

January 11, 2010

A regular meeting of the Board of Directors of the Novato Sanitary District was held at 6:30 p.m., Monday, January 11, 2010, preceded by a closed session beginning at 5:00 p.m. at the District offices, 500 Davidson Street, Novato.

At 5:10 p.m. President Di Giorgio announced the Board would meet in closed session to discuss the following matters on the Closed Session Agenda.

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

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

CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION:

Existing litigation pursuant to Subsection (a) of Government Code Section 54956.9, Suzan Sharpley, Robert Abeling vs. William Long, Novato Sanitary District, Elaine Ginnold, Marin County Registrar of Voters.

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

STAFF PRESENT FOR CLOSED SESSIONS: Manager-Engineer Beverly B. James, Deputy Manager-Engineer Sandeep Karkal, and District Counsel Kent Alm. Sky Woodruff, Principal, Meyers Nave, was present via phone.

The closed Sessions ended at 6:33 p.m.

Open session began at 6:40 p.m.

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

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

ALSO PRESENT: Colleen Rose, Novato resident
Dennis Welsh, Petaluma
Dean L. Heffelfinger, Novato resident
Pam Welsh, Novato resident
Brant Miller, Novato resident
Phil Tucker, CA Healthy Communities Network
Bill Scott, Novato resident

Suzanne Brown Crow, Novato resident
Norman Stone, Novato resident
Jack Kaplan, Novato resident

PLEDGE OF ALLEGIANCE:

AGENDA APPROVAL:

On motion of Member Quesada, seconded by Member Fritz, and carried unanimously, the Agenda was approved as mailed.

FIRST CLOSED SESSION REPORT: District Counsel Kent Alm reported that the Board authorized the law firm of Meyers Nave to initiate litigation against Bank of Marin with regards to the electronic transfer losses in 2009. He stated this litigation would begin within the next several weeks.

SECOND CLOSED SESSION REPORT: District Counsel Kent Alm reported that instruction was given to District Counsel in regards to handling the matter of existing litigation: Suzan Sharpley, Robert Abeling vs William Long, Elaine Ginnold.

PUBLIC COMMENT: None.

BOARD MEMBER REPORTS:

President Di Giorgio stated he was not pleased with the letter authored by Director Welsh (**letter to Patrick Faulkner, County Counsel, dated January 6, 2010**) which was sent to the Board members and the Press. He felt the letter belittles the integrity of the Board and that of District Counsel.

Member Welsh responded that he has agreed to participate in Brown Act training as soon as on-line training is available. He discussed his participation as a witness in the EPA matter in April 2009.

President Di Giorgio and District Counsel Kent Alm discussed the appropriateness of Director Welsh's participation in closed session meetings which involve discussion of the EPA incident with the District's hired law firm of Barg Coffin Lewis and Trapp. Mr. Alm stated that the matter needs to be resolved prior to any further closed session meetings and that he would prepare a legal opinion regarding this matter.

Member Long discussed the letter from Director Welsh stating it was defamatory. He requested Director Welsh revise the letter and publicly circulate it to all parties it was originally sent to.

Member Welsh read a letter he wrote to the Board, dated January 11, 2010, objecting to the Emergency Services Agreement with Veolia and the hiring of temporary employees from Aerotek.

CONSENT CALENDAR:

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

- a. Approval of a contract amendment with Olin Chlor Alkali Products, Olin Corporation to supply 12.5% liquid sodium hypochlorite.
- b. Approval of a contract with Brentagg Pacific, Inc. to supply 25% liquid sodium bisulfite.
- c. Approval of regular disbursements in the amount of \$519,631.04, upgrade project disbursements in the amount of \$1,868,414.89, and Board member disbursements in the amount of \$4,232.69.

Suzanne Brown Crow, Novato resident, commented on the check to Barg, Coffin, Lewis and Trapp and requested a copy of the total amount spent on attorney fees in relation to the EPA matter.

Norm Stone, Novato resident, questioned the initiation of litigation against Bank of Marin as discussed in closed session. Mr. Alm replied that he would be available to speak to Mr. Stone after the Board meeting however, he could not discuss details disclosed in the closed session meeting.

PUMP STATION REHABILITATION: PROJECT 72403:

Consider approval of a contract with The Covello Group for construction management services. The Manager stated that the Rush Creek and Deer Island Pump Station Rehabilitation Project has been awarded, and it is expected that the remaining three design stages constituting the remaining eleven pump stations will begin construction within the next few months. She stated the total estimated construction value of the projects is currently about \$5.04 million. She noted that The Covello Group is currently providing construction management services for the treatment plant upgrade project and the collection system improvements. She stated staff has requested a proposal from The Covello Group to provide construction management services on all the four stages of the pump station upgrade project and has negotiated a not-to-exceed fee on a time-and-materials basis of \$540,589.

Director Welsh stated his opposition to this request because he believes the District's Field Services Superintendent and Staff Inspector should be able to complete the construction management services for all or part of this project.

The Manager stated that the Inspector and Field Services Superintendent are actively involved with other projects. In addition, she stated the management expertise needed for this project exceeds the District's knowledge.

Member Quesada commended The Covello Group's past work with the District, noting their management expertise and ability to keep change orders to a minimum.

On motion on Member Fritz, seconded by Member Long and carried with the following vote, the Board approved a contract in an not-to-exceed amount of \$541,000 with The Covello Group for construction management services on a time and materials basis. Ayes: Di Giorgio, Fritz, Long, Quesada. Noes: Welsh.

LITIGATION:

Consider authorization to provide legal counsel for Director Long for case number CIV096368.

Member Long recused himself at 7:15 p.m.

District Counsel Kent Alm gave an overview of the existing litigation as discussed in the second closed session: Existing litigation pursuant to Subsection (a) of Government Code Section 54956.9, Suzan Sharpley, Robert Abeling vs William Long, Novato Sanitary District, Elaine Ginnold, Marin County Registrar of Voters. He discussed the reasons he does not recommend the District provide legal defense for Director Long in the above mentioned matter. He stated there is no specific provision dealing with Special District Board member legal representation. He noted that he has discussed this issue with Director Long.

Member Fritz stated he feels it is unfair that Director Long be expected to bear the legal costs in this matter. He believes Director Long should be represented.

President Di Giorgio commented on the matter and stated he feels Member Long should receive legal representation in this matter.

Member Quesada discussed the thirty-one parcels that did not receive a ballot which allowed them to vote for the Novato Sanitary District Board of Directors. He stated he felt it was an error by the County Registrar of Voters and suggested the County contact the disenfranchised parcels and allow them to cast a vote at this time. He believes Member Long should receive legal representation in this matter.

Member Welsh discussed the matter, stating it has not been determined who is at fault regarding the thirty-one parcels. He stated he supports legal representation for Member Long in this matter.

District Counsel Kent Alm discussed the pending litigation stating that if Member Long did not reply to the lawsuit, one would assume the plaintiffs would prevail without any further action. He stated that the District is named in the lawsuit as well, and will respond because they have a substantial stake in determining what the issues are in terms of whether the correct boundaries were provided. He discussed the arguments in

favor of, and, in opposition to, providing Board Member Long with legal defense in the pending litigation.

Bill Scott, Novato resident, stated he supports the Board's legal representation of Member Long in this matter.

Norm Stone, Novato resident, stated he agrees with the defense of Member Long if the District uses the same counsel to represent Member Long and the District in this matter.

Jack Kaplan, Novato resident, stated his concern with the precedent the Board is setting in this matter by offering legal defense to Member Long. He discussed Veolia's campaign support and the potential conflict of interest.

Brant Miller, Novato resident, stated he sees no conflict of interest in the District defending Member Long and stated he supports the Board representing Member Long's defense.

On motion of Member Fritz, seconded by Member Quesada and carried with the following votes, the Board authorized the provision of legal representation for Director Long for case number CIV096368. Ayes: Di Giorgio, Fritz, Quesada, Welsh. Abstain: Long due to his absence from the meeting at this time.

MANAGER'S ANNOUNCEMENTS:

The Manager pointed out that the November 9th and November 23rd, 2009, minutes were provided in the Board packet but were not placed on the Agenda. For this reason, the minutes were unable to be approved at this meeting. She stated the minutes would be included as an agenda item at the next Board meeting.

ADJOURNMENT: There being no further business to come before the Board, President Di Giorgio adjourned the meeting at 7:49 p.m.

Respectfully submitted,

Beverly B. James
Secretary

Julie Borda, Recording