

NOVATO SANITARY DISTRICT

August 23, 2010

The Board of Directors of Novato Sanitary District will hold a Closed Session at 6:00 p.m., Monday, August 23, 2010, at the District offices, 500 Davidson Street, Novato. (Open session begins after the closed session at approximately 6:30 p.m. See agenda below).

Materials related to items on this agenda are available for public inspection in the District Office, 500 Davidson Street, Novato, during normal business hours.

CLOSED SESSION:

CONFERENCE WITH LABOR NEGOTIATORS – Government Code Section 54957.6.

- Confer with District's labor negotiators.

AGENDA

- 1. PLEDGE OF ALLEGIANCE:**
- 2. AGENDA APPROVAL:**
- 3. REPORT FROM CLOSED SESSION:**
- 4. PUBLIC COMMENT (Please observe a three-minute time limit):**

This item is to allow anyone present to comment on any subject not on the agenda, or to request consideration to place an item on a future agenda. Individuals will be limited to a three-minute presentation. No action will be taken by the Board at this time as a result of any public comments made.

- 5. BOARD MEMBER REPORTS:**
- 6. REVIEW OF MINUTES:**
 - a. Consider approval of minutes of the August 9, 2010 meeting.

7. CONSENT CALENDAR:

The Manager-Engineer has reviewed the following items. To her knowledge, there is no opposition to the action. The items can be acted on in one consolidated motion as recommended or may be removed from the Consent Calendar and separately considered at the request of any person.

- a. Approval of disbursements.

8. COMMITTEE REPORTS:

- a. Wastewater Operations.
- b. Solid Waste.

9. DISTRICT COUNSEL REPORTS:

- a. Bank of Marin settlement.
- b. Proposition 26: Proposed New Limits on Fees.

10. LABORATORY:

- a. Consider approval of a proposal from EOA to prepare an update of the District's Local Limits.

11. COLLECTION SYSTEM IMPROVEMENTS PROJECT NO. 72706:

- a. Review bids received and authorize contract award to the lowest qualified responsive bidder for the Center Road, Rica Vista to Western Drive Sewer Replacement.

12. STAFF REPORTS:

- a. North Bay Water Reuse Authority.
- b. California Association of Sanitation Agencies Annual Meeting

13. MANAGER'S ANNOUNCEMENTS:

14. ADJOURNMENT:

Next resolution no. 3027

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the District at (415) 892-1694 at least 24 hours prior to the meeting. Notification prior to the meeting will enable the District to make reasonable accommodation to help ensure accessibility to this meeting.

August 9, 2010

A regular meeting of the Board of Directors of the Novato Sanitary District was held at 6:30 p.m., Monday, August 9, 2010, at the District Office, 500 Davidson Street, Novato.

BOARD MEMBERS PRESENT: President William C. Long, Members Michael Di Giorgio, James D. Fritz, and George C. Quesada.

BOARD MEMBERS ABSENT: Dennis Welsh.

STAFF PRESENT: Manager-Engineer-Secretary Beverly B. James, Administrative Secretary Julie Borda and District Counsel Kent Alm.

ALSO PRESENT: John O'Hare, Veolia Water
John Bailey, Project Manager, Veolia Water
Steve Clary, RMC Water & Environment
Bruce Presser, RMC Water & Environment
Brant Miller, Novato resident

PLEDGE OF ALLEGIANCE:

AGENDA APPROVAL:

On motion of Member Quesada, seconded by Member Di Giorgio, and carried unanimously by those members present, the agenda was approved as mailed.

PUBLIC COMMENT: None.

BOARD MEMBER REPORTS:

Member Quesada reported on a personal matter, noting he became a grandfather on Friday, August 6th.

REVIEW OF MINUTES:

Consider approval of minutes of the July 26, 2010 meeting.

On motion of Member Quesada, seconded by Member Di Giorgio, and carried unanimously by those members present, the minutes of the July 26, 2010 Board meeting was approved.

ENVIRONMENTAL MANAGEMENT SYSTEM:

Initial audit report. The Manager introduced Harry Cullen of KullQual Enterprises. Mr. Cullen gave a presentation titled *Novato Sanitary District Audit Summary* which outlined

the benefits of an ISO 14001 environmental management system. He stated that an audit scope was conducted at the District on June 7th and 8th and he outlined key environmental aspects to Operations, Laboratory, Administration, and new plant construction. In his presentation, Mr. Cullen discussed the seventeen observations that he found during his audit and the importance of safety records/documentation.

The Manager explained in more detail how the District would implement the program and noted that outside auditors would come in to review the District's environmental management system program. She noted that some audit tasks that would be performed by the ISO 14001 were already budgeted for with the implementation of the Veolia contract and the necessary ongoing review.

Member Fritz questioned how much additional staff would be needed to implement the ISO 14001 program. The Manager stated that one full-time person would be added to staff for a minimum of one year and an outside consultant would be needed to assist with implementation of the program.

Member Di Giorgio stated that he would hope Veolia Water would have an SOP (Standard Operating Procedures) program in place that would attend to District operating procedures and asked if the District would be duplicating efforts if an ISO 14001 program was put in place. He questioned what the cost would be to implement an ISO 14001 program.

President Long stated that the ISO 14001 environmental management system would provide the Board with critical information regarding the District's operations.

Member Quesada requested an item be placed on a future agenda to appoint a standing committee to address the ISO 14001 program needs.

President Long opened the item for public comment.

Brant Miller, Novato resident, stated that he was previously supportive of the ISO 14001 quality management system. At this time, he advises the Board to be cautious in moving forward.

President Long closed public comment.

John Bailey, Veolia Water, addressed Member Di Giorgio's question regarding Veolia's contracted obligation to prepare SOP's for the District. He stated that Veolia Water is responsible for the preparation of the SOP's in relation to the operation and maintenance of the treatment facility at no additional cost. President Long confirmed that the Veolia contract does not include safety and oversight procedures for the Lab or for the Administrative portion of the District.

The Manager suggested the District work with Harry Cullen to develop a price structure for specific tasks to determine if the District should proceed with the implementation of an ISO 14001 program.

CONSENT CALENDAR:

Member Di Giorgio requested item 7b., *Consider approval of the quarterly investment report* be pulled from the Consent Calendar.

On motion of Member Quesada, seconded by Member Fritz and carried unanimously by those members present, the following Consent Calendar items were approved:

- a. Consider granting final acceptance and authorizing staff to file the Notice of Completion for the Center Road/Wilson Avenue Sewer Project Phase A.
- c. Approval of regular disbursements in the amount of \$538,460.45, project account disbursements in the amount of \$706,675.33, payroll and payroll related expenses in the amount of \$293,319.58 and Board member disbursements in the amount of \$3,104.97.

Member Di Giorgio discussed the Quarterly Investment Report and asked for clarification of the data. The Manager discussed the report in more detail. Member Di Giorgio requested additional information be detailed and requested ending balances be shown. The Manager stated she would consult with Tom Gaffney and provide information on alternative investments when the final budget is brought before the Board for approval. In addition, she stated she would bring the revised report back before the Board.

On motion of Member Di Giorgio, seconded by Member Fritz, and carried unanimously by those members present, the Board approved the quarterly investment report.

WASTEWATER TREATMENT PLANT UPGRADE – CONTRACT B, PROJECT 72609:

- Report on options for strengthening junction boxes: The Manager briefly explained the location of the two junction boxes and noted that their structure has been determined to not be strong enough to withstand the water pressures that could be generated under peak flow conditions. The Manager and Steve Clary explained the structure of the current boxes and detailed the necessary upgrades.

- Consider making CEQA findings.

- Consider authorizing staff to either approve a change order to strengthen junction boxes or to approve issuing separate contracts for junction boxes 2 & 3.

Member Fritz requested staff approve a change order from Monterey Mechanical to complete the necessary repairs.

The Manager discussed the benefits to obtain quotes from the contractors on the bidders list under the Uniform Construction Cost Accounting procedures for a separate contract for each of the boxes.

On motion of Member Fritz, seconded by Member Di Giorgio and carried with the following vote, the Board authorized staff to either approve a change order from Monterey Mechanical for an amount not to exceed \$292,000 or to obtain quotes from the contractors on the bidders list under the Uniform Construction Cost Accounting procedures for a separate contract for each of the boxes at a cost not to exceed \$125,000 per junction box. The work must be completed by October 15, 2010. Additionally the Board authorized the making of CEQA findings. Ayes: Long, Di Giorgio, Fritz. No: Quesada. Absent: Welsh.

BOARD OF DIRECTORS

- Presidential appointment of Ad-Hoc Recycled Water Committee. The Manager outlined the District's need to create an Ad-Hoc Recycled Water Committee to work with North Marin Water District to discuss issues that would arise from the new recycled water project to be built at the Davidson St. treatment facility. She noted that the District's ad-hoc committee would meet with the North Marin Water District's ad-hoc committee to resolve any issues between the two agencies.

President Long appointed himself and Member Fritz to the Committee. In addition, he appointed Member Quesada as an alternate.

ADMINISTRATION:

- Consider approval of a proposal from Rauch Communications for public outreach for 2010/11. The Manager detailed public outreach services that Martin Rauch of Rauch Communication Consultants has provided in the past fiscal year. She discussed with the Board additional outreach services she would like Rauch Communications to provide in 2010/11. She requested the Board approve a proposal from Rauch Communication to provide ongoing public outreach services for the 2010/11 fiscal year for a contract amount not to exceed \$70,000.

Member Fritz requested clarification of the services Rauch Communications has provided to the District. The Manager outlined his services.

President Long stated the Board should be informed of strategic messages Rauch Communications will publicize and requested the Board be made aware of new topics to be used for public outreach.

On motion of Member Di Giorgio, seconded by Member Fritz, and carried unanimously by those Members present, the Board approved a proposal from Rauch Communication Consultants to provide public outreach services for the 2010/11 fiscal year.

Member Quesada questioned District Counsel Kent Alm as to the legality of the District passing a resolution acknowledging those individuals who worked on the "Yes on F" campaign. Mr. Alm stated that public funds could not be used to prepare and send such an acknowledgement, but Board members individually could proceed as they wished. He stated he felt the preparation and passing of such a resolution was outside the business of this District and that all Members of the Board may not share the same view on the matter as Member Quesada.

- Consider approval of a proposal from RMC Water to provide required NPDES permit studies and reports. The Manager noted that Monica Oakley of Oakley Water has worked with the District for several years on various permit renewals. She stated that the new permit requires a number of special studies and reports that the District staff will need assistance in preparing.

In addition, the Manager pointed out that Oakley Water has now merged with RMC Water. The Manager requested the Board approve a proposal from RMC Water to provide required NPDES permit studies and reports for a contract amount not to exceed \$55,000.

On motion of Member Di Giorgio, seconded by Member Fritz, and carried unanimously by those members present, the Board approved a proposal with RMC Water for a contract amount not to exceed \$55,000.

RECLAMATION FACILITY BIOSOLIDS DISPOSAL:

- Consider acceptance of a proposal from Custom Tractor Service (CTS) to transfer biosolids from the storage ponds to the dedicated land disposal site. The Manager briefly explained the District's annual disposal of waste biosolids into the Dedicated Land Disposal (DLD) area at the Reclamation Facility.

On motion of Member Di Giorgio, seconded by Member Fritz, and carried unanimously by those Members present, the Board authorized the Manager-Engineer to enter into an agreement with CTS for a not-to-exceed amount of \$65,000 for sludge injection and an agreement not to exceed \$65,000 for cleaning out the sludge lagoons.

- Consider approval of a proposal from Custom Tractor Service to complete the rehabilitation of four irrigation parcels at the Reclamation Facility. The Manager briefly explained Custom Tractor Service's proposal to complete the rehabilitation of Parcels 21, 25, 34 and 38. She requested the Board approve the proposal from Custom Tractor Service for rehabilitation services for an amount not to exceed \$90,000.

On motion of Member Di Giorgio, seconded by Member Fritz, and carried unanimously by those Members present, the Board approved a proposal with Custom Tractor Service to rehabilitate irrigated parcels 21, 25, 34 and 38 for an amount not to exceed \$90,000.

STAFF REPORTS:

- North Bay Water Reuse Authority (NBWRA). The Manager stated that the Memorandum of Understanding will soon be coming before the Board with final revisions. She expressed her appreciation to Ginger Bryant for her dedicated work in achieving a project completion date extension to the Fall 2012.

MANAGER'S ANNOUNCEMENTS:

- LAFCO will meet on August 12th at 7PM. No issues are pending that will affect the District.
- The Wastewater Operations Committee will meet on Monday, August 16th at 2PM.
- The Joint City District Solid Waste Committee will meet on Monday, August 16th at 4:30PM.
- Regarding tax reporting for Director's compensation, District Counsel stated the IRS requested the compensation be reported on a W-2 form. The Manager stated she will contact a tax specialist to understand the correct procedure for reporting this income.

ADJOURNMENT: There being no further business to come before the Board, President Long adjourned the meeting at 8:22 p.m.

Respectfully submitted,

Beverly B. James
Secretary

Julie Borda, Recording

Novato Sanitary District Check Register

August 23, 2010

Date	Num	Name	Credit
Aug 23, 10			
8/23/2010	51562	U.S. Bank Corporate	126,320.00
8/23/2010	51522	Covello Group, The	53,603.75
8/23/2010	51563	Veolia Water North America	36,495.26
8/23/2010	51541	Marin County Registrar of Voters	26,729.04
8/23/2010	51571	Meyers, Nave, Riback, Silver &...	19,208.04
8/23/2010	51535	HDR EngineeringInc	15,413.51
8/23/2010	51519	Central Marin Sanitation District	10,685.25
8/23/2010	51509	Aerotek	9,222.00
8/23/2010	51527	E & M Electric & Machinery, Inc.	7,311.73
8/23/2010	51517	Cantarutti Electric, Inc	5,348.50
8/23/2010	51548	North Marin Water District 2	4,783.76
8/23/2010	51533	Harrington Plastics, Inc.	4,272.18
8/23/2010	51551	Olin Chlor Alkali Products	4,265.65
8/23/2010	51511	American Express-22062	3,033.85
8/23/2010	51508	Able Tire & Brake Inc.	1,937.39
8/23/2010	51572	Bowens, Kenneth	1,890.00
8/23/2010	51514	Bay Area Air Quality	1,768.00
8/23/2010	51557	Rain For Rent	1,747.16
8/23/2010	51559	Reliable Crane & Rigging	1,740.00
8/23/2010	51530	G & K Services	1,407.91
8/23/2010	51506	3T Equipment Company Inc.	1,404.36
8/23/2010	51534	Harris & Associates, Inc	1,375.00
8/23/2010	51538	Kaiser Permanente	1,142.55
8/23/2010	51542	Marin Mechanical II, Inc.	1,105.00
8/23/2010	51536	IEDA, INC	1,020.00
8/23/2010	51528	Foster Flow Control	971.19
8/23/2010	51566	VWR International Inc.	903.39
8/23/2010	51552	Oratech Controls, Inc.	892.60
8/23/2010	51520	Chem-Dry of Marin, Inc.	826.20
8/23/2010	51555	R & B Company	784.54
8/23/2010	51564	Verizon CA Pump Stations	694.55
8/23/2010	51547	North Marin Water District	666.63
8/23/2010	51565	Verizon California	625.59
8/23/2010	51518	CD & Power	596.00
8/23/2010	51567	WasteManagement	579.65
8/23/2010	51569	Whitney, Larry	570.00
8/23/2010	51540	Labworks Equipment, Inc.	540.12
8/23/2010	51537	Independent Journal	478.00
8/23/2010	51524	Delta Communications Group	466.85
8/23/2010	51507	Able Fence Company	465.00
8/23/2010	51561	Siemens Water Tech Corp.	450.28
8/23/2010	51515	BoundTree Medical, LLC	444.94
8/23/2010	51550	Oakley Water Strategies, Inc.	411.25
8/23/2010	51523	CWEAmembers	396.00
8/23/2010	51570	Zenith Instant Printing, Inc.	383.75
8/23/2010	51512	AT&T-SAC	368.68
8/23/2010	51510	Alhambra	332.07
8/23/2010	51531	Grainger	305.55
8/23/2010	51516	Cagwin & Dorward Inc.	229.00
8/23/2010	51568	Water Components & Building	209.15
8/23/2010	51513	B.W.S. Distributors, Inc.	206.91
8/23/2010	51521	Cintas Corporation	179.33
8/23/2010	51532	HACH/American Sigma Inc	177.95
8/23/2010	51526	Dreitzer, Lorn	169.65
8/23/2010	51554	Petty Cash	151.73
8/23/2010	51529	Fuses Unlimited	144.13
8/23/2010	51543	MME	124.51
8/23/2010	51544	North Bay Gas & Weld	108.00
8/23/2010	51539	Lab Safety Supply, Inc.	102.53
8/23/2010	51560	Royal Petroleum Company	102.35
8/23/2010	51558	Randall Bros. Auto Inc.	97.87
8/23/2010	51545	North Bay Portables, Inc.	89.70
8/23/2010	51549	Novato Car Wash	52.75
8/23/2010	51546	North Bay Truck Service	47.50
8/23/2010	51556	Radio Shack	18.52
8/23/2010	51553	Pacific, Gas & Electric	14.78

08/20/10

Novato Sanitary District Check Register

August 23, 2010

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Credit</u>
8/23/2010	51525	Don Johnsons Pool Service	9.81
Aug 23, 10			<u><u>358,618.89</u></u>

08/20/10

Novato Sanitary District Check Register

August 23, 2010

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Credit</u>
Aug 23, 10			
8/23/2010	2073	Covello Group, The	122,544.91
8/23/2010	2072	Control Systems West, Inc.	19,872.50
8/23/2010	2075	Fishnet Security	4,915.00
8/23/2010	2074	Empire Mini Storage - Novato	730.00
8/23/2010	2076	ModSpace Corporation	411.50
Aug 23, 10			<u>148,473.91</u>

MONTHLY OPERATIONS REPORT
July 2010

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TREATMENT PLANT PERFORMANCE SUMMARY:**July 2010:**

Parameter	Monthly Performance July 2010	
	Novato WWTP	Ignacio WWTP
Flow, MGD (monthly average)	4.26	
Influent BOD ₅ , mg/L (monthly average)	182	228
Influent TSS, mg/L (monthly average)	224	171
Effluent BOD ₅ , mg/L (monthly average)	9	
Effluent TSS, mg/L (monthly average)	7	
Effluent BOD ₅ - % Removal	95	
Effluent TSS - % Removal	97	
Ammonia mg/L (monthly average)	N/A	
Total Permit Exceedances NPDES	0	N/A

OPERATIONS & MAINTENANCE STATUS / REVIEW:**Key events for the period:****General:**

- Cleaned Channel #2 Filter Screen & performed Annual Service – Novato
- Digester Mixing Pump Repair @ Ignacio
- Digester Hot Water Recirculation Pump Repaired @ Ignacio
- Primary Clarifier #1 – motor change out - Novato
- Digester Start-Up – Novato
- Prepare for Decommissioning of Ignacio TP Set-Up Chlorination for Trickling Filter and Bio-Tower
- Boiler/Burner Repair – Novato

CONSTRUCTION UPDATE:

- Flare placed in service – Novato
- Beginning preparation for paving

ADMINISTRATION:

- July 2010 Consulting Services Invoice submitted on August 13, 2010
- July 2010 Technical Services Invoice submitted on August 13, 2010

SAFETY AND TRAINING:

Safety & Regulatory Training

- Monthly plant safety inspections for Novato WWTF completed on July 12, 2010
- No lost time accidents reported during the month of July 2010.
- Five Minute Tailgate training is held daily with the O&M staff.
- Septage Receiving System – July 13, 2010 & July 23, 2010
- Ferric Tank Training – July 12, 2010
- Eaton Electrical Equipment Training – July 19, 2010 & July 21, 2010

Skills & Technical Training

- Ed Dix provided instructional support and training on Hach WIMS (data base) to District (Laboratory) staff.

PUBLIC RELATIONS:

- CWEA Tour of Novato Plant and Dinner Meeting in Novato

VWWOS CONTRACT:

- Operations ongoing under the Emergency Services Agreement.
- Letter of Intent to Resume Operations under September 2009 Contract Issued July 6, 2010.

MISCELLANEOUS

- Wastewater Treatment Plant Classification – New Plant – Submitted to State Water Resources Control Board on July 22, 2010

Veolia Support Staff On Site (Various Times)

John O'Hare	Technical Support
Ed Dix	Process Control Management Plan
Aaron Winer	Management and Administration
Chris McAuliffe	Startup and SOP

WORK ORDER STATISTICS

	Open Work Orders Due Prior to 7/1/10	Open Work Orders 7/1/10 - 7/30/10	Total Open Work Orders
Preventative	14	201	215
Corrective	18	15	33
Total	32	216	248

	Closed Work Orders 7/1/10 - 7/30/10
Preventative	217
Corrective	18
Total	235

Total Outstanding Work Orders as of August 1, 2010	13
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COLLECTION SYSTEMS O&M REPORT

SUMMARY

Novato Sanitary District									
Collection System Monthly Report For 2010									
	Jan	Feb	March	April	May	June	July	Total Year to Date	Average Year to Date
Employee Hours Worked									
Number of Employees	7	7	7	5	5	6	6		
Regular Time Worked on Coll. Sys.	664	586	683	571	533	650	592	4,279	
Regular Time Worked on Pump Stations	332	253	266	277	210	183	266	1,787	
Regular Time Worked on Other	6	25	56	5	13	0	28	133	
Vacation/Sick Leave/Holiday	356	354	481	24	106	122	133	1,575	
Overtime Worked on Coll. Sys.	16	15	22	29	46	47	37	211	
Overtime Worked on Pump Stations	50	22	42	40	50	28	43	275	
Overtime Worked on Other	0	8	17	0	0	0	1	25	
After Hours Callouts	1	0	0	0	0	0	0	1	
Service calls, normal hours	10	6	11	4	2	5	8	46	
Average S.C. response time (minutes)	28	18	51	18	18	28	32	193	
Productivity									
Rodder Ft. Cleaned	4,781	13,489	1,757	4,311	1,749	6,346	1,706	34,139	4,877
Vactor Truck 1 feet Cleaned	638	16,422	22,889	61,242	23,116	24,276	22,041	170,624	24,375
Vactor Truck 2 feet Cleaned	38,870	39,448	51,850	8,051	16,341	20,086	22,047	196,693	28,099
Camera feet Videoed									
Work Orders Completed	133	267	230	219	119	145	225	1,338	
Total Footage Cleaned	44,290	70,218	76,496	73,604	41,206	50,708	45,794	402,316	57,474
Stoppages									
Minor	3	3	2	1	3	2	2	16	
Major	0	0	1	1	3	1	2	8	
Overflow Gallons	3	3	1	0	0	1	0	8	
Volume Recovered, gallons	5,675	9,380	109	50	35	10,000	85	25,334	
				50	35	4,975	60	5,120	
Benchmarks									
Average Feet Cleaned/Hour Worked	65	117	109	123	71	78	77		
Total Stoppages/100 Miles	1.3	1.3	0.8	0.4	1.3	0.8	0.8		
Average spill response time (minutes)	5	18	11	0	16	33	20	15	
Callouts/100 Miles	5.0	3	5	1.7	0.8	2	3.6	3	
Overtime/100 Miles	29	7	10	13	43	21	16	139	
Overflow Gallons/100 Miles	2522	4169	48	22	16	4444	38	11259.10	

RECLAMATION FACILITY O&M REPORT FOR JULY 2010**Summary**

On June 22, 2010, irrigation of the Reclamation parcels began this season following the removal of bales of pasture grass from the parcels. The start date was considerably later than in recent years due to significant rainfall during the late winter/early spring period. As in previous years, the electrical and mechanical systems experienced problems because of the wet conditions and age of the facilities. The fresh water system for cattle drinking water and the irrigation system also experienced failures and required repairs. Preliminary work began to place biosolids in the Dedicated Land Disposal area.

Rancher Operations

The rancher began cutting hay on May 17th and completed picking up and stacking the majority of the bales by July 1st. The rancher did not pick up bales in Parcel 8 on Site 7 and a portion of Parcel 7 on Site 7 due to the lack of adequate storage area. Final quantities are not available but the rancher reported that the tonnage far exceeds what was harvested in the past. This was the result of wet conditions of the parcels preventing the rancher from beginning cutting earlier in the year. The rancher also reported that the market is flooded with bales of pasture grass and prices are low.

The rancher is experiencing problems with the fresh water system for cattle troughs in Site 3. A large leak was located on the north side of Highway 37 adjacent to the freeway right-of-way. The District assisted the rancher in locating this leak by hiring a leak detection company. This leak was found eight feet deep and repaired. Another leak materialized in Parcel 4 of Site 3 (across the highway from the first leak) shortly thereafter. The rancher was struggling to locate this leak due to its depth and discussion began about replacing the entire fresh water main serving Parcels 1 through 4 in Site 3.

Irrigation Systems

At the onset of irrigating on Site 7 a large leak was found on the irrigation main in Parcel 2 near the control valve for Zone 3. Due to its depth the District hired a contractor to excavate down 8 feet to the irrigation main and repair the leak. The leak was caused by a failure of a 2-inch nipple (testing port) on the main that was not properly coated prior to backfilling (in 1985). This location has been a problem area of saturated soils and flooding for quite some time.

The irrigation valve control system and valves were unreliable at the beginning of irrigation season. The majority of the parcels in Site 2 were not working. The electrical system was shorted out by corrosion and/or moisture in control boxes in two different parcels. All parcels were irrigating by the end of the month except for Parcels 1, 5 & 8. Parcels 1 & 5 are not in service due to plans to rehabilitate them later this season, Valves and actuators have failed in Parcel 8 and must be replaced.

At Site 3, only Parcels 6 & 7 and a portion of Parcel 5 were functioning automatically. Parcel 4 & 8 are out of service due to plans to rehabilitate them later this year. Parcels 1, 2 & 3 are being manually operated until staff can secure additional control boards for the zones. These

control boards were removed in years past and used elsewhere. Previously, power was not available in these parcels due to failed power conductors, which were replaced this month. The majority of ditches in Site 3 were mowed at the request of Marin Sonoma Mosquito Abatement District (Mosquito District). This will allow the Mosquito District to more efficiently treat the ditches and should result in lower charges to the Sanitary District at the end of the irrigation season.

At Site 7 only Parcels 6 & 7 and a portion of Parcels 3, 4 & 5 were functioning automatically. Parcel 8 is out of service due to hay bales still on the parcel and this parcel is in need of rehabilitation. Two shorted control boards and two runs of wire were replaced in order to allow irrigation of all of the parcels. A few of the zones within the parcels are not working due to valve and actuator failure. Staff has placed an order for additional valves and actuators and more may be needed.

Irrigation Pump Station

The Wildlife Pond Drain Pump was removed for repairs and should be back in service by the middle of August. As of July 30th, 77,600,000 million gallons of irrigation water has been applied to the parcels.

Dedicated Land Disposal

The contractor hired to clean out the sludge lagoons and place the sludge in the Dedicated land Disposal (DLD) area began moving in his equipment and ripped the DLD to allow additional drying in anticipation of placing sludge in the DLD in August.

Water Quality

WDR EXCEEDANCE (RECLAMATION)	PARAMETER	RESULT	DATE
E-007	pH	9.6	7/07/2010
E-008	pH	9.8	7/07/2010
E-004	pH	9.1	7/06/2010
E-004	pH	9.1	7/13/2010
E-004	pH	9.2	7/20/2010
E-004	pH	9.2	7/28/2010
E-005	pH	9.1	7/06/2010
E-005	pH	8.9	7/13/2010
E-005	pH	8.8	7/20/2010
E-005	pH	8.8	7/28/2010

Discussion of Violations / Excursions:

pH Wildlife and Reclamation Ponds: A wide fluctuation in pH is normal for pond operations. This is a naturally occurring condition due primarily to photosynthesis and the oxygen / carbon dioxide cycle.

Note - An online technical article describing this cycle can be found at:

http://aquanic.org/publicat/usda_rac/efs/srac/464fs.pdf . No discharge from this location occurs.

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Prop. 26: New Supermajority Requirements for Regulatory Fees

by

Michael G. Colantuono, Esq.¹

A statewide initiative on the November 2010 ballot is the latest threat to local control in government finance and might further complicate State budget negotiations. Proposition 26 would recategorize a swath of state and local fees as taxes, imposing supermajority approval hurdles for what are now regulatory and impact fees that can be adopted by simple majorities of the State Legislature, city councils, and county boards of supervisors. This paper summarizes the measure, the campaign arguments for and against it and identifies what we know and what remains open to question about its impact on California's local governments.

Background. In 1997 the California Supreme Court ruled in *Sinclair Paint Co. v State Board of Equalization*,² that a fee imposed on businesses that made products containing lead to fund health services to children and to otherwise mitigate the social and environmental consequences of lead contamination. The challengers argued unsuccessfully that the measure should have been imposed as a tax with $\frac{2}{3}$ approval of each chamber of the Legislature under Proposition 13 rather than as a majority-vote regulatory fee. The Court ruled that the use of the proceeds of a fee need not benefit those charged to avoid characterization as a tax as long as the fee bears a reasonable relationship to the burden imposed by those charged. Fees of this kind are called "regulatory fees." In recent years, California courts have upheld such fees imposed to regulate point-source emitters of air pollution³ and an air quality district's fee on new development to mitigate the impacts of that development on air quality.⁴ Fees have been proposed to mitigate the adverse social or environmental consequences of other products and economic activities, too, such as fees on sweetened beverages to fund anti-obesity programs, fees on alcohol

¹ The author acknowledges the contributions of Michael Coleman of CaliforniaCityFinance.com to an earlier version of this paper. The views stated here and any errors are, of course, the author's alone.

² 15 Cal.4th 866.

³ *San Diego Gas & Elec. Co. v. San Diego County Air Pollution Control District*, 203 Cal.App.3d 1132 (1988) (air pollution permit fees based on volume of pollutants emitted by permittee rather than cost of staff time devoted to issuance of permit).

⁴ *California Building Industry Ass'n v. San Joaquin Valley Air Pollution Control District*, 178 Cal.App.4th 120 (2009) (indirect source rule did not impose a fee regulated by A.B. 1600 or exceed district's authority, but was valid regulatory fee under *Sinclair Paint*).

vendors to fund police services and public education efforts to address the adverse consequences of alcohol consumption.⁵

In addition, the state budget struggles of recent years led to a number of proposals in the State Legislature to avoid the need for two-thirds approval of new revenues, such as a proposed surcharge on vehicle license fees (VLF) to fund state parks,⁶ and a December 2008 proposal to reduce state taxes on gasoline, but to increase fees on gasoline to fund public transportation and other programs.

The Measure. Proposition 26 would recategorize as taxes many regulatory fees that benefit the public broadly rather than providing a direct and distinct benefit to the business owner or other fee payor. Among these are regulatory fees and assessments to address the health, environmental and other social effects of business activities.

Approval Requirements: State & Local Fees & Taxes <i>Proposition 26 would recategorize many fees as taxes</i>		
	Fee	Tax
State	Majority of each house of the Legislature and Governor's approval	For measures increasing state revenues,* 2/3 of each house of the Legislature and Governor's approval or initiative constitutional amendment approved by simple majority of voters
City or County	Majority of the city council or board of supervisors	2/3 voter approval for a special tax, majority voter approval for a general tax
<i>*Proposition 26 would require a 2/3 vote for any law that increase the taxes of any taxpayer, regardless of its overall effect on state revenues.</i>		

The measure also broadens the 2/3 legislative vote requirement for increases in any state tax. The California Constitution currently requires 2/3 approval of each house of the Legislature for laws enacted “for the purpose of increasing revenues.” Proposition 26 substantially expands this supermajority requirement by requiring 2/3 approval of each house of the legislature for any law that will increase the taxes of any taxpayer, regardless of its overall effect on state revenues.⁷ This is comparable to the requirements of Proposition 218 for local government taxes.⁸

Proposition 26 would require any state fee approved in 2010 that violates its terms to expire by late 2011 unless re-enacted in compliance with the new 2/3-vote requirement. No similar “window period” is established for local governments fees and, if approved by California’s voters, the measure will be effective as to local governments only from November 3, 2010.

⁵ *City of Oakland v. Superior Court*, 45 Cal. App. 4th 740 (1996) (pre-*Sinclair Paint* case upholding fee on liquor stores to fund city services made necessary by alcohol consumption).

⁶ This proposal appears on the November 2, 2010 ballot as Proposition 21, but will be voided by Prop. 26 unless Prop. 26 is defeated or Prop. 21 obtains more “yes” votes than Prop. 26.

⁷ Proposed California Constitution, Art. XIII A, § 3(a).

⁸ *Cf.* Government Code § 53750(h) (defining tax “increase” for purposes of Prop. 218).

Fees Proponents Say Proposition 26 will Address

- Health inspection / monitoring fees
- Public safety cost mitigation fees
- Traffic, parking, noise abatement, and air quality impact fees for education, cleanup, health or other programs of general benefit
- Water quality impact fees for education, cleanup, health or other programs of general benefit
- Solid waste, tires, canned beverages, food packaging, computer hardware and toxic waste disposal fees used for education, cleanup, recycling / reuse, health or other programs of general benefit
- Alternative energy fees and energy use surcharges
- Fees on alcohol to litigate public nuisances associated with sale or consumption
- Fees on soda, unhealthy foods, fats, or sugar to mitigate obesity and other negative health effects
- Trenching fees for diminution in durability or longevity of roads, traffic congestion mitigation, mitigate potential damage to existing infrastructure
- Environmental mitigation and eco-impairment fees including carbon consumption fees, oil severance fees, and hazardous waste fees to support programs of general public benefit
- Vehicle registration or gasoline fees for transportation programs or environmental cleanup of general benefit
- Fees on tobacco for mitigating the adverse health effects of tobacco products (including evaluation, screening, and necessary follow-up services to those deemed potential victims of tobacco-related injuries) or to discourage consumption (by increasing cost of product) and/or to educate the general public on the consequences of tobacco consumption. Fees to prevent illegal consumption by minors
- Fees on wireless telecommunications to reduce the impacts of DWTs (Driving While Talking), burdens on the 911 system, potential future effects of close proximity radio frequency exposure
- Fees on “altered food” products (chemical, gene, hormone, etc.) for research, screening, testing and treatment or education.

- Fees on television and movie programming to mitigate effects of violence on youth or similar anti-social consequences linked to programming
- Fees on gambling activities to treat compulsive gambling including screening, education, and treatment
- Fees on pharmaceuticals to treat subsequently discovered health risks associated with a particular drug product, for drug education, health research, treatment, emergency care, covering the costs of the uninsured or underinsured or for immunizations for children
- Fees on 4-wheel drive and all-terrain vehicles to offset eco-damage of off-road automobile use
- Fees on pesticides and other chemicals fees to treat the adverse health effects, for chemical use or alternative product education, research, treatment, or emergency response, cleanup or care.
- Fees on property casualty insurers for firefighting, earthquake and flood, uninsured drivers and auto case court costs.⁹

A state fee deemed a tax under Prop. 26 would require the approval of 2/3 of each house of the Legislature and the Governor.¹⁰ A local fee made a tax by Prop. 26 would be a special tax (because it would be used for a specific purpose) and would require 2/3 voter approval unless restructured to fund general government services.¹¹

The ballot arguments regarding Proposition 26 also identify a number of fees which may be affected by the measure such as oil spill mitigation fees, hazardous waste clean-up fees, fees on tobacco products to fund health programs, fees on alcohol to fund police services and efforts to prevent youth drinking and road impact fees.¹²

Exceptions to the Definition of “Tax.” Proposition 26 excludes from its new definition of “tax” the following kinds of fees:

- for a benefit of privilege conveyed (like a professional license or a land use approval)
- for a service or product (like a park and recreation fee)
- to cover certain costs of regulation

⁹ This listing is taken from “Specific Industry Examples” an undated flyer produced by Stop Hidden Taxes, the campaign organization supporting Proposition 26.

¹⁰ Proposed California Constitution, Art. XIII A, § 3(a).

¹¹ *Id.*, Art. XIII C, § 1(e) (defining “tax”) and existing California Constitution, Art. XIII C, § 2(d) (requiring 2/3 voter approval for special taxes).

¹² The ballot arguments are available on the Secretary of State’s website at www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm.

- entrance fees for state or local property (but not vehicle license fee surcharges like that proposed by Proposition 21 on the November 2, 2010 ballot) and such entrance fees are not limited to cost
- fines imposed by a court or a local government
- development impact fees imposed by a local government
- assessments and property related fees governed by Proposition 218.

Burden of Proof. Proposition 26 states that governments must bear the burden to prove by a preponderance of evidence that challenged revenue measures are not taxes; that the amount of a fee reflects the reasonable cost of providing the permit, privilege, or regulatory program for which it is imposed; and that it is allocated among fee payors so as to “bear a fair or reasonable relation to the payor’s burdens on, or benefits received from, the governmental activity.”¹³ Much of this reflects the requirements of existing law and this language might actually be helpful in giving meaning to the burden of proof rule of Proposition 218, which also makes government bear the burden to defend fees and assessments, but does not specify that the preponderance of evidence standard – the lowest of the standards applied by our courts – controls.¹⁴

Open Questions. There are a number of unknowns about the measure that seem certain to generate litigation. These include:

What does it mean that a fee must be proportionate to the benefit from or burden on a service or program with respect to which a fee is imposed? Would a fee for gas service, for example, depend on whether the person using the gas used it to warm a hospital (large benefit from the service) or run a gas grill (smaller benefit)? Probably not, but we do not know what this phrase means.¹⁵

The measure requires that fees for permits, privileges and services be imposed only when that permit, privilege or service is not provided to those not charged.¹⁶ Does this mean an end to free and discounted passes and fees for low-income households and seniors?

How much of the traditional cost of a regulatory program is now permitted to be covered by regulatory fees is now in question, especially as to rule-making by regulators – such as the advance planning services of local planning agencies.¹⁷

¹³ Proposed California Constitution, Art. XIII A, § 3(d); Art. XIII C, § 1(e) (trailing paragraph).

¹⁴ California Constitution, Art. XIII d, § 4(f) (burden of proof in assessment disputes); § 6(b)(5) (burden of proof in disputes regarding property related fees).

¹⁵ *Id.*

¹⁶ Proposed California Constitution, Art. XIII A, § 3(b)(1) & (2); Art. XIII D, § 1(e)(1) & (2).

¹⁷ The measure allows State regulatory fees to recover only “the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.” Proposed California Constitution, Art. XIII A, § 3(b)(3). Similar, but not identical, language is provided for local fees. *Id.*, Art. XIII C, § 1(e)(3) (“incident to” is changed to “for”).

There are minor language differences between the exemptions from the definition of “taxes” imposed by the state government as compared to those imposed by local governments. The meaning of these small differences (such as costs “incident to” issuing a permit instead of “for” issuing a permit)¹⁸ will require judicial clarification.

Proposition 218 exempted local government fees for gas and electric service from its requirements.¹⁹ Proposition 26 does not include any similar exemption and it therefore appears that such fees will now have to fall within the exemption from the definition of tax for

“[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.”²⁰

Thus, if Proposition 26 is approved, local gas and electric utilities would have a cost-of-service limit on fees that their for-profit competitors do not.

Like Proposition 218, Proposition 26 uses the word “impose” in a crucial way – it defines as a tax “any levy, charge, or exaction of any kind **imposed** by a local government” except as provided by the measure’s exceptions.²¹ We have no definition of this term, but we do know from a case involving Proposition 62, a 1987 statutory initiative involving local taxes, that it does not refer to mere continued collection of an existing revenue measure.²²

Major Impacts. There will be some significant impacts if Proposition 26 is approved by the voters. First, and most obviously, **regulatory fees** to mitigate the social and other consequences of economic activity such as those upheld in *Sinclair Paint* and its progeny will now be defined as taxes requiring $\frac{2}{3}$ voter or legislative approval. Second, **franchise fees** may now be defensible only to the extent they are a charge for the use of government property – and this might require the government have the power to exclude users from the property if the fee is not paid. This might affect fees on pipeline franchises, cable television franchises, solid waste collection franchises, etc. California Department of **Fish & Game fees** for the cost to review documents prepared by local governments under the California Environmental Quality Act (CEQA) might no longer be permissible. Finally, as noted above, **low-income and senior discounts** for various fees and charges might not longer be permitted.

Conclusion. The League of California Cities has taken an “oppose” position on Proposition 26 and other local government organizations, public health and environmental groups can be expected to do so as well. Business interests are supporting the measure. More information about Proposition 26 can be

¹⁸ Compare proposed California Constitution Art. XIII A, § 3(b)(1) & (2) with Art. XIII C, § 1(e)(1) & (2) (“to the payor” deleted from the latter); and proposed California Constitution Art. XIII A, § (3)(b)(3) with Art. XIII C, § 1(e)(3) (“incident to” vs. “for”).

¹⁹ California Constitution, Art. XIII D, § 3(b).

²⁰ Proposed California Constitution, Art. XIII C, § 1(e)(2).

²¹ Proposed California Constitution, Art. XIII C, § 1(e).

²² *McBrearty v. City of Brawley*, 59 Cal.App.4th 1441 (1997) (continued collection of tax is not “imposition” of tax requiring voter approval under Prop. 62).

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found on the Secretary of State's website (<http://www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm>) and on the sites of the "yes" and "no" campaigns: no25yes26.com ("yes" campaign) and www.stoppolluterprotection.com ("no" campaign).

Plainly, there is much of interest to local government on the November 2, 2010 ballot!

NOVATO SANITARY DISTRICT BOARD AGENDA ITEM SUMMARY

TITLE: Special Provisions per Order No. R2-2010-0074-Local Limits Study Project: Scope of Work and Budget for Local Limits Analysis	MEETING DATE: August 23, 2010 AGENDA ITEM NO.:
RECOMMENDED ACTION: Authorize the Manager-Engineer to accept and execute an agreement with Eisenberg, Olivier & Associates (EOA) to review and revise (as needed) the District's Local Limits for a not-to-exceed amount of \$28,000.	
SUMMARY AND DISCUSSION: <p>The District's new NPDES permit, final Order No. R2-2010-0074, which took effect July 1, 2010, requires the District to evaluate the need to review and revise (as necessary) its local limits under 40 CFR 403.5 (c)(1), Based on this review, and within 180 days after the effective date of July 1, 2010, the District is required to submit a report acceptable to the Regional Water Quality Control Board documenting any changes along with a plan and schedule for implementation.</p> <p>This review includes complex analyses of regulatory requirements requiring specialized knowledge. Staff contacted Eisenberg, Olivieri and Associates (EOA) of Oakland, CA, which specializes in this type of work, and asked them to develop a scope of work and schedule that would allow the District to adequately respond and meet Regional Board requirements. EOA is a reputable environmental, public health engineering consultant firm. They have completed various projects with the District, including assistance with the previous local limits study conducted in 2005. EOA also routinely performs this type of work for agencies in the Bay Area and recently performed a similar task for the Las Gallinas Valley Sanitary District.</p> <p>Staff has received a proposal from EOA to perform the required work on a time and materials basis for \$27,556. Staff has reviewed the proposal, finds that it will address the District's need to adequately address the NPDES permit requirements, and recommends that the Board authorize the Manager-Engineer to accept and execute an agreement with EOA to perform this work for the stated amount.</p>	
ALTERNATIVES: None.	
BUDGET INFORMATION: This work will be funded from the Account No. 64160 Research and Monitoring, which has a FY10-11 preliminary budget of \$30,000.	
DEPT.MGR.:	MANAGER:

NOVATO SANITARY DISTRICT BOARD AGENDA ITEM SUMMARY

TITLE: Collection System Improvements; Center Road, Rica Vista to Western Avenue ; Project No. 72706 – Phase F	MEETING DATE: August 23, 2010 AGENDA ITEM NO.:														
RECOMMENDED ACTION: Review bids received and authorize contract award to the lowest responsive bidder, J&M, Inc.															
SUMMARY AND DISCUSSION: At its July 26 th meeting the District Board made CEQA findings and authorized staff to advertise for bids for the project. On August 19 th , 6 bids were received as follows:															
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 60%;"><u>Bidder</u></th> <th style="text-align: left;"><u>Amount</u></th> </tr> </thead> <tbody> <tr> <td>J & M, Inc.:</td> <td>\$394,727.00</td> </tr> <tr> <td>WR Forde & Associates:</td> <td>\$438,048.00</td> </tr> <tr> <td>Fermin Sierra Construction:</td> <td>\$477,770.00</td> </tr> <tr> <td>Maggiora & Ghilotti:</td> <td>\$479,479.00</td> </tr> <tr> <td>Team Ghilotti:</td> <td>\$484,305.00</td> </tr> <tr> <td>Michael Paul Company:</td> <td>\$610,342.00</td> </tr> </tbody> </table>		<u>Bidder</u>	<u>Amount</u>	J & M, Inc.:	\$394,727.00	WR Forde & Associates:	\$438,048.00	Fermin Sierra Construction:	\$477,770.00	Maggiora & Ghilotti:	\$479,479.00	Team Ghilotti:	\$484,305.00	Michael Paul Company:	\$610,342.00
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<p>J & M, Inc. of Livermore, California submitted the lowest responsive bid of \$394,727.00. The Engineer's Estimate of Probable Cost was \$520,000.00. J & M's bid documents have been reviewed and they are in order. Staff contacted J & M to discuss their bid and they are comfortable and confident with their bid.</p> <p>The FY10-11 preliminary budget includes \$3,000,000 for the Collection System Improvements. Accordingly, at this time, it is recommended that the Board award the Center Road, Rica Vista to Western Avenue Sewer Project of the Collection System Improvements to J & M Inc. of Livermore with a bid of \$394,727.00</p>															
ALTERNATIVES: Not award the project and not complete the work.															
BUDGET INFORMATION: This work will be funded from the budget for Collection System Improvements, Project 72706. The preliminary FY10-11 budget is \$3,000,000.00.															
DEPT.MGR.:	MANAGER:														