

Bruce Gibson
Supervisor, District 2
San Luis Obispo County

My position on the proposed settlement of the Los Osos sewer lawsuit:

While I'm not happy about it, I will support paying the \$9.95 million settlement from the county's general fund reserves at our Board of Supervisors meeting on March 6. This is the final bill for constructing the sewer and it closes a long and contentious chapter in the history of Los Osos.

Sewer rates will not be changed at the March 6 meeting. Assuming these funds are to be repaid, I will not support raising rates above the maximum levels approved by ratepayers in 2009. Any increase above the maximum levels would have to be approved by ratepayers.

The details:

Q: Where's the money coming from to pay this settlement?

Short answer: From the county's general fund reserves.

Long answer: On March 6, the action before the Board is to pay the settlement using funds from the county's Solar Plant Mitigation Funds. These funds were collected in lieu of the sales tax that would have been paid if the solar panels and other construction materials for the big California Valley solar projects had been purchased in SLO County. They mitigate the sales tax loss (not the projects' physical impacts) and currently total about \$15 million.

Q: How will this affect sewer rates?

Short answer: The effect is yet to be determined. No change to sewer rates will be made on March 6. I will not support raising rates above the maximum already approved by ratepayers in 2009 in order to pay this settlement (see question below).

Long answer: The effect on sewer rates depends on, a) the BOS as a whole requiring the sewer ratepayers to repay the reserve fund, which seems likely, and b) how the repayment is financed in terms of interest rate and length of loan.

I am currently working with county staff and the State Water Resources Control Board on a refinancing proposal that might produce a minimal effect on rates. It will take several months to know whether this can be accomplished, but the SWRCB indicated at the time of the original loan that we could ask for a reduction in the interest rate below the current level of 2%. Another approach, among others, might be to structure the repayment as a loan from the county's general fund.

Q: What maximum rate increase could you support?

Short answer: Any increase must be within the voter-approved rates. The maximum charge for a single family home could be raised by about \$4.79/month under the currently approved rate structure.

Long answer: In 2009, sewer users voted to approve a “rates and charges” ordinance under the provisions of Proposition 218. For a single family home, the rate is currently \$44.06/month (fixed) plus \$7.54/month per unit of water used indoors. A “unit” is 100 cubic feet or 748 gallons.

The average home is charged about \$157/month total – less than the \$165/month we had originally estimated.

The maximum fixed rate authorized in 2009 is \$48.85/month or \$4.79/month more than currently. The maximum average charge would then rise to about \$162/month.

Q: What if the BOS wants to raise rates higher?

Short answer: The board would have to put any rate increase to a vote by the sewer ratepayers under the provisions of Prop 218. The ratepayers then decide.

Longer answer: I won't support even asking ratepayers for such an increase to pay this settlement.

Q: Why did the county get sued?

Short answer: A contractor on the sewer's collection system, ARB Inc., submitted a low-ball bid to get the contract and then wanted more money for the work they were obligated to perform.

Long answer: The sewer's collection system (pipes in the streets) was so big that we split the contract into roughly equal halves. ARB was awarded the contract on one half, with a low bid of about \$26 million – way under the next lowest bid of almost \$35 million. This appeared to be a low-ball bid, but the county was obligated by state public contracting law to accept it. As work progressed, ARB claimed they were owed more money for the work they contracted to do because of conditions in the field that they claimed the county should have told them about. The strategy of increasing payments through unjustified change orders is not uncommon in public contracting.

Q: So was the county at fault for this by being incompetent, inattentive or deceptive?

Short answer: No.

Long answer: The \$26 million bid was clearly low when compared to the six competing bids, which ranged from approximately \$35-\$42 million. When ARB bid (unsuccessfully) on the other half of the collection system, their bid was \$36 million.

The county had stringent construction management procedures in place for both halves of the collection system. The contractor on the other half (W.A. Rasic, low bid of \$29 million) made no unreasonable claims and completed their contract within budget.

Q: Why is the county choosing to settle this lawsuit rather than fight it?

Short answer: ARB claimed they were owed another \$23 million. If this complex case went to trial, we would likely expend another \$1.5 million in attorney and expert fees and risk an unsympathetic jury awarding them the \$23 million they sought. We held our nose and agreed to a \$9.95 million settlement to avoid that risk.

Long answer: This case is extremely complex, involving the arcane details of construction practice and contract law. In four years of defending this litigation, we have already spent over \$2.4 million on attorney and expert fees. The case was moved out of the SLO County courts and is being heard in Santa Maria, where juries are expected to be unsympathetic toward government.

After a weeks-long trial full of boring details regarding hundreds of construction decisions, review of thousands of documents, and testimony of over a hundred witnesses and many experts, the jury could just give ARB the \$23 million that they asked for – the jurors aren't SLO County taxpayers. Even if they compromised in the middle, the county would be out nearly \$13 million, including fees.

Q: So, does ARB make out like a bandit here?

Short answer: No. Even after paying the settlement, the county estimates that ARB lost approximately \$7 million on this project.

Longer answer: No. One benefit of the extended litigation was a forensic review by experts that estimated ARB's loss would be \$7 million after the settlement is paid.