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February 5, 2009

State Water Resources Control Board
Division of Water Quality
Attn: Todd Thompson, P.E.
1001 I Street, 15th Floor
P.O. Box 2231
Sacramento, CA 95812

RE: Comments on the Proposed Rule-Making Package for AB 885 Regulation of Onsite Wastewater Treatment Systems (OWTS)

Dear Mr. Thompson:

The Regional Council of Rural Counties (RCRC) is an organization representing the collective interests of 30 rural counties throughout California. Because implementation of the AB 885 regulations as currently proposed would have long-lasting and profound adverse impacts on our member counties, RCRC appreciates this opportunity to express our serious concerns about the proposed AB 885 regulations. Over the past eight years, RCRC has been an active participant in the AB 885 rule-making process and we are disappointed to find that the current regulatory proposal fails to meaningfully address many of the key concerns and suggestions that have been previously brought forward.

Being the areas of origin for over 80% of California's water supply, RCRC counties are fully aware of the resource value of high quality surface and groundwater and our members have a strong and continuing commitment to protect these resources. However, the level of water quality protection associated with the proposed regulations is not commensurate with the extremely high costs that would be incurred if the regulations are adopted as proposed. Given this situation, RCRC is pleased that the State Water Resources Control Board (SWRCB) will be suggesting changes to the current proposal.

One of the main problems with the existing regulatory proposal is that all requirements apply uniformly across the State and, as written, provide absolutely no flexibility to take into account the diverse geographical, hydrogeological, demographic, and other physical and social characteristics that exist throughout California. This inflexible "one-size-fits-all" regulatory approach inevitably leads to prescriptive regulations that are impractical, unworkable, and unnecessarily costly. Implementation of the proposed regulations will provide only incremental water quality benefits and these incremental benefits are not com-

mensurate with the associated high costs of compliance—estimated to be at least \$1.4 billion over the next five years.

It is important to point out that AB 885 does not require the SWRCB to adopt inflexible statewide regulatory requirements. In fact, AB 885 does not even require the SWRCB to formally adopt statewide regulations. As discussed more fully in the attached comments, the AB 885 statute provides the SWRCB with discretionary authority to establish more generalized performance “standards” instead of the impractical regulatory requirements currently being proposed. Similarly, AB 885 does not require the SWRCB to establish so-called “minimum standards” for OWTS siting, construction, and performance. The statute says that the SWRCB “may” do so, but because of the permissive language, it also provides the SWRCB with discretion to direct Regional Water Boards to develop such standards. It is unfortunate that these alternative approaches were not given serious consideration as part of the current rule-making proposal.

RCRC is hopeful that the SWRCB will re-examine the language of AB 885 from this perspective and look beyond the relatively narrow strictures that seem, to a large extent, to have shaped the current regulatory proposal.

Generally speaking, Regional Water Boards have been given responsibility to issue waste discharge permit requirements based on general statewide policy and in consideration of regional issues and concerns. RCRC believes that a similar approach could be used to address the AB 885 requirements. Instead of adopting the proposed regulations, RCRC would encourage the SWRCB to approve a conditional statewide waiver for OWTS discharges that includes flexible statewide operating standards for OWTS performance in accordance with AB 885. The Regional Water Boards could, then, in consideration of the regional applicability of these operating standards, be given authority to review existing local ordinances to determine the extent to which these local rules conform to regional requirements for groundwater protection. Using this approach, the Regional Water Boards would work with local regulators through an MOU process to ensure that local ordinances are adequately protective of groundwater quality in consideration of local factors—including hydrogeology, local zoning codes, development patterns, etc.

With respect to the need for septic tank inspections to avoid excessive solid build-up, RCRC believes that a well-crafted cooperative public information campaign would be more efficacious than the current proposal that simply establishes a “self-regulating” mandate with no provisions for enforcement or public outreach.

Regarding the need for groundwater monitoring, RCRC believes that any such program should be limited in scope and should focus on known or suspected problem areas instead of casting a wide net across the entire State looking for problems where, in most cases, no problems exist. Most of the 1.2+ million OWTS in California are, in fact, well-designed, properly sited, and function well with no significant adverse impact on groundwater quality. There are, of course, some problem areas. Most of these isolated problem areas relate to discharges from OWTS that were installed very many years ago. Since then most, if not all, local ordinances have been updated and expanded to improve groundwater protection and to ensure proper OWTS construction and siting. Recognizing this, limited State and local

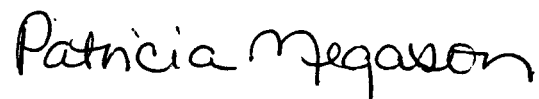
resources should be directed towards addressing known “problem areas” where increased compliance efforts will have a very real and measurable beneficial impact on water quality.

RCRC has prepared detailed comments regarding the DEIR. In general, we believe that this document is fundamentally flawed and grossly understates the adverse impacts of the proposed regulations on land use and other key issues of concern to rural counties. These detailed comments are attached and have been organized into four sections. The first section includes comments about how the proposed regulatory requirements relate to AB 885 and other associated statutory requirements as discussed in the DEIR. The second section deals with the proposed regulations themselves and how the DEIR fails to adequately address many key aspects of the “proposed CEQA project”. The third comment section focuses on the limited and misleading impact analyses in the DEIR itself. The fourth comment section describes the extent to which the subject rule-making process seems to have circumvented Cal EPA’s “Environmental Justice Strategy” as it relates to analysis of disproportionate financial impacts on rural areas of the State. The final comment section addresses the fiscal and economic analysis that was included in the DEIR based on a report entitled “Economic and Fiscal Effects of the Proposed Statewide Regulations for Onsite Wastewater Systems” (included as Appendix G to the DEIR). This report is referred to in the comment section as the “Economic/Fiscal Impact Analysis” or EFIA.

In consideration of our on-going concerns, including individual concerns expressed by our member counties and hundreds of other stakeholders who provided testimony at the various public workshops that have been held throughout the State, RCRC is pleased that the SWRCB has recognized the need to revise the current regulatory proposal. We are hopeful that these revisions will lead to a more flexible and more workable approach to achieve AB 885 compliance.

On behalf of our member counties, RCRC requests the opportunity to participate in the upcoming “regulatory revision process”. Through mutually cooperative efforts in this regard, we believe that it is possible to develop realistic statewide OWTS standards and permitting requirements will be adequately protective of groundwater quality without the need for costly prescriptive regulations that will have minimal benefit to water quality. Please feel free to contact me or Jim Hemminger (209-754-3104) regarding this issue.

Respectfully submitted,

A handwritten signature in black ink that reads "Patricia Megason". The signature is written in a cursive, flowing style.

Patricia Megason
Executive Vice President

Enclosure

cc: Chairperson, State Water Resources Control Board
Members, State Water Resources Control Board
Members, California State Legislature
RCRC Board of Directors
RCRC Member County Supervisors
RCRC Member County Administrative Officers
RCRC Member County Environmental Health Directors
California State Association of Counties (CSAC)
California Association of Realtors (CAR)
California Council of the Directors of Environmental Health (CCDEH)