

March 30, 2011

A regular meeting of the Board of Directors of the Novato Sanitary District was held at 6:30 p.m., Monday, March 30, 2011 at the District offices, 500 Davidson Street, Novato.

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

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

ALSO PRESENT: Dean Heffelfinger, Novato resident
Jo Heffelfinger, Novato resident
Brant Miller, Novato resident
Bill Scott, Novato resident
Alex DiGiorgio, San Francisco resident
Aaron Winer, Veolia Water
John O'Hare, Veolia Water
John Bailey, Veolia Water
Melissa Demsky, Veolia Water

PLEDGE OF ALLEGIANCE:

AGENDA APPROVAL:

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

PUBLIC COMMENT:

An individual addressed the Board and discussed a budget amendment which was approved at the March 2, 2011 Board meeting. She questioned the Manager's authority to approve the expense. She questioned how the District approves expenditures and stated she felt there was a transparency issue.

Alex DiGiorgio, recent UC Berkeley graduate and a certified specialist in Clean Technology Law and Environmental Policy congratulated Member Fritz on his retirement. Mr. DiGiorgio stated he is working to assist wastewater treatment plants cut costs through sustainable development and hopes to discuss this issue further with the District.

Bill Scott, Novato resident, discussed contractors which the District uses for projects. He asked if the District had a review process in place to monitor contractors so when projects are awarded, the District can be made aware of previous errors by the contractor before awarding the contract.

BOARD MEMBER REPORTS:

Member Quesada stated the District should utilize natural gas powered vehicles. He stated that services stations should be mandated by law to dispense natural gas products. He stated that a law should be made to require all vehicles manufactured and sold in California be fueled by 25% natural gas.

Member Welsh commented on the change of the Board meeting date from March 28th to March 30th, stating that the Board had not approved the meeting date change. He requested the Board remain consistent with their meeting dates. He stated that he has not received a complete set of Board policies which would address this issue.

District Counsel Kent Alm stated that all public agencies are required to have a regular meeting date as adopted by Resolution. He stated, however, that it is not infrequent to modify meeting dates for the convenience of the Board and staff. He noted that a meeting not held at the regular date should be classified as a Special Meeting. He stated that a Special Meeting agenda can address most items from a regular meeting agenda.

The Manager stated that under District Board policy, the board meeting dates are set by the Board President in consultation with the District Manager. She noted that in the future, the current agenda will list the next meeting date, not as a Consent Calendar item, but as a notation at the end of the agenda and will not require a board action.

Member Welsh requested the Board review the criteria for changing a regular board meeting date. President Long requested that the April 11th Board meeting agenda include an item to discuss the protocol for setting regular Board meetings.

President Long discussed a letter from Sustainable Novato addressed to the State Water Resources Quality Control Board (SWRQCB) in Sacramento. The letter requested the SWRQCB continue to be diligent in the matter of open allegations regarding possible unreported and unresolved sewage spills by the Novato Sanitary District. President Long stated that the allegations of criminal conduct without any substantiation border on liable and that there may be a need for legal action directed toward the author of the letter.

Member Di Giorgio discussed the letter from Sustainable Novato and noted that the legal fees associated with responding to such allegations are passed on to the Novato rate payers.

Member Welsh stated that the letter from Sustainable Novato addresses incidents from 2007 which were investigated by the Environmental Protection Agency (EPA) and were recently passed to the Regional Water Quality Control Board.

REVIEW OF MINUTES:

- Consider approval of minutes of the March 5, 2011 meeting. Member Quesada noted that the March 5th minutes stated he abstained from the motion to approve the Agenda of that meeting. He requested the minutes be revised to show he did not abstain from that motion. Julie Borda, the Board Recorder, stated the minutes would be revised as follows: *On motion of Member Fritz, seconded by Member Di Giorgio and carried unanimously, the agenda was approved as mailed.*

On motion of Member Di Giorgio, seconded by Member Quesada, and carried unanimously, the minutes of the March 5, 2011 meeting were approved as revised.

CONSENT CALENDAR:

On motion of Member Di Giorgio, seconded by Member Quesada and carried unanimously, the Board approved the following Consent Calendar item:

- a. Approval of regular disbursements in the amount of \$116,067.08 and the approval of project account disbursements in the amount of \$96,309.42.

BOARD OF DIRECTORS:

- Consider adoption of a Resolution of Appreciation for retiring Board Member James D. Fritz. The Manager read Resolution No. 3029, A Resolution Commending Mr. James D. Fritz for Distinguished Service as a Member of The Board of Directors of Novato Sanitary District.

Member Fritz thanked the Board and stated he has benefited from his association with the Novato Sanitary District.

Member Quesada stated he would like to see Member Fritz's numerous photographic contributions acknowledged.

Member Di Giorgio stated he will miss Member Fritz's knowledge of hydraulics and stated he has been a good friend and a good Rotarian.

Member Quesada stated that Member Fritz is a great historian and commented on Member Fritz's visits to historical battle sites.

President Long expressed his appreciation to Member Fritz and stated he has valued Member Fritz's participation on the Board. President Long discussed Member Fritz's initial selection to the Board of Directors and stated he will be missed.

- Election of President Pro-Tem. Member Fritz nominated Member Mike Di Giorgio as President Pro-Tem.

- Consider procedure for filling the vacancy on the Board of Directors. The Manager stated that Member Fritz had notified the District of his intention to retire from his position as of April 1, 2011. She stated that this is 214 days prior to the next general election in the District which is set for November 1, 2011. (**Minute correction: the next general election date is November 8, 2011.**) The Manager outlined District actions as required by California Government Code Section 1780. She discussed the two options available to fill the vacancy: 1) call an election; or 2) appoint a replacement. She stated that staff recommends the Board proceed with the appointment process in accordance with the outlined schedule and direct staff to post a notice soliciting applications for the vacancy in at least three conspicuous locations in the District. She stated that the notice would be posted at both Novato public libraries, at the City of Novato office, in the Novato Advance and the Marin Independent Journal as well as online in the Novato Patch.

She outlined the schedule to proceed with the candidate selection, noting that interested applicants will be required to submit an application to the District office by 4:30 p.m. on April 15, 2011. She stated that the Board will review the applications and interview the applicants at an open public meeting scheduled on Wednesday, April 20, 2011 at 6:30 pm. She stated that the Board would then make an appointment to fill the vacancy at this same meeting.

On motion of Member Di Giorgio, seconded by Member Welsh and carried unanimously, the Board directed staff to proceed with the Board Member appointment process in accordance with the schedule as outlined above and post a notice soliciting applications as noted above.

WASTEWATER OPERATIONS:

- Wastewater Operations Committee report. The Deputy Manager-Engineer outlined the Monthly Operations Report for February 2011, as presented to the Wastewater Operations Committee at their regular meeting on March 21, 2011.

The Board discussed the report. John Bailey, Plant Manager, Veolia Water, discussed a repair to a boiler unit at the facility.

The Deputy Manager discussed the Collection System Operations report and noted that the length of sewer lines cleaned in February had increased over the prior month.

The Deputy Manager stated that the odor control bed rehabilitation was completed and the unit was put back into service on February 28th.

- Presentation on Criticality Assessment. John Bailey, Plant Manager, stated that Veolia has completed a Criticality Assessment of the Novato treatment plant. He gave a brief overview of the assessment, stating that the evaluation looked at consequence of failure and likelihood of failure for all equipment at the District facility. He introduced Melissa Demsky of the Asset Management Group, Veolia Water.

Ms. Demsky noted that her team works on implementing the asset management program as adopted by Veolia Water N.A. and stated it is a “best in class” program. She outlined the mission for asset management and discussed how asset management protects and extends the life of the company’s assets. She discussed the asset management model and outlined the integration of Veolia, the treatment facility, and the District. Ms. Demsky discussed the criticality analysis ranking and how it functions in relation to the equipment at the facility. She discussed steps Veolia will take as it moves forward to protect the treatment facility equipment and processes.

Member Welsh questioned if this program was included in our current contract. John Bailey stated that yes, the implementation of this program is currently part of the Veolia contract. Member Welsh commented that he felt this program was not necessary due to the District’s current maintenance program and the expertise of the Operators. He stated that the District’s maintenance management programs have been successful in the past.

President Long remarked that he was grateful for the overview and the attention to detail that Ms. Demsky applied.

Member Di Giorgio stated that the California Sanitation Risk Management Authority (CSRMA) has required sanitation districts to utilize this type of criticality asset management prior to insurance liability coverage. He stated that one of the reasons the District chose Veolia Water for the management of the new facility was because of the programs, such as this, that they include as part of their contract.

President Long stated he hopes to be able to use this asset management program on the District’s pump stations.

NPDES PERMIT:

- Consider authorizing Barg Coffin Lewis & Trapp LLP to provide legal services in connection with the Administration Civil Liability case from the Regional Water Quality Control Board. The Manager discussed the Regional Water Quality Control Board’s intent to issue an Administrative Civil Liability in connection with sanitary sewer overflows that occurred between September 24, 2007 and February 28, 2010. She stated that District staff and District Counsel have been in discussion with Regional Board staff and State Board Counsel since that time. She noted that recently the State Board Counsel indicated they intend to include discussion of the matter referred to them by the Environmental Protection Agency (EPA) and since Davina Pujari of Barg Coffin Lewis and Trapp LLP is already well versed in this matter, staff recommends engaging this firm to prepare for and attend the meeting scheduled in April. She noted that Meyers Nave was only peripherally involved and does not have the same depth of knowledge in the EPA matter as does Barg Coffin.

The Manager noted that the estimated cost of the work was initially set at a not to exceed amount of \$30,000 but with additional information provided from Barg Coffin prior to the Board meeting, the estimate has been changed to \$57,000. She requested the Board authorize legal services to Barg Coffin Lewis and Trapp LLC in an amount not to exceed \$57,000. She stated that there is \$79,000 remaining in the 2011-12 budget for legal services.

District Counsel Kent Alm stated that for purposes of discussion, the matter being investigated by the EPA is the alleged reporting failure of the 2007 overflows. He stated it was in the District's best interest to have Barg Coffin represent them in this matter as Barg Coffin had much more knowledge on the matter than he.

District Counsel stated he believes the EPA has not indicated that this matter could not be discussed publicly. Mr. Alm stated that there is a pending action by the Regional Water Quality Control Board and they have not given the District any indication of the nature of the investigation.

Member Welsh questioned how the Board could approve an expenditure of \$57,000 to Barg Coffin if the Board did not have full knowledge of the charges in need of representation.

The Board discussed the legal services being considered and the matters under investigation.

Jo Heffelfinger, Novato resident, stated she felt Member Di Giorgio expressed disdain for governmental officials. She stated she is disappointed in Member Di Giorgio's comments.

An individual expressed his support for the District's decision to authorize Barg Coffin to represent them at the Regional Board for the pending matter. He stated the public should know the detail of the circumstances of the pending matter and requested the information be posted on the District website.

An individual discussed the alleged unreported spills in 2007 and the Regional Board's involvement with the matter. She stated the EPA investigation is closed and requested the documents in relation to this matter be released and placed on the website. She stated the public should know what the attorney expenses were for.

An individual stated he had written to the EPA with a Public Records Act Request for documents relating to the investigation but that the EPA denied his request. He stated he would like to know the details of the investigation. He stated he feels the District is being run by competent individuals and does not feel that there was any misconduct by the District.

Member Di Giorgio stated he feels the public should know the details of the investigation. He commented on the initial criminal allegations brought by the EPA and supported Barg Coffin's participation at the Regional Board meeting.

Member Welsh commented on the initial information gathered by Barg Coffin in regards to the EPA allegations/investigation and asked District Counsel if the information gathered could be released to the Board and the public.

In response to the request for release of documents, the District Counsel stated that the information gathered by Barg Coffin was mostly public records and some personnel records. He noted that personnel records are always confidential. He stated that the legal conclusions from Barg Coffin's investigation is called work product and is held in confidentiality by the Board under the attorney/client privilege. He stated that if the Board decided as a whole, to release the work product, the information could become public. He stated this is not typically done but there is no law prohibiting the action.

Mr. Alm discussed his present involvement with the Regional Board as directed by the District. He discussed the Administrative Civil Liability suit that was filed in the fall of 2010 and the recent overflows as discussed at previous board meetings.

On motion of Member Fritz, seconded by Member Di Giorgio and carried with the following vote, the Board authorized the Manager-Engineer to execute a contract with Barg Coffin Lewis & Trapp LLP to provide legal services in connection with the Administrative Civil Liability case from the Regional Water Quality Control Board in an amount not to exceed \$57,000. Ayes: Di Giorgio, Fritz, Long, Quesada. Noes: Welsh.

STRATEGIC PLANNING:

- Consider accepting a proposal from Rauch Communications to guide the District in the preparation of a Strategic Plan. The Manager noted that the District's current Strategic Plan was completed in 2001 and that the Board had included funding in this year's budget to update the District's Strategic Plan. She noted that a preliminary Strategic Planning Workshop was held on March 5th and was facilitated by Martin Rauch of Rauch Communications. The Manager stated that the objective of the Strategic Plan is to develop a strategic guideline that staff can use to implement a work plan for the next five years. She discussed the outline the Strategic Planning meetings would take. She stated that the estimated cost for this work will be \$15,960 and she recommends accepting the proposal from Rauch Communications for work on a time and materials basis with an amount not to exceed \$18,000 without further authorization.

Member Di Giorgio stated that a strategic planning session should involve the entire Board and requested Martin Rauch schedule the session after the board member vacancy is filled.

Member Welsh commented on the topic and scale of the strategic planning session. He stated that the scope of the session should focus on a smaller scale, such as the future of the District's pump stations.

President Long and Member Di Giorgio stated that the Board needs to examine and commit to the future growth of the District in regards to asset management, asset preservation and private lateral issues.

On motion of Member Di Giorgio, seconded by President Long and carried unanimously, the Board accepted a proposal from Rauch Communications to guide the District in the preparation of a Strategic Plan for work on a time and materials basis with an amount not to exceed \$18,000.

RECYCLED WATER:

Consider approval of revision to the NMWD Agreement. The Manager requested this item be removed from discussion and placed on the agenda for the April 11th board meeting.

LEGISLATIVE ISSUES:

- Consider approval of a letter supporting AB 741 (Huffman). The Manager noted that Assemblyman Huffman is authorizing AB 741. She noted that this bill would aid the financing of private sewer improvements by expanding existing law to allow property owners to voluntarily enter into agreements with local wastewater agencies to finance needed sewer improvements. She requested the Board authorize the Manager to send letters to Assembly Member Huffman and Senator Leno in support of AB 741.

Member Welsh noted that in the past, the District had done studies which detailed the causes of infiltration during wet weather events. He stated that the conclusion of these studies was that six inch, eight inch and larger lines that were beneath the water table caused a great amount of water infiltration. He did not feel the laterals were the cause of increased flow and did not support the Board's position on passage of AB 741.

President Long called for the question and the Board voted to approve the letter supporting AB 741 (Huffman), as follows: Ayes: Di Giorgio, Fritz, Long, and Quesada. Noes: Welsh.

STAFF REPORTS:

The Manager reported that President Long and herself were in Sacramento on behalf of the North Bay Water Reuse Authority meeting with Assembly Member Huffman, Assembly Member Wes Chesbrough, Assembly Member Michael Allen, Senator Leno, and Senator Noreen Evans. She noted that the Prop 84 bonds for recycled water are moving forward and that the North Bay Water Reuse Authority is expected to be awarded \$2,000,000 for the Phase One projects. She noted that Novato Sanitary District and the North Marin Water District can expect approximately \$500,000 of the award. The Manager outlined the next steps involved in the recycled water project and the critical dates associated with the steps.

Member Di Giorgio stated he attended a recycled water meeting which was chaired by Drew McIntyre of the North Marin Water District.

MANAGER'S ANNOUNCEMENTS:

- North Bay Water Authority will hold a meeting on Friday, April 1st, at 9:30 a.m. in Petaluma. She noted that the speaker will be Tom Gandesbery.

- The Manager invited everyone in attendance to celebrate Member Fritz's retirement by enjoying a piece of cake.

ADJOURNMENT: There being no further business to come before the Board, President Long adjourned the meeting at 9:15 p.m.

Respectfully submitted,

Beverly B. James, Secretary

Julie Borda, Recording