



NOVATO SANITARY DISTRICT

500 DAVIDSON STREET • NOVATO • CALIFORNIA • 94945 • PHONE (415) 892-1694 • FAX (415) 898-2279
www.novatosan.com

10.1.29-NSDMIJClarificationLetter

Mr. Brad Breithaupt
Opinion Page Editor
Marin Independent Journal

Dear Mr. Breithaupt:

January 29, 2010

The Marin IJ published an editorial on January 26, 2010, about issues related to Mr. Dennis Welsh and the Novato Sanitary District (NSD) – “Sanitary district needs to be straight with Novato voters.”

While we appreciate the Marin IJ’s interest. We believe it would have been helpful if you had contacted us prior to publishing the editorial. A letter dated four days before your editorial from NSD legal counsel is attached. It is being posted where it can be viewed by all at www.novatosan.com. The Board is seeking a fair, legal and reasonable solution to the issue, and is in fact being “straight” with its customers and voters.

The editorial dealt with events that occurred nearly a month ago, lending an implication that the Novato Sanitary District is continuing to bar Mr. Welsh from closed sessions on this matter and not being “straight” with voters. However, that implication is erroneous and must be clarified. The District has been evaluating how to legally and fairly reconcile the differences about the closed session and Mr. Welsh has, in the meantime, participated fully in ALL Board deliberations.

Furthermore, Marin County District Attorney Edward S Berberian found that “there is no evidence of past improper conduct by the Board or evidence of intent to act improperly in the future”.

The basic facts are that the Environmental Protection Agency is investigating an issue related to the District, and according to the U.S. Attorney’s office, the newest Director of the District, Mr. Welsh, is a potential witness against the District. Litigation is threatened against the NSD and/or some of its staff. The Board wants to conduct a closed session to discuss the threatened litigation with its legal counsel. On the other hand, Mr. Welsh asserts that he has a right as a Board member to participate in the closed session.

So there is a legal dilemma. On the one hand is the Board’s right to have candid and private discussions with legal counsel about potential litigation. On the other is Mr. Welsh’s right as an individual Board member to participate in all Board meetings unless a legal exception applies.

After extensive analysis, District legal counsel concludes that there is no clear legal answer to these competing interests. Consequently, counsel has

recommended seeking an independent legal review by the Marin County Superior Court to help the Board select the legally and ethically correct position. Note that on January 28, the Marin County District Attorney published a finding that Mr. Welsh does not have a conflict of interest that would preclude him from participating in future closed session meetings on this topic.

District counsel, Mr. Kent Alm, prepared this detailed review of the legal dilemmas. His analysis, which is attached to this letter, provides the detailed explanation that your editorial asks for and goes further to outline a fair and reasonable recommendation to resolve the issue.

While the Board is currently evaluating the approach recommended by its attorney, and will now incorporate the findings of the Marin County District Attorney, the memo demonstrates that the District is investing substantial effort to come to a fair, ethical and legal conclusion to this issue.

Given information presented above, and the recent findings of the Marin County District Attorney, we urge the editorial board to reconsider its position as stated in the editorial, and present to the public the facts described above.

Should you have any questions, please refer them to our General Manager, Beverly James.

Sincerely
Michael DiGiorgio
President, Board of Directors
(415)246-5599