



July 16, 2021

Los Osos Basin Management Committee (BMC)
Los Osos, CA

Dear Committee Members:

We are writing to provide you with a prioritized list of actions we believe the BMC must take in the near future to protect and preserve the Los Osos Groundwater Basin.

Our priorities consolidate and update earlier requests and add several new ones based on further review of the Stipulated Judgment and Basin Plan, a close review of the 2020 Annual Report, BMC staff responses to our letter of March 12, CHG's response to our recommended revisions, and review of the 2015 letter from the Coastal Commission and related documents and requirements—all of which are attached.

In general, our Working Plan Priorities provide ways for you to take the “bold and decisive” action that you committed to in the Basin Plan and the “necessary and appropriate” actions you are empowered to take in the Stipulated Judgment to maximize cost-effective mitigation programs and to accurately measure the results with an upgraded system for data-based decision making (quality data, metrics, and measurable sustainability goals and objectives). Several of our new requests focus on how the BMC can apply the Stipulated Judgment and Basin Plan in a manner that allows you to more effectively achieve your primary goals and purpose--to ensure the Basin provides a sustainable water supply for the people and resources that depend on it.

To provide some background, we first discuss several reasons we think the BMC's progress has been slow. These include (1) the disproportionate influence of the County which keeps the BMC focused on the County's goal of adding 30% or more development over the Basin, (2) an over-reliance on the model for decision making due, in part, to the Stipulated Judgment and Basin Plan's over-emphasis on the model and modeled “metrics,” (3) the need to better align BMC documents and operations with SGMA and the Coastal Act and related Coastal Policies and requirements including

the Los Osos Wastewater Project (LOWWP) Coastal Development Permit (CDP), and (4) a reluctance, especially on the part of purveyors, to use the powers granted in the Stipulated Judgment to achieve the goals and purpose of the BMC.

After 40 years of seawater intrusion into the Basin and six years of BMC operations with no significant improvement in conditions—with seawater intrusion continuing to destroy our precious limited water supply, and with droughts and record heat waves devastating community water supplies throughout the Western U.S—it's time for the BMC to use all the tools at its disposal to proactively prepare the Basin for what may be even more challenging times ahead.

The adjudication of the Basin and the Stipulated Judgment (with its provisions to upgrade practices, policies, and programs) enable the BMC to provide for Los Osos what will likely be very rare in the future—an independent, sustainable community water supply. On the other hand, the BMC can take a “Hope for the Best—Wait and See” approach, trusting predictive modeling rather than data-based decision-making, gambling that a back up supply will be there when we need it.

The BMC is at a critical point in determining which way it will take the Basin and the community. With these requested actions, some of which we request you initiate at your next meeting on July 21, we provide specific ways you can begin to proactively move the community toward a more certain future.

Confirming the 2400 AFY Sustainable Yield

Our **#1 Working Plan Priority** is for the BMC to confirm that the Basin's Sustainable Yield remains at 2400 AFY as agreed in the Stipulated Judgment. Section 4.3 of the Stipulated Judgment requires the BMC to “evaluate, confirm, and set” the Sustainable Yield with a unanimous vote and based on “the best available, then existing, data and evidence.” As Mr. Cote clearly explained at the June 16 meeting, the procedure was not followed, and in 2017, when the estimated Sustainable Yield was raised to 2760 AFY (based on the data and evidence in the 2016 Annual Monitoring Report), the chloride and water level metrics and data showed seawater intrusion at its worst and did not support raising the Sustainable Yield. Further, since 2019, the metrics have not supported the increase. (Please see further analysis and support in “Reasons and Support” for our #1 Priority, in our “Recommendations for Revisions” to the 2020 Annual Report, and analysis of Stephanie Shakofsky, attached.)

One of the reasons confirming the 2400 AFY is our first priority is that it sets the tone and the direction of the BMC for the future. If the BMC keeps the 2760 AFY in place, the BMC is making a decision that does not prioritize Basin sustainability, but instead makes the County's goal of adding development the top priority. Further, it would not

be a decision based on measurable data, but instead on uncertain modeling projections, as yet unverified by monitoring data.

Kylie Hensley of the County Planning Department stated at the June 16 meeting that the 0% growth rate requirement is in effect until the First Tier Basin Plan projects are in place, but that the provision is subject to change through “adaptive management.” She also mentioned that the Board of Supervisors could begin to approve development once the 0% growth rate is lifted.

The First Tier projects (projects proposed in the Basin Plan to support the current population) include conservation, recycled water use, and Infrastructure Projects A and C. The Basin Plan indicates that three Infrastructure Program C expansion wells are needed to support the current population. However, based on the model and 2017 conditions (improving metrics), the 2018 Adaptive Management TM estimates the sustainable yield to be 2760 AFY with just one Program C expansion well installed, Expansion Well #1. It concludes that the Basin Yield Metric target of 80 (2208 AFY) will support the current population. Water use at that time was estimated at 2070 AFY. The 8th Street Well is due to be in operation this year. Thus, the Board of Supervisors could begin to approve development, based on the “Adaptive Management” TM, if the 2760 AFY remains in effect. (See 2018 Adaptive Management TM, pp. 6 & 7 on LOSG website at thelog.com).

Further, as Ms. Hensley mentioned on June 16 pursuant to Subsection 7.3 of Community Standards section of the LOCP, the Board of Supervisors could “certify” that the Basin is sustainable and lift the Title 19 requirement for new development. The County is apparently conducting a review of the program, in part to determine how much conservation potential remains. However, it is also continuing to process applications and approve development.

If the BMC does not clarify that the 2400 AFY sustainable yield (and not the 2760 AFY) is in effect--and also clarify that the 2018 Adaptive Management TM is not in effect--the County could begin to approve development this year, even without a Title 19 requirement.

Section 7.3(D)(1) of the LOCP, as approved by the Board of Supervisors in December of 2020, allows the Board to declare that the Basin is sustainable for development and to remove a Title 19 requirement if “the Board of Supervisors adopts a resolution certifying new development can be accommodated by the sustainable yield of the Basin without causing seawater intrusion, as identified in the Basin Plan for the Los Osos Groundwater Basin and annual monitoring reports.” (*see LOCP, Community Standards, Section 7.3 attached*).

This vague language allows the Board to approve development primarily based on the model, if, for example, the Board believes the development will not cause “additional” seawater intrusion. For 20 years or more, the Board of Supervisors has approved

development over the Basin outside the sewer service area knowing seawater intrusion is advancing. The current estimated production is about 2000 AFY, although seawater intrusion continues to move into the Basin.

Moreover, the County has over 350 single-family and multi-family housing units on a waiting list that the LOCP exempts from a growth rate restriction. Some are affordable housing units and others are exempted from the growth rate because applications were submitted prior to the Board's approval of the CDP (see LOCP, Section D-5 attached). We believe the County may give final approval to these projects for construction this year if the BMC is not clear that the Sustainable Yield remains at 2400 AFY and the Basin Yield Metric target of 80 (BMY 80) remains in effect (i.e., 1920 AFY) (see Wait Lists attached).

This could happen because a 2760 AFY Sustainable Yield—even if the Basin Yield Metric target of 80 is applied—suggests that the Basin has a “marginal yield” of about 200 AFY to support further development since the current estimated production is about 2010 AFY ($2760 \times .8 = 2208 - 2010 = 198$). Section 5.6.22 of the Stipulated Judgment grants the BMC the right to certify marginal yield proposals, but the Board of Supervisors may consider the 2018 Adaptive Management TM to satisfy this requirement. Thus, the BMC should also make it clear that it has not certified a marginal yield.

The Stipulated Judgment further grants the BMC the right and responsibility to determine when the Basin is sustainable rather than the Board of Supervisors, and that the BMC should make this clear to the Board. Thus, our #2 Working Plan Priority is that you inform the County that the Stipulated Judgment grants the BMC the authority to set criteria for Basin sustainability. We ask that you also tell the County that you are in the process of reviewing and upgrading its metrics, and until that process is complete, the BMC will use the chloride and water level metrics and data to date. These numbers do not support raising the Sustainable Yield from the 2400 AFY agreed to in the Stipulated Judgment. We ask that you further make it clear that the 1920 BYM 80 remains the production target (see Working Plan Priority #2).

We should be clear that, though we support confirmation of the 2400 AFY Sustainable Yield, we don't support it as a criterion for determining future development. We support it because it will set a lower, more protective pumping target, and it will signal the need for implementing more mitigation programs. Further, “sustainable yield” as defined in the Basin Plan allows seawater to advance, so it doesn't avoid “undesirable effects” consistent with accepted definitions. The Basin Plan recognizes this and sets the Basin Yield Metric target of 80 (BYM 80) as the production target. However, the BYM 80 has not been verified by data as a yield that stops seawater intrusion and avoids other undesirable effects.

A central theme of our earlier letter, consistent with SGMA and the LOWWP CDP Condition 6, is that decisions that can have long-term and irreversible adverse

consequences, such as whether to add further development, must be based on sufficient quality data and clear and measurable objectives. The BMC is having the metrics reviewed and possibly upgraded with new monitoring wells and time-specific measurable objectives, according to BMC staff responses to our March 12 letter. Our **#9 Working Plan Priority** recommends sufficient monitoring sites, and quality data, metrics, and measurable goals and objectives, including sufficient margins of safety built into the metrics and objectives, to adequately protect the Basin against climate change and other impacts.

Concerns highlighted by the BMC meeting of June 16

The BMC meeting of June 16 (see attached transcript) reinforces our concern that the BMC priorities have shifted away from a focus on the immediate goals of the Basin Plan, largely due to the County's disproportionate influence on the BMC's priorities, policies, and practices. This has resulted in the BMC focusing an inordinate amount of time and energy on the County's goal of adding 30% more development over the Basin.

The County's influence and priorities were clearly shown at the June 16 meeting with yet another County presentation on the LOCP, the Growth Management Ordinance (GMO), and Title 19, which are currently being reviewed by Coastal Commission staff. We agree with the purveyors on the Committee that the County's presentation was not productive and should have been scheduled after the purveyors had a chance to finish a letter to the Coastal Commission regarding ADUs. We also agree with Mr. Zimmer's remarks refuting Supervisor Gibson's claim that the County's role is to approve development (apparently based solely on modeling) and the purveyors' role is to make sure there is enough water for development, and to deny will-serve letter to projects if purveyors believe there is not enough water for the projects.

Mr. Zimmer pointed out that modeling predictions have not yet been confirmed by Basin measurement and that the first priority of purveyors and the Basin Plan is to provide a sustainable water supply for the current population. He emphasized that the County is required to ensure an adequate water supply for a project before the County approves it.

We also concur with Mr. Cote's remarks regarding the Sustainable Yield. He clearly and convincingly affirmed that he and the BMC had not approved the yield increase from the agreed-on 2400 AFY to the 2760 AFY appearing in the 2020 Annual Report in accordance with the Stipulated Judgment, and he voted against sending the Annual Report to the Court with a Sustainable Yield that was not approved as required. We agree with Mr. Cote that purveyors have been "too timid" in the past in asserting their

rights and responsibilities under the Stipulated Judgment and Basin Plan, and our #2 through #4 and #12 Working Plan Priorities suggest actions we believe purveyors on the BMC can take to begin to change that.

The critical need for data-based decisions and how they are supported by SGMA and the LOWWP CDP

Data-based decision making is critical for Basin sustainability, especially after 40 years of seawater intrusion and climate change the new normal. Because the past no longer predicts the future, careful monitoring of conditions is essential to informed and effective decision-making, and modeling becomes a much less effective and reliable tool. The actual progress and impacts of seawater intrusion, nitrate levels, and the effects of programs must be closely monitored, and decisions that can have long-term or irreversible adverse consequences, such as whether to add development, must be made on the basis of measurable sustainability goals and objectives with ample margins of safety built in.

Following is a list of reasons modeling-based decisions could adversely affect Basin sustainability, and why decision making based on sufficient quality data and measurable objectives is essential:

- 1) After 40 years of seawater intrusion, too much of the Basin has been lost due to reliance on limited data and rosy modeling predictions that overstated what could safely be extracted. In 2015, when the Basin Plan was published, it showed, based on the estimated Sustainable Yield of 2450 AFY, that the Basin had been over-drafted by an average about 750 AFY, about 30%, for about 35 years--a total of about 26,000 AF. Basing the overdraft on a Yield Metric Target of 80, the overdraft averaged about 1250 AFY for a total of about 44,000 AF.
- 2) All models have uncertainty, and the current one could have more than most because it has not been updated (as recommended by its creator CHG), because it assumes 17.5" of annual rainfall, when the for average for 10 years has been more, because about 50% of the water pumped from the Basin is estimated (and the estimates are questionable according to a hydrogeologist we hired), and because the mode is being used to predict Basin conditions that have not existed historically, which adds to uncertainty (i.e., a lot more production moved inland and to the upper aquifer, and dispersed septic system recharge shifted to one location).
- 3) Climate change, by definition, means that modeling, which relies on historical conditions predicting future conditions, is now less reliable.
- 4) The County is under a lot of pressure to develop the area after 30 or so years of a sewer moratorium and 10 years of a partial water moratorium, in addition to state and local initiatives to increase housing stock, which means the County will continue to push for model-based decision-making.
- 5) The Department of Water Resources, recognizing the shortcomings of model-driven basin management, requires via SGMA measurable goals and objectives to confirm basin sustainability.

6) The state legislature, via the Coastal Act, recognizing the importance of an adequate water supply to the health and sustainability of coastal resources—and the Coastal Commission recognizing the critical threat to the endangered Los Osos Water Basin from seawater intrusion and the pressures to develop the area with the construction of the sewer—implement and enforce Coastal Zone land use policies and the Los Osos Wastewater Project (LOWWP) Coastal Development Permit (CDP). The latter requires conservation and recycled water reuse to be maximized, ample water for sensitive habitat, and “measurable success criteria” of a sustainable water supply to support development. Special Condition 6 of the LOWWP CDP requires Los Osos buildout limits, and mechanisms to stay within them, to be based on “conclusive evidence” of a sustainable water supply.

The LOSG asks the BMC to meet and exceed these best management practices and Coastal Act and CDP requirements to preserve the Los Basin as you implement our requests.

BMC policies, practices, and priorities should be consistent with SGMA and Coastal Act/Commission policies and requirements

The BMC can and, we believe, is required to ensure its policies, practices, and priorities are consistent with SGMA and the Coastal Act and related policies and requirements, including the LOWWP CDP Special Conditions 5 & 6. We have attached a 2015 letter to the BMC from the Coastal Commission, which informs the BMC that the Stipulated Judgment and Basin Plan must conform to the Coastal Act and LOWWP CDP. It indicates that Coastal Commission staff would prefer that the Stipulated Judgment and Basin Plan specifically refer to the CDP and other policies and requirements, but absent such reference, the policies and requirements still apply. (See 2015 letter attached).

SGMA requires time-specific measurable physical objectives and interim objectives to be set to confirm a Groundwater Sustainability Agency (GSA) is on track to meet its measurable sustainability goals, and Special Condition 5 requires the LOWWP conservation, recycled water use, and environmental monitoring programs to have “measurable success criteria.”

The Stipulated Judgment does not mention the LOWWP Special Conditions of the Coastal Commission required CDP. It mentions only the original project Condition 97, and then just one of the condition’s requirements--that the County keep all recycled water in Basin. The Basin Plan mentions and cites Special Conditions 5 & 6, and it provides for the County to implement and administer the Condition 5 conservation program as the Basin Plan program from 2015 to 2018, but the program was never fully implemented (pp. 198-199). The Basin Plan also indicates that the Special Condition 5 program is “incorporated into” the Basin Plan program but that compliance with Condition 5 remains the sole legal responsibility of the County (p. 147).

While the Basin Plan provides Chloride and Water Level Metric targets and Basin Yield Metric targets for pumping, the targets do identify clearly defined sustainability objectives able to verify Basin sustainability or progress toward sustainability. Aligning the Basin Plan, Stipulated Judgment, and Basin operations policies, practices and standards with the standards and requirements of SGMA and the LOWWP CDP—as we believe you are required to do—would improve the short and long-term effectiveness of the BMC.

To meet what we believe to be the highest standards, our **#9 Working Plan Priority** is that you develop a system of quality metrics, data, and objectives that can reliably track seawater fronts and water levels (throughout the Basin) and also provide “conclusive evidence” of a sustainable water supply, consistent with SGMA and the LOWWP CDP.

Using the Powers Granted in the Stipulated Judgment

If the BMC is going to make the changes needed to respond to climate change and the difficult challenge of reversing seawater intrusion in the Basin, we think it will have to make related changes in the Basin Plan and Stipulated Judgment. The Stipulated Judgment provides for such changes to achieve the goals and purpose of the Stipulated Judgment. For instance, Sections 3.1 and 5.11.4 clearly allow the BMC to make changes with a unanimous vote and Section 7.1 empowers the BMC or one or more members to ask the court to make changes. (See *Attachment #1: Stipulated Judgment—sections related to rights and process for changes to the Stipulated Judgment and Basin Plan (Emphases added.)*)

In our **#12 Working Plan Priority**, we encourage you to make improvements that boost the chances and opportunities for a sustainable Los Osos Basin.

Specific Requests with Reasons and Support

Please note that several of the following requested actions are time sensitive. We believe they should be initiated on July 21, if only to direct staff to compose a letter, etc.

#1 Working Plan Priority

(Completion date 7-21-21)

Confirm that the agreed-on Sustainable Yield estimate of 2400 AFY remains in effect along with the Basin Yield Metric Target of 80 based on the 2400 AFY Sustainable Yield estimate, revise the Basin Yield Metric value, and make any other related changes in the 2020 Annual Report; and submit a revised 2020 Annual Report to the Court or other notification that includes the revisions. (Also see #5 and #11 Priority.)

Reason and Support: At the June 16 BMC meeting, Mr. Cote of S&T Mutual explained clearly and convincingly how a “methodology” for approving Sustainable Yield changes

had not been established as asserted in the 2020 Annual Report, and the approval process for changing the Sustainable Yield from the originally agreed-on 2400 AFY as set forth in the Stipulated Judgment had not been followed. He pointed out that the first Annual Report of the BMC in 2015, published after only one BMC meeting, reported the Sustainable Yield as 2450 AFY. He further explained that a unanimous approval of Annual Reports containing predicted Sustainable Yield did not meet the standard of the deliberative process required by the Stipulated Judgment (Section 4.3). Moreover, changes in the Sustainable Yield from the 2400 AFY to 2760 in 2017 based on the 2016 Annual Report were not supported by data because seawater intrusion was advancing according to the Chloride Metric in 2016, and the “best available ...data and evidence” since 2018 (chloride and water level metrics and data) show seawater intrusion advancing in Zones D and E and water levels plateauing well below the levels needed to stop it. Thus, the best available data and evidence does not support a conclusion that the Sustainable Yield has increased as a result of implemented programs. We note that the Stipulated Judgment does not define “best available data ... and evidence.” However, the customary and most reasonable meaning is measurable observable data, as opposed to modeling predictions or water use estimates. The County or another party may argue that Section 2.1 established the model as “common factual basis for decision making by the Court, the Basin Management Committee and the parties, subject to the fitness for the particular purpose.” We point out that the model has not been updated or peer reviewed (as required), and the Basin Plan states:

(C) Water Level and Chloride Metrics

While the Basin Yield Metric and Basin Development Metric are useful for planning to balance water supplies and demands in the Basin, it is also important to measure the actual physical impact that actions set forth in this Basin Plan will have on seawater intrusion. In other words, it is prudent to affirm that operations with a theoretically acceptable Basin Yield Metric actually produce the desired results. Thus, the second method of measuring progress against seawater intrusion is based directly on data generated by the Groundwater Monitoring Program set forth in Chapter 7.

We also ask that you redefine “sustainable yield” to a yield that avoids undesirable effects prior to or as part of any future review and update of the sustainable yield. (Also see our request #14 and #17 of our March 16 letter and #11 Priority below and analysis by Stephanie Shakofsky attached.)

#2 Working Plan Priority

(Completion date 7-21-21)

Affirm the right and responsibility of the BMC to set criteria for Basin sustainability and inform the County that the BMC is in the process of updating metrics and determining what the sustainability criteria will be, and that the County should not make such decisions as approving development based on

estimated Sustainable Yields, “marginal” yields, interpretations of data, or any other assumed criteria for Basin sustainability. Direct staff to write a letter notifying the County of the above.

Reasons and Support: See *Attachment #1: Stipulated Judgment—sections related to BMC rights and responsibilities to conduct and approve studies and investigations, maintain and make improvements to the model, and to take all actions necessary and appropriate actions to carry out purposes and goals in the Stipulated Judgment, e.g., Sections 5.6.1, 6.2.20, 5.6.22, 5.6.25, and 5.9.1.*

#3 Working Plan Priority (Completion date 7-21-21)

Affirm the right and responsibility of the BMC to conduct and approve studies and implement all conservation and other programs over the Basin per the Stipulated Judgment; and inform the County that the BMC has not approved the Title 19 review. Request that the County stop use of the program to approve development and stop approval of development until the BMC has approved a criteria for determining Basin sustainability and the Basin has met those criteria, and direct staff to write a letter notifying the County of the above.

Reason and Support: Supervisor Gibson at the June 16 BMC meeting pointed out that the County’s intent with the Title 19 offset program is to make sure new development does not make conditions worse. The goal of the program, he said, is to achieve at least a 1:1 offset of the additional demand from the Basin. This means that the program is not intended to improve seawater intrusion conditions. Thus, the program uses conservation potential in the Basin without achieving the goals and purpose of the Basin Plan and Stipulated Judgment--to stop and reverse seawater intrusion to establish a sustainable water supply. Because the program uses available conservation potential, it has a negative impact on BMC operations by making the Basin Plan and BMC’s “highest priority” mitigation program (the Water Use Efficiency Program) less effective or ineffective (see LOBP, p. 141). The conservation program required by the LOWWP CDP, which the BMC adopted and incorporated into the Basin Plan, was supposed to be implemented in a manner that maximizes the health and sustainability of the Basin and dependent resources, “including with respect to offsetting seawater intrusion as much as possible.” Thus, it provides more benefits to the Basin and to the current residents depending on it consistent with the first two Immediate Goals of the Basin Plan and the goals and purpose of the Stipulated Judgment. (See *1: Stipulated Judgment—sections related to BMC rights and responsibilities to conduct and approve studies and investigations, maintain and make improvements to the model, and to take all actions necessary and appropriate actions to carry out purposes and goals in the Stipulated Judgment.*

#4 Working Plan Priority

(Completion date for voting to inform the County and directing staff to write a letter to the County 7-21-21)

Affirm the right and responsibility of the BMC to maintain and make improvements to the model and determine how funding is spent to accomplish the Basin Plan and Stipulated Judgment goals, objectives, priorities, and purposes; and inform the County not to pursue development of the transient model until the Basin Management Committee determines the best use of the money; and direct staff to write a letter notifying the County of the above.

Reasons and Support: Supervisor Gibson has made it clear that he believes the transient model will inform relatively short-term year-to-year decision making to improve “adaptive management.” He has also made it clear that, by “adaptive management,” he means increases in the Sustainable Yield based on implementation of infrastructure and other Basin Plan programs. We believe development of this costly upgrade of the model will keep the BMC focused on use of the model for decision-making, rather than on the use of upgraded chloride and water level metrics, data, and measurable objectives and could result in decisions that cause irreversible harm, e.g., Board of Supervisors deciding the growth rate can be increased based on a short-term positive trend in metrics or another program implemented.. Flood Control and Conservation District funding and other available funding in the near term should be spent on projects and actions more urgently needed, including (1) upgrades of the conservation and recycled water programs and (2) upgrades of chloride and water level data, metrics, and objectives. (See *Attachment 1:Stipulated Judgment—sections related to BMC rights and responsibilities to conduct and approve studies and investigations, maintain and make improvements to the model, and to take all actions necessary and appropriate actions to carry out purposes and goals in the Stipulated Judgment; also see #13 of our March 12 letter for more detail. Note that we may support development of the transient model in the future, once measurable objectives and sustainability criteria are in place*)

#5 Working Plan Priority

(Completion date for directing staff to write letter 7-21-21; completion date for voting on changes to operations, the Stipulated Judgment, and Basin Plan November, 2021)

Contact the Coastal Commission regarding how BMC policies, practices, and priorities can better align with the Coastal Act, related policies and ordinances, and the LOWWP CDP; and inform the Coastal Commission that the BMC and/or purveyors will be taking a position that no new development should be approved over the Basin until the BMC upgrades metrics, data, and objectives and develops sustainability criteria based on those upgrades that can provide conclusive evidence of Basin sustainability for added development, and Basin conditions

meet those the criteria, and direct staff to write such letter to the Coastal Commission.

Reason and Support: As we explain in the section above, the Stipulated Judgment, Basin Plan, and BMC operations (several policies, practices, and priorities) are not now consistent with the Coastal Act, related policies and requirements, and the LOWWP CDP. Contacting the Coastal Commission with a letter to better understand how the BMC can support Coastal Commission priorities and the Commission staff can support BMC priorities would avoid conflicts and result in more effective protection, preservation, and enhancement of the Basin.

#6 Working Plan Priority

(Completion date for removing of deferrals and directing staff to comeback up program upgrade and implementation plans 7-21-21; completion date for planning and upgrading programs October, 2021)

Remove all “deferrals” from Basin Plan programs and implement all programs, in addition to all of the most cost-effective additional programs to stop and reverse seawater intrusion in Zones D and E and ensure a sustainable Basin water supply for the current population and dependent resources based on upgraded data, metrics, and measurable objectives (sustainability criteria) that conclusively show the Basin can sustainably support the current population and dependent resources, and direct staff to review, upgrade, and devise implementation plans for programs. Ensure the removal of the deferred status of the inter-tie provision that may be needed to support S&T if nitrates make S&T well water undeliverable. (Also see Requests #1, #2, and #18 from our March 12 letter for more detail.)

Reason and Support: BMC staff agrees with the LOSG that Zone E intrusion poses a significant threat to the Basin, and CHG in the 2020 Annual Report acknowledges that rising chloride levels at Wells LA11 and LA40 indicate advancing seawater intrusion and a “worsening condition over time” (p. 57). However, Staff and CHG also state in their responses to the LOSG that the BMC’s current plan is to add transducers to measure the effects of Broderson leach fields and possibly to modify and add Zone E monitoring wells per CHG recommendations in the 2020 Annual Report, in hopes further monitoring shows that Zone E intrusion will stop with the current strategy (reduced pumping and increased recharge via Broderson leach fields) (p. 57). We note that when Linde Owen asked Spencer Harris of CHG at the January BMC meeting whether Broderson leach fields would benefit seawater intrusion, which had advanced to a point eastward of the Broderson site, Spencer Harris indicated that it would benefit Zone D intrusion but didn’t mention Zone E. A wait-and-see approach, especially with the delay involved in adding new monitoring wells, jeopardizes Zone E and possibly the Basin. A clear plan should be devised now to stop Zone E intrusion and to reverse it to a point under the estuary. Figure 38 (Page111) indicates that the

goal of the Basin Plan has been to not just stop Zone E intrusion but to reverse it to under the estuary and this goal is stated in staff responses to our March 12 letter (see #3). An action plan to reverse Zone E is critical to Basin sustainability to avoid further harm and irreversible consequences, if possible, that could lead to loss of the Basin or prohibitive costs to sustain the Basin. For instance, the only viable source of water for injection into Zone E may be the water developed in the Upper Aquifer and inland, which the Basin Plan now indicates can be used for further development. To maximize the potential for a sustainable water supply for current residents, no additional development or demand should be added until sufficient quality data, metrics, and objectives conclusively show the Basin will support the current population and dependent resources. All program options must be considered and the most-cost effective must be implemented and reserved as needed to achieve the immediate goals. (Also see Requests #1, #2, and #18 from our March 12 letter.)

Regarding the BMC conservation program, the 2020 Annual Report indicates that the BMC is considering a review of the program to determine how much conservation potential remains (p. 81). Clearly, significant conservation potential remains because the County continues to approve development with a retrofit-to-build ordinance, and the BMC has never implemented the comprehensive indoor-outdoor Basin-wide program agreed to in the Basin Plan (e.g., pp. 198-199). The BMC program should be updated and maximized to achieve the objectives of the LOWWP CDP and the \$5 million budget required by the CDP should be expended. Per the CDP, mandatory measures should also be put in place, we believe, and we believe, a Basin-wide ordinance or other mechanism that also mandates well monitoring (also see #3 **Working Plan Priority**). Regarding the inter-tie to support S&T Mutual, basin sustainability includes ensuring that no part of the community could run out of potable water from the Basin.

#7 Working Plan Priority (Completion date September, 2021)

Formulate and implement a uniform, clear, and precautionary trigger for when will-serve letters will be denied e.g., “No water using development will be approved until chloride and water level metrics and data conclusively show that the Basin is sustainable for the current population and dependent resources, and enough surplus water exists to provide a sustainable water source for the proposed development with a protective margin of safety; and direct staff to write a letter to the CPUC supporting approval for GSWC.

Reason and Support: The Stipulated Judgment gives the BMC the ability to restrict water use, including with the denial of will-serve letters, so long as the policy is uniform and applied equally to purveyors. Using the clear data-driven position as allows BMC members to maintain the uniformity required. The Stipulated Judgment requires a unanimous vote to restrict water use but also allows the County to abstain. Supervisor Gibson, at the June 16 BMC meeting, indicated that the County would

support purveyors' decision to deny will-serve letters if purveyors believe there is an inadequate water supply to support it. (Also see Requests #4 and #18 of our March 12 letter and Attachment #1: Stipulated Judgment—sections related to process for restricting water use and denying will-serve letters (Emphases added.))

#8 Working Plan Priority

(Completion date for approving a funding mechanism and basic structure September, 2021; completion date for selecting a specific option November, 2021; date of a 218 or other community vote March, 2022)

Approve a funding mechanism that spreads the cost of all BMC activities and a fair share of the nitrate clean-up costs of the Los Osos wastewater facility equitably Basin-wide, which recognizes and appropriately values the benefit all users of the Basin receive from a sustainable water supply and the disproportionate cost to residents in the sewer service area and purveyor service areas in previous years.

Reasons/Support: It is clear to us that one reason the BMC is not taking “bold and decisive action” and is allowing the County to determine the course of the BMC is that the BMC does not have an adequate funding source for its operations. This conclusion is supported by BMC staff responses to our requests of March 16, several of which were denied or put-off due to inadequate funding. Pursuing and establishing an adequate funding source is required by the Stipulated Judgment, which also provides for the County Flood Control and Conservation District to create a Zone of Benefit. The Stipulated Judgment restricts reasons BMC members can drop out of the BMC to the lack of adequate funding for BMC operations. Also, the lack of adequate funding leading to delayed or ineffective implementation of the Basin Plan puts the BMC’s control of Basin management in jeopardy by making oversight of the Basin by the Court or the Department of Water Resources more likely. The Basin Plan indicates that sewer costs for home and business owners within the wastewater service area will decrease if Basin Plan program costs are distributed Basin-wide (p. 199). A reduction in costs for sewer service area residents will most likely be necessary for a successful 218 process largely because the cost of the wastewater project continues to go up. The County is apparently considering another raise in sewer costs, making BMC funding more difficult to obtain through an assessment. Spreading sewer costs more widely would alleviate the burden on the 85% of residents in the sewer service area, making BMC funding more likely. (Also see Requests #9 and #10 of our March 12 letter, and Attachment #1: Stipulated Judgment—sections related to rights and responsibilities of the BMC to obtain funding (Emphases added). and Excerpts from the Basin Plan, p. 199)

#9 Working Plan Priority
(Completion date November, 2021)

Upgrade and improve chloride and water level monitoring data and metrics by implementing all of our related recommendations from our March 12 letter and all CHG recommendations in the 2020 AMR, including new nested wells for Zones D and E, and devise protective measurable goals, objectives, and interim objectives per our March 12 recommendations that move seawater fronts under the estuary and raise water levels sufficiently to provide conclusive evidence of a sustainable water supply for the current and any proposed future development (Also see our Request #3, #5, #6, #7 of our March 12 letter for more detail. Reasons and support for are provided throughout this letter.)

#10 Working Plan Priority
(Completion date November, 2021)

Implement a Basin-wide ordinance or other mechanism with the help of the County or the Court that requires all users of the Basin to meter and report water use and to participate in a Basin-wide conservation program. (Also see our Request #10 in our March 12 letter for more detail.)

Reasons and Support: The Stipulated Judgment gives the BMC the authority to “take all acts as are necessary and appropriate to carry out the purposes and goals described in this Stipulated Judgment” (Subsection 5.6.1). The Basin Plan Basin Plan points out that having to estimate about one half of the production in the Basin (unmetered water use) is a man source of modeling uncertainty and it suggests and describes use of a County ordinance as an inexpensive way to measure the use, estimating the coast just \$150,000. (see pp. 37, 47, 138, 139). An a hydrogeologist hired by LOSG estimated the use for agriculture could be almost double the current estimates. The CDP requires “enforceable mechanisms” to implement the Condition 5 program, which the BMC adopted, and the Stipulated Judgment allows the BMC “to take all acts as are necessary and appropriate to carry out the goals described in (the) Stipulated Judgment” (Section 5.6.1) (Also see our Request #10 in our March 12 letter and Attachment #1: Stipulated Judgment—sections related to BMC rights and responsibilities to conduct and approve studies and investigations, maintain and make improvements to the model, and to take all actions necessary and appropriate actions to carry out purposes and goals in the Stipulated Judgment. (Emphases added.))

#11 Working Plan Priority
(Completion date of model updates and peer review by November, 2021; inform County to stop development of transient model a.s.a.p.)

Update the steady-state Basin model, have the model peer reviewed with thorough sensitivity and uncertainty analyses, have multiple less-than-best-case scenarios completed using the model, review “sustainable yield” align with new objectives, and redefine to avoid undesirable effects. (Also see our Requests #12, #13, #15, #17 and #18 from our March 12 letter for more detail.)

Reasons/Support:

Reasons and Support: The steady-state model should be updated and peer-reviewed, as CHG recommends in the 2020 Annual Report, before a transient model is developed (possibly sometime in the future). The transient model will be based on many of the same assumptions and parameters as the steady-state model and these factors should be evaluated and updated as needed and have sensitivity and uncertainty analyses completed considering all parameters and assumptions with uncertainty. We recommend the expert doing the peer review completes the sensitivity and uncertainty analyses with input from CHG. For the reasons we state in Request #13 of our March 12 letter, we think an updated and peer-reviewed steady-state model will be an adequate tool to continue to initiate programs. As BMC decision-making relies more on monitoring, it is likely to rely less on modeling. We suggest that you also redefine “sustainable yield” as a yield that does not have undesirable effects, consistent with accepted definitions and the LOWWP CDP, e.g., that avoids harm to habitat, as part of the model update or as part of any update of the sustainable yield. All updates and upgrades of the model, sustainable yield, and the peer review, should be initiated and conducted using a transparent public process that invites and implements public input. CHG points out that an update should be done before a peer review.

#12 Working Plan Priority
(Completion date by December, 2021)

Revise the Stipulated Judgment, Basin Plan, and Annual Reports as needed to support the above requested actions, removing any language that may be vague, contradictory, or confusing, so that the goals, objectives, sustainability criteria, priorities, programs, procedures, and other policies and practices are clear, data-based, focused on ensuring a sustainable Basin. If approval cannot be obtained with a unanimous vote, ask the Court to order or direct the modifications to achieve the goals and purpose of the Stipulated Judgment and BMC.

See Attachment #1: Stipulated Judgment—sections related to rights and process for changes to the Stipulated Judgment and Basin Plan (Emphases added.)

Please note that we may add to, subtract from, or modify priority actions in the future based on further information, inadvertent omissions, etc.. These requests are not intended to replace our earlier requests e.g., in our March 12 letter or “Recommended Revisions to the Draft 2020 Annual Report,” but are intended mainly consolidate and

update, except for our request for a transient model, which we are not requesting at this time. We incorporate our earlier requests and other submittals to the BMC and County by reference. Please see attachments, including our March 12 letter and Recommended Revisions to the 2020 Draft Annual Report (and staff and CHG responses), and please visit our website at thelosg.com. for other submittals. We will try to post this letter and attachments in the near future.

We appreciate your responsiveness to our earlier requests and requested revisions to the 2020 Annual Report. We look forward to the BMC's implementation of these requests and to supporting your efforts in the future.

Yours,

Patrick McGibney
Chair, Los Osos Sustainability Group (LOSG)

Attachments

Attachment #1--Stipulated Judgment and Basin Plan excerpts

Attachment #2—LOSG letter of March 12, 2021

Attachment #3—BMC Staff Responses to LOSG letter (Please see BMC 5-19-21 Agenda Packet, pdf pp. 39-41)

Attachment #4--Coastal Commission letter to ISJ Parties (2015)

Attachment #5—LOCP Section 7.3 “Community Standards”

Attachment #6—LOSG Recommended Revisions to 2020 AMR, responses, and follow-up

Attachment #7—Review of Basin Yield Metric, Chloride Metric (and Ag water use) by Stephanie Shakofsky, Hydrogeology Consulting.

Attachment #8—County building wait list (single family) (as of 1-7-20)

Attachment #9—County building wait list (multi-family)