



HATHAWAY LARSON

Koback · Connors · Heth

February 2, 2021

VIA EMAIL

Erik Nobel
Planning Director
Klamath County
305 Main Street
Klamath Falls, OR 97601
enobel@klamathcounty.org

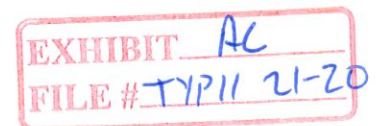
Re: South Suburban Sanitary District
Class B Biosolid Project/North Poe Valley Road
TYP II 21-20

Dear Mr. Nobel,

On behalf of the South Suburban Sanitary District ("District"), this correspondence is in response to the evidence submitted by those in opposition to the above entitled matter by the County's January 26th deadline. The District's responses are timely and in compliance with the County's February 2nd deadline.

Most of the testimony submitted by opponents were not relevant to the criteria applicable to the District's Class B Biosolid Project, except for the following identified topics. We provide a specific response to each one of these topics below.

Gregory S. Hathaway
1331 NW Lovejoy St., Ste. 950
Portland, OR 97209
greg@hathawaylarson.com
(503) 303-3103 direct
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1. The District's Plans and Maps are inaccurate.

Some Opponents stated that the District's Plans and Maps were inaccurate regarding the location of the wells on the District's North Poe Valley Road Site ("Site"). Walt Meyer, the District's Project Engineer from West Yost Associates responds to this issue in his letter to me dated February 1, 2021 which is attached as Exhibit A.

Mr. Meyer advises that many of the older well registrations in the Oregon Water Resources Department ("OWRD") data base did not include horizontal coordinates and as a result, OWRD simply placed the wells on a map without precise location data. The maps provided by the District showing the location of the existing wells on the Site were based on the OWRD maps which the District believes to be inaccurate.

Mr Meyer advises that as part of the DEQ permitting process, the District will be required to survey the Site and precisely show any wells that are located on the Site. As a result, the concern expressed by some opponents that the maps provided by the District do not accurately reflect the correct location of existing wells on the Site will be resolved in the DEQ permitting process which is required by the Klamath County Land Development Code, and is a recommended Staff Condition of Approval.

Some opponents also questioned the location of the fence as shown on the District's Site Overview Plan for the North Poe Valley Road Site. To the contrary, the Site Overview Plan does not actually depict the existing barbed wire fence that surrounds the Site. Instead, Note 9 simply provides that the existing 3' tall barbed wire fence surrounding the property will remain.

2. The onsite wells need to be capped.

Some opponents have expressed concern regarding the existence of the wells on the Site and the land application of the Class B Biosolids potentially contaminating those wells. The District has previously advised

February 2, 2021

Page 3

you that it plans to decommission the wells on the Site to protect groundwater resources in compliance with state rules for abandoning wells. Mr. Meyer responds to this issue in his letter attached as Exhibit A that the abandonment of wells will be consistent with the requirements of OAR Chapter 690, Division 220 entitled "Abandonment of Water Supply Wells", and reported to OWRD pursuant to Division 205 of OAR Chapter 690.

In the alternative, Mr. Meyer advises that should the District retain any existing wells on the Site (and not abandon a well), State law requires that certain setbacks be established including the setback that Class B Biosolids cannot be applied within 200 feet of a well.

As a result, any groundwater quality concerns expressed by opponents will either be addressed by capping or abandoning any existing wells on the Site in accordance with State law or, in the alternative, the District will not be able to apply its Class B Biosolids near any wells that may not be capped or abandoned unless in compliance with the setbacks established by State law. As stated earlier, these issues will be addressed by DEQ in its permitting process.

3. Alternative Sites.

Some opponents identify alternative areas or methods regarding the District's plan to apply Class B Biosolids. As the County is aware, ORS 215.246 (3) only requires the District to address alternatives identified in the public process. Here, opponents have identified the Swan Lake area, and also the City of Klamath Falls and Klamath Drainage District approach as alternatives to the District's proposal to apply Class B Biosolids on the North Poe Valley Road Site – which it owns.

As you are aware, based on LUBA's recent decisions reversing Klamath County's denials of the District's two Recycled Water Projects, an applicant's burden of consideration under ORS 215.246 (3) only requires an applicant to provide a written explanation for not using any sufficiently identified alternative under the very limited obligation imposed by ORS

February 2, 2021

Page 4

215.246 (3). *South Suburban Sanitary District v. Klamath County*, (LUBA No. 2020-082); and *South Suburban Sanitary District v. Klamath County and Susan F. House and William D. Kennedy*, (LUBA No. 2020-090).

Here, the District owns the North Poe Valley Site. As a result, Walt Meyer, the District's Project Engineer, advises in his letter to me dated February 1, 2021 attached as Exhibit B that the District restricted its consideration of alternatives, including the Swan Lake Area alternative and methods as identified above, to land controlled by the District.

In addition, the District previously evaluated the City of Klamath Falls and Klamath Drainage District ("KDD") approaches in its alternatives analysis for its two Recycled Water Projects that were recently approved by the County based on LUBA's reversals. The District concluded that a City of Klamath Falls alternative was not viable because the City did not currently have a defined project that would meet all of the state regulatory requirements. The District also concluded that a KDD alternative was not a viable alternative because under the current KDD operating system any recycled water would be discharged to the Klamath River which would not be allowed by the State. LUBA determined that these explanations complied with the requirements of ORS 215.246 (3).

The District respectfully requests that this correspondence, along with Exhibits A and B, be entered into the record regarding Case File TYP II 21-20.

Very truly yours,

HATHAWAY LARSON LLP

/s/ Gregory S. Hathaway

Gregory S. Hathaway

GSH/ph

CC: South Suburban Sanitary District

EXHIBIT A



February 1, 2021

Project No.: 515-50-19-15
SENT VIA: EMAIL

Mr. Gregory S. Hathaway
Partner
Hathaway Larson LLP
1331 NW Lovejoy St., Suite 950
Portland, Oregon 97209

SUBJECT: Disposition of Wells on North Poe Valley Road Site

Dear Mr. Hathaway:

We have received a question regarding the disposition of wells that are located on the North Poe Valley Road Site which will receive Class B Biosolids. To protect groundwater resources, the District plans to abandon wells that are located on this Site where either Biosolids or Recycled Water are used. Should a well be retained that may be used, legally required setbacks and appropriate well head protection will be employed as required by State law. For example, Class B Biosolids cannot be applied within 200 feet of a well.

With regard to abandoning of wells, the procedures used will be consistent with the requirements of OAR Chapter 690, Division 220, Abandonment of Water Supply Wells. The work will be reported to the Oregon Water Resources Department (OWRD) per Division 205 of the same chapter.

Many of the older well registrations in the OWRD data base did not include horizontal coordinates and consequently OWRD simply placed them on the map without precise location data. The maps we provided are based on the OWRD maps and we believe those to be very inaccurate. That said, before irrigation systems are installed, we will have to survey the properties and precisely show any wells that are located on the property. As part of the design of the irrigation systems, site surveys will be made and these surveys will include the location of all wells.

Sincerely,

WEST YOST ASSOCIATES

A handwritten digital signature of Walter J. Meyer, with the text "Digital Signature" written in small letters below the signature.

Walter J. Meyer, P.E.
Managing Engineer

EXHIBIT B



February 1, 2021

Project No.: 515-50-19-15
SENT VIA: EMAIL

Mr. Gregory S. Hathaway
Partner
Hathaway Larson LLP
1331 NW Lovejoy St., Suite 950
Portland, Oregon 97209

SUBJECT: Alternatives to the North Poe Valley Road Site for Biosolids Sites

Dear Mr. Hathaway:

Application of biosolids on EFU land is allowed provided appropriate review of the sites is completed including county land use and DEQ technical review. Any EFU land could be considered including sites in Poe Valley. However, to facilitate the management of biosolids application, the District has restricted its consideration of alternatives to land controlled by the District.

Sincerely,

WEST YOST ASSOCIATES

A handwritten signature in black ink, appearing to read "W. Meyer", with a small "Digital Signature" watermark below it.

Walter J. Meyer, P.E.
Managing Engineer