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Peter Yribarren
Visalia Area Office
U.S. Department of Agriculture
3530 West Orchard Court
Visalia, CA 93277

Re: Los Osos Wastewater Project

Dear Mr. Yribarren:

We are legal counsel for the County of San Luis Obispo. We understand that you have some questions regarding the meaning and effect of section 1(k)(4) of AB 2701, which reads as follows:

(4) If the county constructs and operates a wastewater collection and treatment system pursuant to this section, *not less than three years* after the operation of the system commences, the board and the board of directors of the district *shall mutually apply* to the Central Coast Regional Water Quality Control Board for a modification of the waste discharge permit, requesting permission to transfer of the responsibility to operate the wastewater collection and treatment system from the county to the district. Consistent with that modification, the board shall adopt a resolution that specifies the date on which the county will no longer exercise its powers pursuant to this section.

(Italics added)

Our understanding of section 1(k)(4) of AB 2701, is as follows. First, the County must operate the new sewer system for at least three years. Secondly, at an unspecified date after three years, there is a requirement that the County Board of Supervisors and the CSD Board of Directors “shall mutually apply” to the Regional Board for permission to transfer responsibility for operations from the County to the CSD.

We believe the only mandatory provision in this section is that no action to convey the system to the LOCSD could occur within the first three years after the system becomes operational. We do

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not believe this section requires the County, the LOCSD, or the RWQCB to agree to or accomplish a transfer at any particular time after the three years of mandatory County operation. In our opinion, it is inherent in the statutory requirement that the County and the CSD “mutually apply” for the “permission” of the Regional Board that (1) both the County and the CSD have discretion in determining whether or not a “mutual” application is appropriate and (2) the Regional Board is free to grant or deny permission based on the exercise of its sound discretion. In any event, there is no deadline by which the mentioned transfer must be applied for or accomplished.

Our Public Works staff does not envision a transfer to the LOCSD so long as the financial and managerial status of the LOCSD remains in its current state. The operation of the planned facilities is going to require sophisticated professional staffing and management and a significant and ongoing financial commitment. Due to the CSD’s very tenuous financial situation, combined with a history of contentiousness on the Board and transitory management at the staff level they do not believe that the CSD is currently in a position to provide the necessary staffing and management to operate the planned facilities in the required manner. It would require not only a substantial turnaround on several fronts, but also a long period of stability before any transfer could be considered by the County.

While our Board of Supervisors would make any such decision, we would recommend a host of conditions be met before the County would entertain such a transfer, including but not limited to:

1. Consistency with any funding agreements entered into for the financing of the project
2. Adequate financial condition of the LOCSD
3. The establishment of a long period of demonstrated highly competent management of other utility systems on the part of the LOCSD, and including the stability of their management staff.

If the USDA, or any other funding entity, has concerns about this section of AB2701, we believe it may be appropriate to include measures to mitigate those concerns in any financing agreements, so that in the future all involved parties can be involved in any potential project transfer actions, in whatever role is deemed necessary. County Counsel would recommend, and the County would be very likely to accept, a USDA financing condition requiring USDA approval of any transfer of the project facilities from the County to the LOCSD.

We also note the requirements of section 1(1)(3) of AB2701, which apply after any transfer, requiring the County to--

- (3) Continue to collect any necessary assessments and use them to repay any indebtedness incurred by the county to finance the construction of the wastewater collection and treatment system pursuant to this section.

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Thus, even if at some point in the future it was agreed to transfer the project to the LOCSD, the County would remain responsible for collecting assessment and ensuring that all financing agreements are complied with. We note as well that with the involvement of the RWQCB in a permitting, monitoring and enforcement role, that the operation of this system will have extraordinarily strict oversight.

If you have any questions about this letter, or the meaning or impact of AB 2701, please feel free to contact me.

Very truly yours,



WARREN R. JENSEN
County Counsel

WRJ:slf

Cc: Paavo Ogren
Bruce Gibson