Lisa Schicker-Hotmail" <lisaschicker@hotmail.com>
 Date: Tuesday, May 12, 2009, 10:48 AM

Lisa Schicker
 805-528-3268

----- Forwarded Message -----

From: lisa schicker <lisaschicker@sbcglobal.net>
 To: Warren Jensen <wjensen@co.slo.ca.us>; Chairperson Bruce Gibson <bgibson@co.slo.ca.us>; Supervisor Frank Mecham <fmecham@co.slo.ca.us>; Supervisor Jim Patterson <jpatterson@co.slo.ca.us>; Supervisor Adam Hill <ahill@co.slo.ca.us>; Supervisor Katcho Achadjian <kachadjian@co.slo.ca.us>; Planning Commission <planningcommission@co.slo.ca.us>
 Sent: Tuesday, May 12, 2009 10:48:39 AM
 Subject: May 12 Addendum to May 5, 2009: Formal Complaint, Continued - Mr. Ogren's MWH Contracts, Conflict of Interest and Flaws with Shortlist and Design-Build Procurement Process for the County Los Osos Wastewater Project

Dear Honorable Board of Supervisors and Mr. Jensen -

Please add this to the record as an addendum to my complaint and also include this information in public comment for the BOS meeting.

Mr. Jensen, in your preliminary findings, you had commented last week that source of my comment and request for the promised community advisory vote could not be found in AB 2701. I responded in my note sent on the evening of May 5, 2009 (attached).

As promised, I did some additional research and found that reference to the advisory election was not in the text of AB 2701, but here:

http://www.slocounty.ca.gov/PW/LOWWP/BOS_Items/BOS_Archive_2006.htm

Please review the June 19, 2006 Implementation Strategy Report that the BOS adopted that day.

Please see Page 12. point number b. i. 2 and page 13 b. ii c and page 14 all explain the county's intent to hold the community advisory election on the top waste water project alternatives.

I believe it can also be found in both Blakeslee's "Framework" that he sent to the Board and in his notes that accompany the bill. He also asks for an audit of the LOCSD's waste water project, which was a concern to all of us, and it is a remaining task that has yet to occur, which I fully support.

Additional information has also come to light that I wish to share with the BOS for their consideration:

It now appears that Lou Carella and Rob Miller both had both financial and business relationships with the applicant MWH thought prior LOCSD and County projects (LOCSD Waste water Project Report, Design and Lopez Lake, etc.), and that these projects were supervised by the public works director.

Both of these gentleman were asked to serve on the interview panel, interviewing firms that included their former business partner, MWH , for the SLO County Waste water project.

Mr. Carella was the only member of the 5 member panel that conducted all of the reference checks, and all of his scores were incorporated into the score sheets for all of the panel.

Dear Supervisors, I have now worked for the largest public works department in the State of CA for almost 20 years. Every contract that I work on here is reviewed by the State Department of Audits, my work receives a high level of scrutiny. I must tell you that it would be unacceptable for firms with past financial or working relationships on recent public projects to sit on "both sides of the table", one firm conducting the interview for a public works project that is paid for by taxpayers - and the other firm applying for the job. That was my comment last week, how could "friends objectively review friends?" The state auditors would never approve such an arrangement for a public sector job, for obvious conflict of interest reasons.

Thank you from Lisa

Lisa Schicker
805-528-3268

.....

----- Forwarded Message -----

From: lisa schicker <lisaschicker@sbcglobal.net>
To: Chairperson Bruce Gibson <bgibson@co.slo.ca.us>; Supervisor Frank Mecham <fmecham@co.slo.ca.us>; Supervisor Jim Patterson <jpatterson@co.slo.ca.us>; Supervisor Adam Hill <ahill@co.slo.ca.us>; Supervisor Katcho Achadjian <Kachadjian@co.slo.ca.us>; wiansen@co.slo.ca.us; Planning Commission <planningcommission@co.slo.ca.us>; caispuro@co.slo.ca.us; dgraton@co.slo.ca.us
Cc: Lisa Schicker-Hotmail <lisaschicker@hotmail.com>
Sent: Tuesday, May 5, 2009 9:16:32 PM
Subject: Formal Complaint, Continued - Mr. Ogren's MWH Contracts, Conflict of Interest and Flaws with Shortlist and Design-Build Procurement Process for the County Los Osos Wastewater Project

Dear Supervisor Gibson and Board Members:

As promised, here is a copy of my presentation from today (I got through about 1/4 of it during public comment) with the additional reference documents attached. Please include these in the public record and post in the official minutes for the meeting.

It has taken quite a bit of time to gather all of these documents for you, and many of these were referenced in several of my earlier communications with your Board.

Mr. Jensen, the AB2701 advisory vote was not in the bill, that was my error, but it was something that Assemblyman Blakeslee and I discussed extensively and I believe it is included in his personal notes that accompany the Bill, along with his request that the State audit the LOCSD waste water project; he understood the seriousness of these issues. I will look for his notes and I suggest you discuss this with him, too. Paavo and I also discussed the timing of an advisory vote regularly, perhaps he can shed additional light on this topic for everyone.

Please Mr. Gibson, do not "shoot the messenger", my comments today were not opinions, nor were they "unsubstantiated claims", as you stated in your closing comments. I presented both facts and questions to your Board that require clarification. These facts presented were derived from my first hand experiences and observations and I am simply presenting these facts to the current decision-makers for their evaluation.

It is my duty and responsibility, that is how I see it. And just like you said about your decisions, "its not personal" for me either.

I believe that my concerns have merit, and I have no ulterior motive for making this effort to collect all of these documents for you other than keeping my promise to the people of Los Osos.

My promise to my community was to deliver an affordable 21st century sustainable water and waste water project as soon as possible, and I worked night and day towards that goal for over six years now, first as an activist and then as an elected official, despite unbelievable adversity.

My promise to my community was if the LOCSD supported AB 2701, we would be assured a fair, honest and open process and that all alternatives would be explored - including gravity and step and everything in between - so the people would get the best project for the best price.

That is why pre-empting the decisions of the Planning Commission, by expediting Public Works' recommendations to short-list gravity collection teams with the MWH design only is a bad idea - it circumvents the fair and coequal process that you promised the people, and it stifles the creative solutions that we need, and that is what is currently causing this recent citizen upheaval.

My goals are ones that I think we all share. The only way we can get there is by working together, citizens with their elected officials in an open democratic process, through these very tough issues and with mutual respect for our various points of view.

Thank you in advance for reviewing these additional materials.

Sincerely,

Lisa Schicker, Past President and LOCSD Board Member 2004-2008

.....

SUMMARY

In light of the information that has been provided to your Board and to the public and for the record, I request that your Board take action:

1. Vote to agendize a review of the LOWTP design build procurement process and rescind the current consultant shortlist, if it has been approved, until a complete investigation can occur and implement independent third party oversight for the Wastewater Project design build process.

2. Vote to agendize an audit of all County/Agency contracts that the Public Works Director has managed, including the Lopez Lake Dam Retrofit project, and including his past relationships with consultants such as RMC, Carollo, Carella, and MWH, among others. These same firms were the shortlisted bidders for the design of the LOCSD waste water project and most of them are already working on your project, too.

For your consideration:

“Elected and public employees are charged with a legal duty to report a suspected

crime or illegal activities... If Board members knew about the illegal activity, their vote approving the final contract affirmed and condones it and all subsequent actions approving warrants and amendments to the contract simply continued the fraud on the public. They essentially participated in the criminal activity.”
(Excerpt from the D.A.'s letter to LOCSD and their Attorneys, March 2, 2006)

This quote is timely for you; as you now have in your possession information and disclosure of illegal acts that have tainted the shortlisting and design build procurement process for the Los Osos project. This information will apply to all subsequent decisions that you make.

As I have said many times before, all Los Osos has ever asked for is a fair and honest process. We can still get there. Thank you for consideration of these materials.

May 5, 2009

RE: Formal Complaint: Mr. Ogren's Illegal MWH Contract, Conflict of Interest with MWH and Flaws with the Short listing of MWH and the Design-build Procurement Process for the Los Osos Wastewater Project

Dear Honorable Chairperson Gibson and Board of Supervisors:

As part of my duties as a previously elected person with direct knowledge of events that will influence decisions you will soon make on behalf of Los Osos citizens, it is my duty and responsibility to make you aware of information and activities that are unethical, illegal, and/or a suspected crime.

This will be my tenth communication and correspondence with you regarding a formal complaint filed a month ago, alerting you to past illegal activities of the Public Works Director, Paavo Ogren that are related to current County business and to unethical activities by consultants hired by Mr. Ogren for SLO County projects, including the LOWTP.

I have confirmed that your Board and/or County Counsel received my previous correspondence and documents which provide Attorney, DA and Engineering documents describing how Paavo Ogren (as IGM), directed the execution of an illegal MWH contract for the LOCSD's LOWTP.

Mr. Ogren appears now to have also violated the design-build code and contract procurement requirements for the County's project by hiring MWH in the fall of 2006, ignoring the refusal of the LOCSD to issue the necessary conflict waiver, and then short listing this same MWH firm again in April 2009.

MWH is a firm that has already made millions in Los Osos from this illegal contract, for a project that no one wanted (see your recent survey results), and has filed lawsuits against the citizens/LOCSD that are still active. They are also under investigation by the DOJ and FBI in Florida - for bid rigging and unethical billing practices.

How did MWH ever make it past the reference check that was conducted by the County's Design Build interview panel? Who conducted this interview and what were their prior relationships with MWH? Did MWH disclose their current lawsuits, their legal problems in Florida or complaints still pending against them at the Construction Management Association to the County, as is customary?

My purpose is to assure, for the public record, that you are fully aware of the seriousness of these allegations. I recommend that each of you request that County Counsel compile a complete set of materials sent to you regarding this matter and that you have all the supporting documents, too, in order to remain completely informed.

I also request that you take prompt action to protect the County taxpayers and Citizens of Los Osos from any further financial harm. Please do not allow the continuation of a tainted procurement process being led by the Public Works Director, when at

the very least there now is a perceived conflict of interest; both MWH and your Public Works Director must be immediately removed from working on this project.

I have attached additional supporting documents in PDF format for your review; most are new, and some have been previously referenced in writing and/or during my public testimony from March 28, 2009 to the present.

Here is a list of the enclosed attachments:

1. Official Memo from GM Bruce Buel, sent to LOCSD Board: January 6, 2006, stating that Interim GM Paavo Ogren directed him to backdate the first MWH contract for \$288,000. **According to the County DA, this is considered a "violation of Penal Code Section 424 and Government Code Section 6200, both of which prohibit falsification of public records such as the backdated contract..."** Paavo Ogren knowingly directed the backdating of the original contract, affecting all subsequent amendments and contracts for over \$16 million with MWH, which were executed after the fraudulent first contract.
2. Copy of the LOCSD/MWH backdated contract. The Attorney (and "approved to form" statement) and the Board President signatures are missing, as are required on LOCSD public contracts. Dated September 1, 1999, Paavo Ogren, IGM was in charge, before Bruce Buel, eventual GM, was even employed.
3. LOCSD Resolution 2005-47, requiring DA to investigate the MWH contracts. December 2005.
4. Letter 1 to DA, all attachments, citing illegal acts and false claims, and including false claim letter to MWH (12-8-05), and an invoice showing Ogren's approval of \$29K invoice from MWH without board authority in Nov 1999. **This letter to the DA constituted the reporting of a crime, which by receipt of this note, you now have also been notified.**
5. Letter 2 to DA, citing illegal acts - March 2006.
6. Letter to AG with all copies of DA correspondence, citing illegal acts - March 2006.
7. LOCSD letter to Construction Management Association, citing illegal acts, conflict of interest and examples of MWH poor engineering judgment. March 2006.
8. LOCSD letters 1 and 2 to MWH, terminating contracts and detailing all False Claims. August 2006.
9. Newspaper articles regarding these issues.

In light of the information that has been provided to your Board and to the public and for the record, I request that the BOS:

- 1. Vote to agendize a review of the LOWTP design build procurement process and rescind the current consultant shortlist, if it has been approved, until a complete investigation can occur and implement independent third party oversight for the Wastewater Project design build process.**
- 2. Vote to agendize an audit of all County/Agency contracts that the Public Works Director has managed, including the Lopez Lake Dam Retrofit project, and including his past relationships with consultants such as RMC, Carollo, Carella, and MWH, among others.**

One last thought, for your consideration:

“Elected and public employees are charged with a legal duty to report a suspected crime or illegal activities... If Board members knew about the illegal activity, their vote approving the final contract affirmed and condones it and all subsequent actions approving warrants and amendments to the contract simply continued the fraud on the public. They essentially participated in the criminal activity.” (Excerpt from the D.A.'s letter to LOCSD and their Attorneys, March 2, 2006)

This quote is timely for you; as you have in your possession information and disclosure of illegal acts that have tainted the short listing and design build procurement process for the Los Osos project. This information will apply to all subsequent decisions that you make.

As I have said many times before, all Los Osos has ever asked for is a fair and honest process. We can still get there. Thank you for consideration of these materials.

Most Sincerely,

Lisa Schicker
Past President and Director, LOCSD 2004-2008

Cc: The citizens of Los Osos, members of my community will also receive copies of this formal complaint

County Counsel, Design Build Institute of America, Construction Management Institute of America, DOJ, DA and AG

This Formal Complaint was presented in person during public comment at BOS Meeting - Los Osos Wastewater Update and hand delivered to each supervisor and the County Clerk for inclusion in the record

This formal complaint with all attachments was emailed to the BOS, and County Counsel on the evening of May 5, 2009.



Public Works
Paavo Ogren
Director

> [County Home Page](#) > [Public Works and Transportation](#) > [Los Osos Wastewater Project](#) > [Related BOS Items](#) > BOS 2006

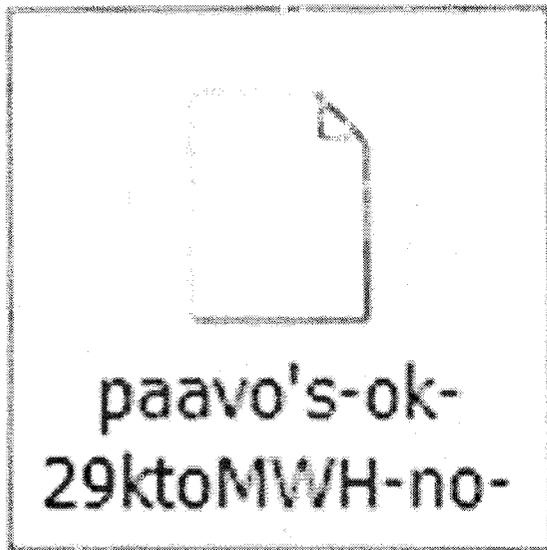
BOS 2006

[Printer Version](#)

Date	Item(s)	Video	Staff Report	Attachment(s)
Dec. 19, 2006	Form Technical Advisory Committee and Approve consulting agreement with Wallace Group	Board of Supervisors	Staff Report Item B-18	
Dec. 12, 2006	Approve consulting agreement with Carollo Engineers and with Crawford, Multari, and Clark	Board of Supervisors	Staff Report Item B-12	Clerk's Files
Oct. 3, 2006	Approve \$2 million budget for Project Development	Board of Supervisors	Staff Report Item G-1	
June 19, 2006	Support for AB 2701 and Approve the Project Strategies	Board of Supervisors	Staff Report Item A-1	

LOWWP Quicklinks

- [Design-Build Documents](#)
- [2008 Technical Memos](#)
- [Document Library](#)
- [Related B.O.S. Items](#)
- [Technical Advisory Committee](#)
- [FAQ's](#)
- [Join the Mailing List](#)
- [Request Electronic Mailings](#)
- [News Archives](#)
- [Environmental Impact Report](#)



The above icon appears on Ms. Schicker's SkyDrive, but the contents consist of a blank page.