

November 9, 2009

A regular meeting of the Board of Directors of the Novato Sanitary District was held at 6:30 p.m., Monday, November 9, 2009, preceded by a closed session beginning at 5:15 p.m. at the District offices, 500 Davidson Street, Novato.

At 5:15 p.m., President Michael Di Giorgio opened the closed session of the Board of Directors of the Novato Sanitary District.

BOARD MEMBERS PRESENT: President Michael Di Giorgio, Members Arthur T. Knutson, William C. Long and George C. Quesada.

BOARD MEMBER ABSENT: Member James D. Fritz.

President Di Giorgio announced the Board would meet in closed session to discuss the matters on the Closed Session Agenda.

CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 54957:

Public employee performance evaluation: Title: Manager-Engineer

District Counsel Kent Alm joined the Closed Session at 6:05 p.m. to discuss the following two matters on the Closed Session agenda:

CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL – EXPOSURE TO LITIGATION – TWO POTENTIAL CASES:

Significant exposure to litigation pursuant to Subsection (b) of Government Code Section 54956.9

CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION – ONE POTENTIAL CASE:

Manager-Engineer Beverly James joined this closed session.

Initiation of litigation pursuant to Subsection (c) of Government Code Section 54956.9

Closed Session ended at 6:21 p.m.

Open session began at 6:30 p.m.

BOARD MEMBERS PRESENT: President Michael Di Giorgio, Members Arthur T. Knutson, William C. Long and George C. Quesada.

BOARD MEMBER ABSENT: Member James D. Fritz.

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

ALSO PRESENT: Dean L. Heffelfinger, Novato
Jo Heffelfinger, Novato
Phil Tucker, CA Healthy Communities Network
Brant Miller, Novato
Barbara Gildea, Novato
Suzanne Brown Crow, Novato
Tom Pierce, Novato
Deanna Pierce, Novato,
Bill Scott, Novato
Jamie Erze, Novato

PLEDGE OF ALLEGIANCE:

CLOSED SESSION REPORT:

District Counsel Kent Alm reported that in regards to Item #3 of the Closed Session Agenda, the Board indicated that if the District could not reach an agreement with Bank of Marin within thirty days, District Counsel is authorized to begin litigation.

AGENDA APPROVAL:

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

PUBLIC COMMENT:

Jo Heffelfinger requested the September 21, 2009 board minutes be amended as follows: page 2, paragraph 1, should read "Dennis Welsh **former** Chairman of Alliance for Concerned Citizens of Novato".

BOARD MEMBER REPORTS:

President Di Giorgio noted that he attended the November 7th public tour of the Novato Treatment facility and stated there were 25 to 30 people in attendance.

REVIEW OF MINUTES:

Consider approval of the September 21st and 28th, 2009 Board meeting minutes.

Recorder Julie Borda was asked to amend the final version of the September 21st minutes as per the request of Jo Heffelfinger, as noted above.

On motion of Member Quesada, seconded by Member Long, and carried unanimously by those members present, the Minutes of the September 21st, 2009 Board meeting

was approved as amended and the Minutes of the September 28th Board meeting were approved as written.

CONSENT CALENDAR:

Member Long requested Consent Calendar Item c. be pulled from the consent calendar for further discussion: Approval of Addendum No. 2 to District Standard Specification and Drawings.

The Deputy Manager-Engineer explained in further detail the issue of Separate Side Sewers, as referenced in Addendum Item 4: Part B.

On motion of Member Long, seconded by Member Quesada, and carried unanimously by those members present, consent calendar item 6.c. was approved.

On motion of Member Quesada, seconded by Member Long, and carried unanimously by those members present, the following consent calendar items were approved:

- a. Approval of regular disbursements in the amount of \$481,347.29, upgrade project disbursements in the amount of \$1,573,873.41 and Board Member disbursements in the amount of \$2,869.49. Payroll and payroll related disbursements in the amount of \$253,081.45 were ratified.
- b. Approval of Consent for Boundary Change and Waiver of Conducting Authority for Lands of Pirker.

ADMINISTRATION:

Authorize engagement of Barg, Coffin, Lewis & Trapp law firm to represent the District in the EPA/US Attorney investigation with the authorization to hire necessary experts and consultants.

On motion on Member Quesada, seconded by Member Knutson and carried unanimously by those members present, the Board authorized the engagement of Barg, Coffin, Lewis & Trapp law firm to represent the District in the EPA/US Attorney investigation with the authorization to hire necessary experts or consultants.

Suzanne Brown Crow, Novato resident, questioned why the District did not have an insurance policy in place which would cover the District's legal expenses in cases such as this.

District Counsel Kent Alm responded that the District does not have a policy for criminal defense because the agency through which the District obtains its insurance, CSRMA, offers criminal defense options for individuals only.

Norman Stone, Novato resident, questioned the parameters of the policy and the potential cost to the District.

District Counsel Kent Alm explained that the engagement with Barg, Coffin, Lewis and Trapp is coverage for the Novato Sanitary District that operates through the Board, not for any specific Board member. He also stated that the current fee agreement has no "not to exceed" amount and may be brought before the Board at any time for review and may be terminated at any time.

Suzanne Brown Crow asked if any parameters had been specified in the contract. She stated it would be prudent for the District to establish parameters to keep the District's costs from getting out of hand.

District Counsel Kent Alm stated that the contract was not written to include any parameters. He stated that the contract is very simple and is meant to engage the law firm to defend the District against criminal and civil claims arising out of or relating to the referenced search warrant.

President Di Giorgio responded that the District engaged the law firm because District Counsel Kent Alm's time was limited. President Di Giorgio stated that during closed session, the Board has given the law firm of Barg, Coffin, Lewis & Trapp parameters, however, these cannot be disclosed to the public.

Approve a consulting agreement with Rauch Communications. The Manager noted that Rauch Communications would assist the District with their pollution prevention outreach programs, newsletter publication and distribution and developing outreach programs on an as-needed basis. The Manager stated that the proposal is for a time-and-materials basis not to exceed \$60,000.

On motion of Member Quesada, seconded by Member Long and carried unanimously by those members present, the Board approved a time-and-materials basis consulting agreement in an amount not to exceed \$60,000 to Rauch Communications.

Bill Scott, Novato resident, stated his concern that the Rauch Communications agreement might be used to support the District's position in regards to the referendum.

District Counsel Kent Alm stated that his firm has looked into this issue and he agrees that rules apply which prohibit the use of public funds for a partisan issue such as the referendum matter.

President Di Giorgio stated the whole Board agrees with that statement.

Phil Tucker asked if this agreement with Rauch Communications was put out to bid. He asked when Rauch Communications was first asked to work with the District and under what circumstances were they brought in: through public bid, RFP, etc.

The Manager stated that Rauch Communication is a professional services provider, and as such, the District selects them based on qualifications, not necessarily on price. She

stated that several years ago, the District solicited several public outreach firms and chose Rauch Communications to facilitate public outreach and pollution prevention outreach. She stated this firm also is the public outreach firm for the North Bay Water Recycling Authority Project.

Member Long commented that the sanitation business is becoming more and more recognized by the public due to community issues such as fats, oils, and greases which block sewer pipes and cause overflows. He stated that a good public outreach firm will pay dividends for the future and for the public health and safety.

Designate and authorize Board Members and staff to sign District checks – WestAmerica Bank. The Manager explained that at the previous Board meeting, District banking needs were moved to WestAmerica Bank. She stated that with this new banking relationship, the Board is required to authorize District check signers.

Member Quesada requested that the Deputy Manager Sandeep Karkal be included as a staff member with check signing authority.

On motion of Member Quesada, seconded by Member Knutson, and carried unanimously by those members present, the Board authorized the following Board Members as check signers: Michael Di Giorgio, William Long and James Fritz. The Board authorized the following District staff members as check signers: Beverly James, Sandeep Karkal and June Brown.

Consider adoption of District Policies. President Di Giorgio stated that he would like to extend these policies to another board meeting. Members Quesada and Long agreed.

On motion of Member Quesada, seconded by Member Long and carried unanimously by those members present, adoption of the District Policies will be returned to the next regular Board meeting scheduled for November 23rd.

WASTEWATER TREATMENT FACILITY OPERATION:

Discuss referendum on the contract service agreement for operation, maintenance and management of wastewater treatment facilities, provide direction to staff and make motions as appropriate.

President Di Giorgio stated that the Board would discuss the item at this meeting and vote on the item at the next Board meeting. He stated that the referendum had enough certified signatures to pass and he discussed the possible election dates which conform to the requirements of the Elections Code and their costs. He stated the referendum and election process could cost the District approximately \$400,000 and that the District may have to raise the sewer service charges in the coming year for this unexpected expense.

District Counsel Kent Alm quoted from Elections Code Section 9145 which requires the District, upon receipt of a valid Referendum Petition, either repeal the "ordinance" that is the subject of the referendum, or submit the "ordinance" to the voters. He stated that the Manager is required to certify the Certificate of Petition Verification and adopt the letter from Elaine Ginnold, Registrar of Voters. He discussed the dates available for the District to schedule the election.

President Di Giorgio wanted to ensure the language used for the "ordinance" was clear to the voters.

Member Quesada stated the best date for the election would be June 8, 2010, which coincides with the Primary Election as this would ensure the largest voter turn-out. Member Long agreed.

President Di Giorgio stated that the District has chosen not to contest the referendum, but to allow the Novato residents to vote on the issue. He felt the June 8th election date was also the most appropriate.

Norman Stone, Novato resident, questioned the wording of the referendum which stated that the District could either terminate the contract with Veolia or put the decision to the voters at an election.

District Counsel Kent Alm stated that at this meeting, the Board must either repeal the contract with Veolia Water North America or procedurally adopt a Resolution which calls for the matter at hand to be placed on the ballot.

Phil Tucker stated his appreciation to the Board for their decision to put the referendum on a ballot so the Novato residents can vote on the issue.

On motion of Member Quesada, seconded by Member Long and carried unanimously by those members present, the Board certified receipt of the Registrar of Voters Certificate of Petition Verification letter and signature count.

On motion of Member Long, seconded by Member Quesada and carried unanimously by those members present, the Board declined to repeal the contract and directed staff to prepare a Resolution to conduct an election at a date to be specified.

District Counsel Kent Alm stated this resolution will be prepared for the Board's approval at their next Board meeting on November 23rd. Mr. Alm discussed the wording for the ballot, stating that it must fairly represent the issue of the referendum. In addition, he stated the language must be consistent with what the petitioners signed. Mr. Alm stressed that the language of the ballot would be fairly written to avoid any legal action.

Dean L. Heffelfinger, Novato resident, asked if public input would be allowed at the next Board meeting when the proposed resolution is brought forth and if the Board would postpone a decision on the Resolution if appropriate wording could not be agreed upon.

President Di Giorgio stated the resolution vote could be postponed.

COLLECTION SYSTEM IMPROVEMENTS PROJECT, PROJECT 72706:

San Ramon Sewer Rehabilitation Project: Consider: adopting CEQA findings; authorize staff to file a Notice of Exemption, (NOE), with the County Clerk; review proposals and award project to Maggiora & Ghilotti in the amount of \$49,494. Deputy Manager Sandeep Karkal gave an overview of the project. He noted that staff received six proposals with Maggiora & Ghilotti submitting the lowest proposal. He stated the engineer's estimate of probable costs was \$60,000.

On motion of Member Long, seconded by Member Quesada, and carried unanimously by those members present, the Board adopted CEQA findings and authorized staff to file a Notice of Exemption for the Collection System Improvements Project 72706.

On motion of Member Quesada, seconded by Member Long, and carried unanimously by those members present, the Board awarded the Collection System Improvements Project 72706 to Maggiora & Ghilotti for the amount of \$49,494.

Consider approval of a contract amendment in the amount of \$68,000 with Nute Engineering on a time and materials basis.

The Manager gave an overview of the proposal stating that the District currently has a contract in place with Nute Engineering (Nute) in the amount of \$213,000 to cover design services on the following Collection System Improvements projects: A-State Access Road Sewer Project; B-Center Road/Wilson Avenue Sewer Project; C-Olive Street/Chase Street Project; and D-Ignacio Blvd. Sewer Project. The Manager outlined the significant findings which were made that resulted in changes to the scope of Nute's work. She recommends approval of the contract amendment.

On motion of Member Quesada, seconded by Member Long, and carried unanimously by those members present, the Board approved a contract amendment in the amount of \$68,000 with Nute Engineering on a time and materials basis for the following projects: A-State Access Road Sewer Project; B-Center Road/Wilson Avenue Sewer Project; C-Olive Street/Chase Street Project; and D-Ignacio Blvd. Sewer Project.

PUMP STATION REHABILITATION PROJECT, PROJECT 72403:

Consider adoption of a resolution making CEQA findings; approve plans and specifications; and authorize advertising for bids – Project Unit 1, Rush Creek and Deer Island Pump Stations. The Manager noted that Nute Engineering has completed the plans and specifications for this work and it is ready for bid. She stated that staff has completed the California Environmental Quality Act (CEQA) documentation and

determined that the project is categorically exempt. She noted that the engineer's estimate for this work is \$724,000.

Member Long questioned how many additional pump stations are in need of rehabilitation. Deputy Manager Engineer Sandeep Karkal explained that the District has a total of 13 pump stations in need of rehabilitation and after approval of this project, eleven additional pump stations will be brought before the board for rehabilitation approval.

On motion of Member Quesada, seconded by Member Long, and carried unanimously by those members present, the Board adopted Resolution No. 3013, making CEQA findings, approving plans and specification and authorizing advertising for bids for Project Unit 1, Rush Creek and Deer Island Pump Stations.

STAFF REPORTS:

Deputy Manager Sandeep Karkal briefly discussed the North Bay Watershed Association's monthly meeting on Friday, November 6th at the Marin Community Foundation in Hamilton.

MANAGER'S ANNOUNCEMENTS:

None.

ADJOURNMENT: There being no further business to come before the Board, President Di Giorgio adjourned the meeting at 8:04 p.m.

Respectfully submitted,

Beverly B. James
Secretary

Julie Borda, Recording