

March 2, 2011

A regular meeting of the Board of Directors of the Novato Sanitary District was held at 6:36 p.m., Wednesday, March 2, 2011, at the District Office, 500 Davidson Street, Novato.

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

BOARD MEMBERS ABSENT: None

STAFF PRESENT: Manager-Engineer-Secretary Beverly B. James, Deputy Manager-Engineer Sandeep Karkal, Administrative Services Manager June Brown, and legal counsel Kent Alm.

ALSO PRESENT: Lee Pierce, Novato resident  
Richard Drury, Attorney, Lozeau Drury LLP  
Brant Miller, Novato resident  
Dee Johnson, HHW Coordinator  
Delyn Kies, Sustainable Novato/MFSRTF  
Ernie Carpenter, Hunter Legacy  
Curtis Michelini, Industrial Carting  
Steve McAffrey, Novato Disposal Service  
Susan Stompe, Marin Conservation League

PLEDGE OF ALLEGIANCE:

AGENDA APPROVAL: Legal counsel Kent Alm advised that a matter had arisen after the posting of the agenda in the form of a 23-page legal letter, along with a number of attachments.

He explained the procedure under the Brown Act where items may be added as an urgency item if the matter arose after the posting of the agenda and needs to be dealt with prior to the next regularly scheduled meeting. He further advised that the item for consideration is documentation that was received by the District yesterday afternoon that takes the position that the District is unable to move forward with the item on the agenda dealing with the Solid Waste Franchise Agreement because adequate CEQA compliance was not performed; that Novato Disposal Service is in violation of the current franchise and therefore cannot be issued an extension; and that, under the District's own procedure, this is a project that would have to be competitively bid. Legal counsel recommended that the item be added to the agenda and taken up under closed session as an item with significant exposure to litigation, and that it be handled at the same time as the discussion of the item on the franchise agreement.

The Chairman called for a motion to amend the agenda.

*It was moved by Member Quesada, and seconded by Member Di Giorgio, to amend the agenda as recommended.*

Legal counsel reiterated that the Board needs to make the finding that the item is an urgency item that needs to be added to the existing agenda for immediate action and the need to take action came to the attention of the Board subsequent to the agenda being posted. The Manager-Engineer confirmed that the documentation was received via email yesterday afternoon and by FedEx today.

*The maker and second of the motion indicated their understanding of the findings. The motion carried unanimously.*

PUBLIC COMMENT: None.

BOARD MEMBER REPORTS: Member Fritz reported that the Wastewater Operations Committee met and the report is included with the agenda packet.

Member Long reported that he attended a meeting of the Marin County Council of Mayors and Councilmembers Ad Hoc Committee on Pensions and Other Post-Employment Benefits. The committee has completed their pension survey of cities and participating agencies and is in the process of organizing the information and beginning to identify options to deal with the cost and security of both pensions and benefits. He indicated they are on a good timetable to wrap the work up in the next few months.

REVIEW OF MINUTES:

Consider approval of minutes of the February 14, 2011 meeting.

*On motion of Member Di Giorgio, seconded by Member Fritz, and carried unanimously, the minutes of the February 14, 2011 Board meeting were approved.*

CONSENT CALENDAR:

*On motion of Member Di Giorgio, seconded by Member Quesada and carried unanimously, the following Consent Calendar items were approved:*

- a. Approval of Subordination Request from the Redevelopment Agency of the City of Novato.
- b. Approval of regular disbursements in the amount of \$359,028.50, and project account disbursements in the amount of \$144,870.36.

SOLID WASTE: Prior to meeting in closed session, President Long asked if there were any public comments relative to this item. Legal counsel invited Richard Drury, attorney with Lozeau Drury, and author of the letter opposing adoption of the Solid Waste Franchise Agreement on behalf of the Concerned Citizens of Novato, to present his

comments. Legal counsel clarified that comments would be allowed both before and after the closed session depending on the Board's action.

Mr. Drury thanked the Board and presented the original documents prepared on behalf of the Concerned Citizens of Novato to the District Manager-Engineer for filing. The documents consisted of a 23-page comment letter and Exhibits A through M.

Mr. Drury apologized to the Board for presenting such a large document before them at such short notice but indicated his office was unaware until Friday of last week that the District Board was going to be making CEQA findings at this meeting. He stated he believed that the draft CEQA findings were in fact only made available on-line today and urged the Board to continue this matter for possibly 30 days to at least allow consideration of these issues. He stated the decision to grant a no-bid contract for up to 15 years to a corporation without taking competitive bids is a very big decision. He further stated that it's a discretionary action that will have environmental impacts. His argument is that those impacts ought to be considered in an environmental impact report when true flexibility remains, which is now. In the CEQA findings, which Mr. Drury received today, the agency purports to be taking two CEQA exemptions. One is the pre-existing facility exemption, Section 15301, which Mr. Drury claims does not apply here because the contract requires the franchisee to construct a new recycling facility and expanded household hazardous waste facility. He indicated those facilities can have impacts such as noise, odor, dust, air quality etc and cited Exhibit B of his documentation, comments by environmental scientists, Pless Environmental, Inc., on the potential environmental impacts of the proposed revised franchise agreement. The comments of Pless Environmental indicate that such facilities can have impacts that exceed Bay Area Air Quality Management District's significant thresholds.

The second exemption that's claimed is the Categorical Exemption for projects that are consistent with community planning and zoning under Section 15183. Mr. Drury stated that, again, that exemption doesn't apply because it expressly does not apply to any project that may have significant impacts due to the project itself or its location. The agreement doesn't specify what the location will be so there is no basis for the agency to make a finding that there will be no significant impacts due to the location. Mr. Drury's position is that the CEQA documents should be prepared now when flexibility still remains to decide where the facilities should be located. Environmental experts, Pless Environmental, also conclude that the project may have significant impacts due to stormwater. Lozeau Drury is currently representing the California Sportfishing Alliance and the Petaluma River Council against the Novato Disposal Company because their facilities on Petaluma Blvd., as well as the North Bay Company's on Standish Avenue, by the company's own self-reporting have discharged hundreds and hundreds of times into the receiving waters of the Petaluma River and the Laguna in Santa Rosa. Mr. Drury continued that this contract may well result in additional materials being taken to those facilities and additional runoff. He stated that the violations are the subject of pending litigation in federal U.S. District Court.

Mr. Drury referred to the Initial Study attached to the CEQA findings and stated an Initial Study is not a document that's prepared with an exemption. It's a document that precedes either a Negative Declaration or an Environmental Impact Report, so the fact that an Initial Study was prepared indicates that CEQA review should be required here – not a Categorical Exemption for a decision of this magnitude.

Mr. Drury invited any questions and urged the Board to consider his comments. He apologized again for putting such a large matter before the Board at such short notice.

Board Member Di Giorgio asked Mr. Drury who his clients "Concerned Citizens of Novato" are. Mr. Drury responded that they are a group of citizens who he has met with who are residents of Novato and they have asked him not to disclose their names. He reiterated that he has met with them and they are residents of the City of Novato.

Board Member Di Giorgio then asked Mr. Drury if he has represented anyone like Industrial Carting in any of the litigation he mentioned. Mr. Drury responded that he has not.

President Long and legal counsel Kent Alm stated if anyone else in the audience has concerns about the issue that's been presented it would be appropriate to hear them now.

There being no further comments, at 6:52 p.m. President Long announced that the Board would meet in closed session.

CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Subdivision (a) of G.C. Section 54956.9:

OPEN SESSION: No reportable action was taken in closed session and President Long reconvened the meeting in open session at 8:05 p.m.

SOLID WASTE:

- Consider making CEQA findings and approving the Amended and Restated Agreement between Novato Sanitary District and Novato Disposal Service: *Member Quesada, seconded by Member Welsh, moved to continue this item to the next regularly scheduled Board meeting on March 14<sup>th</sup>. The motion carried 3-2 on the following vote: AYES: Members Quesada, Welsh, Long. NOES: Members Di Giorgio, Fritz.*

Member Di Giorgio expressed his irritation with the outcome. He indicated that Novato's clean-up program will be affected and residents will not have the 4 times a year clean-up that would be offered under this contract. He further stated he does not like threats of lawsuits by people unknown. They should be named and if they're embarrassed to be named they shouldn't make threats. Member Di Giorgio believes this is delaying the implementation of some of the food waste programs, including

commercial food waste, and is going to take away our goals of achieving zero waste. He stated everything has been done to mollify people of Sustainable Novato. Initiation of food waste recycling at all multi-family units will now be delayed. He added that it's interesting that those sacrifices to the environment are being threatened by somebody who's saying they're doing this to protect the environment and he thinks it's the exact opposite.

DeLyn Kies of Sustainable Novato presented written testimony from Sustainable Novato and from the Marin Food Scrap Recycling Task Force.

Mr. Curtis Michelini of Industrial Carting and Global Recycling, responding to Member Di Giorgio's comments on the clean-up program, announced his company would be honored to participate in clean-up events at no charge.

No further comments were received from the Board or the public.

WASTEWATER FACILITIES UPGRADE CONTRACT D - RECYCLED WATER  
PROJECT 73002:

- Consider approval of Agreement for Grant Facilitation Services for North San Pablo Bay Restoration and Reuse Project: The Manager-Engineer reported that the Sonoma County Water Agency (SCWA) has prepared an Agreement for Grant Facilitation Services for the North San Pablo Bay Restoration and Reuse Project. The Grant Facilitation Agreement, provided to the Board with the agenda packet, specifies the responsibilities of the lead agency (SCWA) and each of the participating agencies, including Novato Sanitary District, as recipients for the American Reinvestment and Recovery Act (ARRA) grant for the project. The Manager stated that District legal counsel has reviewed the agreement and it has been reviewed and agreed to by legal counsel of all the other participating agencies. She recommended Board approval of the agreement as presented.

Member Quesada asked what percentage of the grant funds would be used to reimburse Sonoma County Water Agency for administration of the grant and whether a maximum amount could be stipulated in the Agreement. The Manager responded that she didn't recall the exact percentage but there is a provision in the agreement for administrative documentation to be made available to recipients upon request. Any revisions to the agreement would be difficult as it would have to be re-circulated through all the other agencies.

*On motion of Member Fritz, seconded by Member Quesada and carried unanimously, the Board approved the Agreement for Grant Facilitation Services for North San Pablo Bay Restoration and Reuse Project as written.*

- Consider approving plans and specifications, and authorizing advertising for bids: The Manager reported briefly on the background of the project and recommended that the Board approve the plans and specifications and authorize advertising for bids.

*On motion of Member Quesada, seconded by Member Fritz and carried unanimously, the Board approved the plans and specifications for Wastewater Facilities Upgrade Contract D - Recycled Water Project 73002, and authorized advertising for bids.*

#### WASTEWATER OPERATIONS:

- Wastewater Operations Committee Report for January: The Manager-Engineer presented the Wastewater Operations Committee report for January, a copy of which was included in the agenda packet. She reported that the treatment plant has been performing very well. It performed well through the wet weather, with no violations occurring in January. The landscaping in front of the facility has been replaced and restored and will be irrigated with recycled water.

No odor complaints have been received since the beginning of January. The first review of Standard Operating Procedures is final and new SOP's continue to be written. 236 work orders were completed in January.

The Manager stated that there was a pipe break when the glue joint on a cleanout riser failed at the sludge ponds at Reclamation, resulting in a spill of approximately 8,600 gallons. The spill occurred on the Pozzi Ranch property owned by the Audubon Society.

There was one sewer overflow for the month of January at Michelle Circle caused by a grease blockage due to a sag in the mainline, resulting in an overflow of approximately 2,500 gallons to a drainage ditch. Notification protocol was initiated and results reported to Marin County Environmental Health Services. This particular line was on a 12-month cleaning schedule that has now been changed to a 4-month frequency until this section of the line can be replaced.

Member Di Giorgio commented on the work orders, noting that 205 of them were preventative rather than corrective. He also pointed out that the spill record for December and January is excellent.

Suzanne Brown Crow questioned the sludge spill onto Audubon Society land and asked if there are any repercussions against the contractor responsible for installing the failed pipe joint. The Manager responded that the work was performed 3 years ago and, unfortunately, too much time has passed for the maintenance period to still be in effect for this small job. Ms. Crow nonetheless indicated the District should write the contractor, especially if it's a contractor who performs work for the District on a regular basis, and at least alert him of the problem. The Manager indicated that she will inform the contractor although there is no financial recourse at this point.

Member Long requested that permit limits be included in the tables and graphs as part of the Operations Report and the Manager confirmed that they will be provided in future.

ADMINISTRATION:

- Review six month Revenue and Expenditure Report: The Board and Manager reviewed the Revenue and Expenditure Report for period ending December 2010. Total operating revenues are at 50.6% with operating expenses at 46.9%. Overall the revenues and expenditures are within budget for this time period. The Manager explained the reasons for variances in the report, indicating that there is a budget amendment request on the agenda for two items significantly over budget. Member Fritz asked if there is a line item for the cost of Board meetings. The Manager responded that Board Member fees are listed under "Directors' Fees" and Board medical benefits included in "Employee Benefits". Staff costs for Board meeting preparation and attendance are not included.

Capital Improvement revenue is at 46.3% of budget, with expenditures at 48%.

In response to a question from Member Long, the Manager reported that staff anticipates that overall the fiscal year expenses will be within budget.

- Review Quarterly Investment Report for Quarter Ended December 2010: The Board and Manager reviewed the Quarterly Investment Report for Quarter Ended December 2010. District funds are invested with the State Local Agency Investment Fund and transferred as needed to meet District obligations. The current LAIF yield is 0.46%.

- Consider amending the budget for account 60091, Collection System Software, and account 66122, Attorney Fees: The Manager explained the reasons for two requested budget amendments.

A budget amendment of \$23,000 is requested for account #60091, Collection System Software Maintenance. This account is over budget because the vendor for the Collection System software program did not bill for the 2009-10 maintenance fee of \$17,000 and the District was therefore double-billed this year. In addition, the software budget of \$20,000 for 2010-11 was exceeded by an additional \$8,700 for program updates. No further expenditures are anticipated for the remainder of this fiscal year.

A budget amendment of \$101,000 is requested for account #66122, Attorney Fees. This account is over budget for several reasons which were explained by legal counsel Kent Alm. EPA investigation fees were higher than anticipated and, at the conclusion of the EPA investigation, the matter was referred to the State Water Resources Control Board for potential civil action, resulting in more legal fees. Additionally, the District incurred extraordinary legal and labor investigation expenses relating to personnel matters over the last six months.

The Manager stated that the budget amendments will be offset by other line items that are expected to be under-budget. Overall the 2010-11 budget expenditures will not be exceeded.

*Member Di Giorgio, seconded by Member Fritz, moved to approve the two budget amendments as presented.*

Ms. Suzanne Brown Crow stated that, in her opinion, the projected legal expenses of \$87,000 for the remainder of the fiscal year are high. Legal counsel explained the issues regarding legal costs connected with current personnel issues and stated that on an ongoing basis legal expenses are not expected to remain at the same level.

Member Welsh asked for an explanation of what the labor and employment issues are. Legal counsel responded that there were a number of labor and personnel issues that were not handled directly by him and, although he is aware of the issues, prefers not to discuss personnel issues at a public meeting. There were several personnel investigations involving separate individuals, one of which is still not resolved. Member Welsh questioned whether these incidents came to the Board in closed session. The Manager confirmed that they did not come to the Board. It is not typical that situations of this type come to the Board. In dealing with personnel issues, there are very strict rules. Member Long indicated that a guideline in this kind of an issue may be that if there's a substantial policy question, or exception to past practices, the Board should be aware of it. The Manager indicated that was not the issue in this case.

*The motion to approve the two budget amendments was carried unanimously.*

#### WASTEWATER FACILITY UPGRADE PROJECT 72609:

- Consider approval of an addendum to the EIR for the Wastewater Facility Plan Project: The Manager-Engineer presented proposed addendum number 4 to the EIR for the Wastewater Facilities Upgrade Project. She described the proposed revisions, prepared by RMC Water Environment and ERA Associates. A description of the revisions was included in the staff report as part of the agenda packet. District staff has reviewed the contents of the addendum, concurs with its findings, and recommends that the Board approve Addendum No. 4 to the Final Environmental Impact Report.

*On motion of Member Di Giorgio, seconded by Member Welsh and carried unanimously, the Board approved Addendum No. 4 to the EIR for the Wastewater Facility Plan Project.*

- Consider approving plans and specifications, and authorizing advertising for bids for Phase I Landscaping Project: The Manager-Engineer requested approval of the plans and specifications and authorization to bid for the Phase I Landscaping Project as part of the Wastewater Facility Upgrade Project. The plan incorporates responses generated during public outreach that occurred in 2010 and includes screening vegetation to enhance the visual boundary between the treatment plant and neighboring Lea Drive. Phase I will consist of planting screening trees along the property fence line along Lea Drive. The plantings will be California native trees which will be irrigated with potable water until recycling water facilities are available. The engineer's estimate for this work is \$70,000.

*On motion of Member Di Giorgio, seconded by Member Fritz and carried unanimously, the Board approved the plans and specifications and authorized advertising for bids for Phase I of the Landscaping Project.*

**MANAGER'S ANNOUNCEMENTS:**

- The North Bay Watershed Association will be meeting at the District on Friday, March 4, 2011.
- The North Bay Watershed Association Water Quality Committee will be meeting at the District on Tuesday, March 8, 2011.
- Board Member Mike Di Giorgio and Deputy Manager-Engineer Sandeep Karkal recently attended a Special District Governance Seminar in Anaheim, presented by the Special Districts Institute. Member Di Giorgio noted that the seminar was excellent.
- Administrative Secretary Julie Borda is attending a 2-day California Special Districts' Association seminar on Board Secretary Training.

**ADJOURNMENT:** There being no further business to come before the Board, President Long adjourned the meeting at 9:05 p.m.

Respectfully submitted,

Beverly B. James, Secretary

June Brown, Recording



March 14, 2011

To the Board of Novato Sanitary District regarding the March 1, 2011 legal brief from Lozeau Drury and the Board's subsequent vote to delay the District's franchise agreement extension with Novato Disposal:

According to the minutes of your March 2, 2011 Board meeting, Mr. DiGiorgio stated that "everything has been done to mollify people of Sustainable Novato." As President of Sustainable Novato, I wish to clarify that actions taken by Richard Drury on behalf of the Concerned Citizens of Novato are **not** in any way connected to Sustainable Novato. Sustainable Novato is represented by Delyn Kies, research associate, and Ed Mainland, Board Vice President, not by Mr. Drury.

Sustainable Novato will continue to work **with** your Board and management to support any and all actions, policies and practices that will sustain and improve Novato's environment.

Thank you.

A handwritten signature in black ink that reads "V-Anne Chernock". The signature is fluid and cursive.

V-Anne Chernock  
President, Sustainable Novato

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