Filed 10/25/12 Citizens for Clean Water v. Regional Water Quality Control Board CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

CITIZENS FOR CLEAN WATER, et al., Plaintiffs and Appellants, v. REGIONAL WATER QUALITY CONTROL BOARD, et. al. Defendant and Respondent.	2d Civil No. B231945 (Super. Ct. No. CV070472) (San Luis Obispo County)

In 1983, the California Regional Water Quality Control Board, Central Coast Region (Regional Board), adopted Resolution 83-13, prohibiting the discharge of waste from residential sewage disposal systems (e.g., septic tanks) in Los Osos as of November 1, 1988. Los Osos has no community sewer system. Residents in the "prohibition zone," therefore, use septic tanks. The septic tanks discharge wastewater in violation of Resolution 83-13. In 2006, the Regional Board began proceedings to enforce the resolution against 45 randomly selected homeowners after the Los Osos Community Services District (LOCSD) halted construction on a sewer system due to community opposition. After public hearings, the Regional Board issued cease and desist orders (CDOs) to the homeowners. Each CDO requires the recipient to cease discharges from the recipient's septic tank no later than 60 days after a community sewer system becomes available. If construction work again ceases on the sewer system, the recipient will have

two years in which to propose alternatives before being required to cease using the septic tank. Appellants, recipients of the CDOs and their legal defense fund, sought a writ of mandate in the superior court to vacate the CDOs. The trial court denied the writ.

Appellants contend the trial court erred because Resolution 83-13 is invalid, both facially and as applied to them, because it does not allow for water recycling as required by Water Code section 13241, subdivision (f).[1] Appellants further contend that they did not receive a fair administrative hearing before the Regional Board because board members were biased against them, staff members assisted the prosecution team, one board member participated in decision making without hearing all of the defense evidence and the Regional Board gave appellants insufficient notice of the CDO hearings. Finally, appellants contend the Regional Board abused its discretion when it issued the CDOs because the enforcement action was motivated by a desire to influence an upcoming vote on the sewer assessment, it is impossible for appellants to comply with the CDOs, and the CDOs were inappropriately punitive. We affirm.

Facts

Between 1950 and 1980, the population of Los Osos, California grew from 500 people to 10,933. The 2010 U.S. Census found its current population to exceed 14,000. Many homes were built on lots that are too small for proper operation of a septic tank and subsurface disposal system. The community's water supply is entirely from groundwater. Its "percolating soils and high ground water prevent adequate treatment of wastewater effluent leading to a potential health threat from bacterial contamination of ground water." The high groundwater has also been found to contribute to septic system failures, surfacing of effluent and foul odors.

Los Osos has no sewer system and, except for those residing in a few subdivisions, all residents rely on individual on-site wastewater disposal systems, e.g., septic tanks, to dispose of their sewage and wastewater. Over the years, Los Osos' groundwater has become increasingly polluted due to discharges from septic tanks. A

[1] All statutory references are to the Water Code unless otherwise stated.

study from the 1980s documented a "high incidence of occurrence of infantile [disease] in communities utilizing drinking water supplies with excess nitrate concentrations." Other studies, performed at frequent intervals between 1969 and 2006, have demonstrated that groundwater in Los Osos contains high concentrations of nitrate, about 91 percent of which is deposited in the groundwater by sewage effluent. Pharmaceuticals, antibiotics and chemicals used in shampoo and other toiletries were also detected in groundwater samples tested by hydrologists in 2006. These contaminates are only found in human wastewater sources; they do not occur naturally and are not used in agriculture.

In 1983, respondent Regional Board adopted Resolution 83-13, amending the Water Quality Control Plan, Central Coast Basin to provide, "Discharges of waste from individual and community sewage disposal systems are prohibited effective November 1, 1988, in the Los Osos/Baywood Park area . . . . [¶] . . . [¶] 'Failure to comply with any of the compliance dates established by Resolution 83-13 will prompt a Regional Board hearing at the earliest possible date to consider adoption of an immediate prohibition of discharge from additional individual and community sewer disposal systems' ."

In 1999, the Los Osos Community Services District (LOCSD) was formed to provide a sewage collection and wastewater treatment facility for the community. By 2005, it had obtained the necessary permits, entered into contracts and begun construction work on the project. Some community residents objected to the location of the proposed wastewater treatment facility. They organized a recall election for members of the LOCSD board and, in September 2005, succeeded in replacing a majority of board members. The newly constituted LOCSD board issued stop work orders and, facing $35 million in claims from unpaid contractors, filed for bankruptcy protection in August 2006. The County of San Luis Obispo took over the sewer construction project.

Meanwhile, the Regional Board's staff began the process of enforcing Resolution 83-13. Staff selected 45 properties within the prohibition zone at random and served the residents of those properties with proposed CDOs. The Regional Board

established a briefing schedule and hearing dates for each recipient of a CDO. Many of the recipients entered into settlement agreements with the Regional Board. Others requested a hearing on the proposed CDOs. On May 10, 2007, after public hearings at which each recipient was given an opportunity to present evidence and argument, the Regional Board issued CDOs to all of the recipients who had not signed settlement agreements.

The CDOs provide that, if the County of San Luis Obispo approves a benefits assessment by July 1, 2008, to finance construction of a community sewer system and construction is completed in a timely manner, the recipient must connect to the sewer system within 60 days after it becomes available. If the benefits assessment is not approved, or construction again ceases, the recipient of the CDO "shall cease all discharges from the Septic System no later than January 1, 2011[,]" unless the recipient has proposed and the Regional Board has approved an "onsite system for discharge from the Site[.]" The proposed alternative "must be adequate to cease unpermitted discharges from the Septic System . . . ." The CDOs required recipients to pump out their septic tanks every three years, but allowed them to continue using the septic tanks so long as the County continued its efforts to construct a community sewage collection and treatment facility.

Recipients of the CDOs appealed to the State Water Board and were unsuccessful. They then filed this action for writ of mandate in the superior court. Following a series of demurrers and a nonjury trial, the trial court entered judgment in favor of the Regional Board. It found the administrative hearings conducted by the Regional Board complied with due process and that the CDOs were supported by substantial evidence. The trial court also noted that it, "appreciates the mix of emotion, surprise, and helplessness experienced by [appellants] upon receipt of their CDOs. Nonetheless, the evidence belies their legal claims, which the Court finds are exaggerated. Having reviewed the record of the proceedings, the Court does not come away with the notion of a local government agency run amuck. To the contrary, the Court's overall impression of the hearings is that the Regional Board went out of its way

to provide due process of law, allowing affected residents a reasonable opportunity to speak their minds and to present exculpatory evidence."

Standard of Review

"A party aggrieved by a final decision of the State Water Board may obtain review of the decision by filing a timely petition for writ of mandate in the superior court. (§ 13330, subd. (a).) Code of Civil Procedure section 1094.5 governs the proceedings, and the superior court must exercise its independent judgment in examining the evidence and resolving factual disputes." (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 879.) Although it exercises its independent judgment, the trial court "must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.)

On appeal, we review the trial court's factual findings for substantial evidence and independently review its findings of law. (*Building Industry Assn. of San Diego County, supra,* 124 Cal.App.4th at p. 879.) "Thus, we are not bound by the legal determinations made by the state or regional agencies or by the trial court. [Citation.] But we must give appropriate consideration to an administrative agency's expertise underlying its interpretation of an applicable statute." (*Id.*)

Discussion

Validity of Resolution 83-13

At the CDO hearings, the Regional Board declined to hear any evidence or argument concerning the validity of Resolution 83-13, ruling instead that the only issues under consideration were whether individual property owners were discharging waste in violation of the resolution and whether the proposed remedy for violations was appropriate. The trial court concluded this ruling was correct because Resolution 83-13 "was adopted 25 years ago. It is far too late now to bring a facial challenge to the legality of this Resolution." Appellants contend both the Regional Board and the trial court erred

because section 13330, as it existed in 1983, would have permitted their facial challenge. The argument is without merit.

The trial court correctly concluded that appellants' facial challenge to Resolution 83-13 is time barred. Resolution 83-13 amended the basin plan for the Central Coast region and was a quasi-legislative action by the Regional Board. The applicable statute of limitations for an action challenging the Regional Board's decision to adopt Resolution 83-13 is Code of Civil Procedure 338, subdivision (a), which establishes a three-year limitations period for " 'an action upon a liability created by statute,' " other than a penalty or forfeiture. (*City of Arcadia v. State Water Resources Control Bd.* (2010) 191 Cal.App.4th 156, 171 [challenge to water quality regulation adopted by state board subject to three-year limitations period].) As a consequence, the limitations period for mounting a facial challenge to the validity of the resolution has long since expired.

Appellants next contend Resolution 83-13 is invalid because the resolution, which prohibits all discharges of wastewater in the affected area, does not allow for any recycling of water to protect the water basin from salt water intrusion as required by subdivision (f) of section 13241. This argument is also without merit. First, appellants did not explicitly raise this contention in their appeal to the State Water Board and have, therefore, failed to exhaust their administrative remedies. (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 589.) Appellants' filing with the State Water Board never mentions section 13241 or the claim that Resolution 83-13 violates the statute by failing to provide for water recycling. Instead, the brief makes general statements that the basin plan is invalid or out of date. These general statements do not satisfy the exhaustion requirement. (*Id.* at p. 594.)

Second, had the claim been preserved for appellate review, we would reject it. Section 13241 was added to the Water Code in 1991, eight years after the Regional Board adopted Resolution 83-13. It provides, "Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance . . . . Factors to

be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following: . . . (f) The need to develop and use recycled water." (§ 13241, subd. (f).) The statute mandates that regional water boards "consider" certain factors in establishing water quality objectives. It does not require the adoption of any particular objective or require that objectives adopted prior to its effective date be revised. Nothing in the statute indicates a legislative intention to repeal by implication a water quality control plan or objective adopted before section 13241 took effect. (*Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7.)

Appellants complain the Regional Board lacked evidence that any individual septic tank was discharging waste into the groundwater. Because the Regional Board had no direct evidence that any individual septic tank was discharging waste into the groundwater, but nevertheless issued the CDOs, appellants contend the Regional Board now interprets Resolution 83-13 to prohibit any discharge, regardless of whether it contains waste. They contend this is an "unenforceable" interpretation of the resolution as applied to them, because section 13301 authorizes a CDO only when a regional board "finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board . . . ." (§ 13301.) The argument is without merit.

The Regional Board had substantial evidence that the individual appellants were violating Resolution 83-13 by discharging waste into the groundwater. Appellants admitted they lived in the prohibition zone and used a septic tank. Septic tanks by definition discharge effluent into the ground and from there, into the groundwater. Groundwater in Los Osos is contaminated with nitrates and other pollutants, the primary source of which is human waste. The Regional Board was not required to dig test wells or develop other direct evidence that an individual septic tank was discharging waste before issuing a CDO to the owner of that tank. (*Jackson v. Department of Motor Vehicles* (1994) 22 Cal.App.4th 730, 741 [findings of administrative agency may be supported by evidence and reasonable inferences]; *Pereyda v. State Personnel Board*

(1971) 15 Cal.App.3d 47, 50 ["Inferences based upon circumstantial evidence are sufficient to support [an administrative agency] finding."].)

Due Process

Bias of Board Members

In December 2005 and January 2006, the Regional Board held hearings on the question of whether to impose administrative civil liabilities ("ACL") on the LOCSD after it halted construction of the sewer project. The Regional Board members voted unanimously to adopt the proposed ACL order, assessing total civil liability against the CSD of $6,627,000. At the hearing, the LOCSD had argued the Regional Board should not fine the LOCSD because the order to cease and desist using septic systems had been in effect for so long, it had become stale. In response to that argument, Regional Board member Gary Shallcross stated, "[O]ne of the attorneys was saying you can't be fined, and the other was saying give us cease and desist orders. Well, if you can't fine them, then cease and desist orders are worthless. [¶] So I just wanted to say that if we can't fine someone then all of our enforcement tools are out of the window, if we don't have fines to back it up."

Mr. Shallcross also stated that he thought this dispute was "probably one of the saddest things that's come before the Board," because it had divided the community so bitterly. He expressed hope that the community could come together at some point, but acknowledged "it doesn't look like it's going to happen anytime soon. [¶] Again, just to reiterate the other sentiments, it looks like our enforcement abilities going down the path we have been have been ineffectual. For many years now we've tried to work with the CSD. We tried to work with the folks prior to the CSD. [¶] We don't seem to be able to get anywhere, and so hopefully going after the individual dischargers may create the political will for something to happen in a reasonable amount of time."

In his comments, Regional Board Chairman Jeffrey Young was very critical of the LOCSD's decision to halt the original project and then deflect responsibility for the delay onto voters. He characterized the voters' decision to recall LOCSD board members and halt construction on the original project as "the most short-sighted thing to

do. . . ." Chairman Young also stated, "the individual enforcement actions I think are critical. I think that they have to start as soon as staff can start to process things and get them moving. [¶] It's quite clear to me that the folks of Los Osos, in my opinion, are really not capable of addressing these issues with their wastewater in a rational way. I don't know what's going to happen. . . . .[¶] And I don't really see any clear end to this dilemma at this point because the community is really so polarized. And it really is just a, it's a tragedy."

Appellants contend these comments demonstrate that Mr. Shallcross and Chairman Young were biased against residents of Los Osos and were not neutral on the question of whether the Regional Board should adopt CDOs against individual homeowners. Appellants contend they were denied due process in the CDO hearings because these board members were biased against them. We are not persuaded.

"When, as here, an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal. [Citation.] A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party. [Citations.] Violation of this due process guarantee can be demonstrated not only by proof of actual bias, but also by showing a situation 'in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.' " (*Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 737.) Due process also requires that parties to administrative proceedings be afforded a reasonable opportunity to be heard. (*Gilbert v. Hamar* (1976) 520 U.S. 924, 930 [138 L.Ed.2d 120]; *Jonathan Neil & Assoc. Inc. v. Jones* (2004) 33 Cal.4th 917, 936, fn. 7.) It does not, however, preclude members of an administrative agency board from both initiating enforcement proceedings and participating as decision makers in ensuing hearings. (*Withrow v. Larkin* (1975) 421 U.S. 35, 56 [43 L.Ed.2d 712].)

More specifically, our Administrative Procedures Act prohibits a person from serving as a decision maker in an adjudicative proceeding if the person "has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage."

(Gov. Code, §§ 11425.30, subd. (a)(1), (c).) The same statute, however, expressly allows a person to participate as a decision maker "at successive stages of an adjudicative proceeding." (Gov. Code, § 11425.30, subd. (b)(1).) The Government Code also expressly provides that an administrative presiding officer or board member may not be disqualified for bias on the ground that he or she has "experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding." (Gov. Code, § 11425.40, subd. (b)(2).)

In our view, the comments made by Mr. Shallcross and Chairman Young at the LOCSD hearing fall into this latter category and are not evidence of their bias against the individual recipients of CDOs. The comments were made at the end of a lengthy, contentious hearing at which the Regional Board decided to hold the LOCSD financially accountable for halting the wastewater treatment project in defiance of the Board's prior resolutions and orders on the issue. The board members' comments indicate that the enforcement action against the LOCSD was one stage of a lengthy process designed to secure compliance with Resolution 83-13 and the Regional Board's prior orders. Government Code section 11425.30, subdivision (b)(1) permits board members to serve as decision makers at successive stages of a proceeding.

Nor did the board members act as "advocates" for the prosecution team. Neither board member expressed an opinion on what the result of enforcement actions taken against individual residents would be, nor did they dictate in advance the terms of any future cease and desist orders. When the Regional Board began its hearings on the individual CDOs, both Mr. Shallcross and Chairman Young reiterated their ability to be impartial and denied that they had any bias against the individual residents. Their conduct at the individual CDO hearings was consistent with those sentiments. We agree with the trial court's finding that "the hearings were conducted by the Regional Board with dignity, civility and forebearance." There was no violation of due process.

Separation of Powers

Government Code section 11425.10, subdivision (a)(4) provides that, in any adjudicative proceeding before an administrative agency, "The adjudicative function

shall be separated from the investigative, prosecutorial, and advocacy functions within the agency . . . ." (Gov. Code, § 11425.10, subd. (a)(4).) As our Supreme Court recently explained, "By itself, the combination of investigative, prosecutorial, and adjudicatory functions within a single administrative agency does not create an unacceptable risk of bias and thus does not violate the due process rights of individuals who are subjected to agency prosecutions." (*Morongo Band of Mission Indians v. State Water Resources Control Bd., supra*, 45 Cal.4th at p. 737.) Procedural fairness requires only "some internal separation between advocates and decision makers to preserve neutrality." (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2006) 40 Cal.4th 1, 10.) Due process is satisfied when "rules mandating an agency's internal separation of functions and prohibiting ex parte communications are observed . . . ." (*Morongo Band of Mission Indians, supra,* 45 Cal.4th at p. 741.) Where such rules are observed, the presumption that administrative agency decision makers are impartial "can be overcome only by specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias." (*Id.*) Unless there is specific evidence that administrative decision makers are actually biased, an attorney or staff member employed by the agency may, without offending due process, serve as part of a prosecution team in an enforcement matter while simultaneously serving as an advisor to the decision makers in an unrelated matter. (*Id*. at p. 734.)

Here, a staff attorney and the Regional Board's executive officer both participated as members of the "prosecution team" in the enforcement matter against the LOCSD and in the hearings on the individual residents' CDOs. In May 2006, after the prosecution team had presented the first days' evidence and testimony in the CDO hearings, the staff attorney resigned from the prosecution team and from further participation in the matter. In response to residents' complaints, the Regional Board ordered that documents and testimony presented by the prosecution team on the first day of the hearing would be stricken from the record and the prosecution would be required to present its case again, at the continued hearing. The Regional Board declined to remove its executive officer from the prosecution team.

Appellants contend they were denied a fair hearing because the staff attorney and executive officer participated in the enforcement action against them. Our review of the administrative record discloses no "specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias." (*Morongo Band of Mission Indians, supra*, 45 Cal.4th at p. 741.) Appellants have not demonstrated that the participation of the staff attorney or executive officer resulted in a denial of due process.

The appropriate remedy for a failure by the Regional Board to maintain a separation between its prosecutorial and decision making functions in an administrative hearing is to order a new hearing. (*Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 801, 818; *Kumar v. National Medical Enterprises, Inc.* (1990) 218 Cal.App.3d 1050, 1056-1057.) Appellants were given that remedy when the Regional Board struck the prosecution's evidence from the first day of the CDO hearings and ordered the prosecution team to present its case again, from the beginning.

Participation of Board Member Hodgin

David Hodgin joined the Regional Board in February 2007 and participated as a decision maker in the May 10, 2007 hearing. Appellants contend Mr. Hodgin's participation violated their due process rights because he was not a member of the Regional Board when the prosecution team and the LOCSD presented their cases. The argument has been waived because appellants did not raise it in their appeal to the State Water Board. (*Tahoe Vista Concerned Citizens v. County of Placer, supra*, 81 Cal.App.4th at p. 589.) Had it not been waived, we would reject it because there is no requirement that each board member be personally present to hear every item of evidence considered by the board. "The obligation of the panel members was to achieve a substantial understanding of the record by any reasonable means . . . ." (*Allied Comp. Ins. Co. v. Ind. Acc. Com.* (1961) 57 Cal.2d 115, 120.) Appellants have not demonstrated that Mr. Hodgin lacked a substantial understanding of the record.

Improper Notice

Appellants admit that they received notice by mail of the proposed CDOs and the initial hearing dates. They contend the Regional Board nevertheless violated their due process right to reasonable notice of the proceedings because, "other notices and documents were only available by accessing the Board's website with the alternative to travel to the Board's offices to pay for and obtain copies." Some appellants lack internet access. There is no claim that any of the appellants lacked actual notice of any hearing on the proposed CDOs or that they were prevented from reviewing any document included within the administrative record, either on the Regional Board's website or at its offices.

"Due process is the opportunity to be heard at a meaningful time and in a meaningful manner." (*Southern California Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 543.) It does not " 'require any particular form of notice or method of procedure. If the [administrative remedy] provides for reasonable notice and a reasonable opportunity to be heard, that is all that is required. [Citations.]' (*Drummey v. State Bd. of Funeral Directors* (1939) 13 Cal.2d 75, 80-81.)" (*Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486.) In determining what process is due in a given case, we are instructed by the Supreme Court to give " 'substantial weight' to the 'good-faith judgments' of the officials charged with the administration of the procedure in question." (*Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 46, quoting *Matthews v. Eldridge* (1976) 424 U.S. 319, 349 [47 L.Ed.2d 18].)

Consistent with these principles, Government Code section 11440.20, provides that notice of an administrative proceeding "shall be delivered personally or sent by mail or other means to the person at the person's last known address . . . ." (Gov. Code, § 11440.20, subd. (a).) Notice may be made by first-class, registered or certified mail, "by facsimile transmission if complete and without error, or by other electronic means as provided by regulation, in the discretion of the sender." (Gov. Code, § 11440.20, subd. (b).)

Appellants have not demonstrated that the Regional Board's procedure for providing them notice of the CDO hearings and related documents violated due process. Each appellant received, by mail, a paper copy of the notice of hearing, the proposed CDO, a brief staff report to the Regional Board concerning the enforcement action and a list of other documents on which the prosecution team intended to rely at the hearings. The notice of public hearing explained the procedural rules the Regional Board had adopted for the CDO hearings. It also informed the recipient that, "The proposed CDOs and related documents are available for downloading from the Water Board's website at http://www.waterboards.ca.gov/centralcoast. Persons who do not have Internet access or would like to receive a hard copy of these documents may review and/or copy these documents at the Water Board's office at the address on page 1 of this notice, weekdays between 8:00 a.m. and 5:00 p.m."

This procedure gave appellants reasonable notice of the hearing dates and of the prosecution team's evidence. All of the relevant documents could be reviewed on the Regional Board's website or at its offices. The requirement that parties either review documents at the Regional Board's office or pay for copies does not violate due process. (See, e.g., *Zuckerman v. Stated Bd. of Chiropractic Examiners, supra,* 29 Cal.4th at p. 36 [due process not violated by rule requiring party subject to administrative proceeding to pay reasonable costs of investigation and prosecution].) Appellants do not claim they lacked actual notice of any hearing date or that they were denied access, either on the website or at the Board's office, to any specific document. There was no violation of due process.

Arbitrary and Capricious Enforcement Action

Appellants contend the Regional Board's enforcement action against individual residents of Los Osos was arbitrary, capricious and a prejudicial abuse of discretion because it attempted improperly to influence their votes in the election to approve a special assessment funding construction of a new, county-supervised sewer system, it "attempted to extract an impossibility from appellants," because they could not

guarantee voter approval of the special assessment, and the CDOs were unfairly punitive. We are not persuaded.

Legislation enacted in 2006 gave the County of San Luis Obispo, rather than LOCSD, responsibility over the wastewater collection and treatment project. (Gov. Code, § 25825.5.) The special assessments needed to finance the project, however, required voter approval. That vote had not yet taken place when the Regional Board issued the CDO to appellants. The CDOs require recipients to cease using their septic systems either after the sewer project is constructed or earlier, if the voters did not approve funding for the project or construction is again halted.

Appellants contend the CDOs amount to "improper and illegal electioneering," in violation of Elections Code section 18540, because they were intended to coerce voters into approving the special assessments. The argument is entirely without merit. Elections Code section 18540, subdivision (a) provides: "Every person who makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting . . . for any particular person or measure at any election . . . is guilty of a felony . . . ." Here, the Regional Board issued CDOs informing recipients that they would be required to comply with Resolution 83-13 on some future date; that date differed depending upon whether voters approved the special assessment. Resolution 83-13 was in effect, and prohibited the use of septic tanks in Los Osos, long before Government Code section 25825.5 gave the County authority to put the sewer funding measure to a vote. The CDOs operated to inform recipients that the Regional Board intended to enforce its pre-existing prohibition on the use of septic systems. As a matter of law, the Regional Board's conduct in informing residents that they will be required to comply with their existing legal obligations is not a "tactic of coercion or intimidation" in violation of the Elections Code.

Appellants next complain the CDOs "seek to exact an impossibility" from them because they had no control over the election result and could only comply with the CDOs by vacating their homes. We need not address this contention because the voters approved the special assessment and the sewer project is underway. In any event,

compliance with the CDOs was not impossible. Regional Board staff acknowledged there were alternative means of compliance in the event the special assessment failed.

Appellants' final contention is that the CDOs were "an improper remedy with inappropriate and punitive ramifications[,]" because they included notice of potential criminal sanctions, injunctive relief and substantial fines. The contention misrepresents the record: no criminal sanctions, injunctions or fines were included in the CDOs. Instead, the CDOs informed recipients that they would be required to connect to the sewer when it became available and to properly maintain their septic systems in the interim. The Regional Board could not impose additional sanctions without holding additional administrative hearings at which the Regional Board would be required to consider, among other things, each recipient's degree of culpability and ability to pay. (§ 13350.) Its decision to issues the CDOs rather than pursue some other form of enforcement action was not an abuse of discretion. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 568; *Sherwin-Williams Co. v. South Coast Air Quality Management Dist.* (2001) 86 Cal.App.4th 1258, 1267.)

Conclusion

The judgment is affirmed. Costs to respondents.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Charles S. Crandall, Judge

Superior Court County of San Luis Obispo

Shaunna Sullivan, Sullivan & Associates, for Appellants.

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