

TO: BOARD OF DIRECTORS
FROM: MICHAEL LEBRUN *ML*
INTERIM GENERAL MANAGER
DATE: JANUARY 7, 2011

**AGENDA ITEM
F
JANUARY 12, 2011**

GENERAL MANAGER'S REPORT

ITEM

Standing report to your Honorable Board -- *Period covered by this report is December 15, 2010 through January 7, 2011*

DISTRICT BUSINESS

Administrative

- Correspondence with County staff indicates petroleum contamination at the site of the proposed Jim O. Miller Park reached groundwater. This will complicate and prolong cleanup of the site. (See attached correspondence).
- Numerous discussions and meetings with staff and Waterline Intertie consultants and partners including Design Engineer, Assessment Engineer, Outreach, Rural Water Company, Woodlands Mutual Water Company in order to assess current project status and formulate a path forward. A presentation to your Board is scheduled for January 26, 2011.
- Coordination of Best Management Practices checklist completion.
- Conducted tour of District facilities for new Director.
- Attended new Director orientation with District Counsel
- Conducted an All-Staff informational meeting to address recent changes in General Manager position.
- Scheduled a staff Holiday Lunch to recognize and appreciate staff service through 2010.
- Coordinated cleaning of hearing room carpets during Holiday recess.
- Re-initiated weekly Cabinet meetings with upper management staff to improve District function.
- Supported District Engineer's efforts in submitting a \$2.3M grant application for Waterline Intertie infrastructure.

Operation

- Conducted final interview of top candidate for Maintenance Supervisor position and promoted Mr. Scott German of District staff to the position effective January 1, 2011.
- Met with District Engineer to coordinate and assist in numerous ongoing projects.
- Maria Vista Estates has set a total of ten water meters.

Meetings

Significant meetings scheduled:

- January 11 – Meeting with WIP Assessment Engineer
- January 14 – Coordination meeting with District Counsel
- January 14 – NMMA TG
- January 14 – Meeting with SLO County Special District General Managers
- January 24 – WIP Committee

Safety Program

- Non-injury vehicle accident involving District staff on District property. An insurance claim is pending. Conditions surrounding the incident have been reviewed by District Safety Officer and Staff have been counseled.

RECOMMENDATION

Staff seeks direction and input from your Honorable Board.

ATTACHMENT

- December 28, 2010 correspondence with County staff regarding proposed J.O. Miller Park.
- Updated Waterline Intertie Project expense summary
- Recent Industry Articles (5 each); Rio Linda Water District GM woes, Water Rates, Chromium 6 report summary, Summary of Water Conservation regulations, Review of Proposition 26 impacts on public agency fee measures.

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Michael LeBrun

To: lvanfleet@co.slo.ca.us
Subject: RE: FW: Miller Park in Nipomo

-----Original Message-----

From: lvanfleet@co.slo.ca.us [mailto:lvanfleet@co.slo.ca.us]
Sent: Tuesday, December 28, 2010 9:31 AM
To: Michael LeBrun
Cc: cstevenson@co.slo.ca.us; cmaddalena@co.slo.ca.us
Subject: RE: FW: Miller Park in Nipomo

Hello, Michael-

And welcome back! ConocoPhillips has a work plan that has been approved by Environmental Health for the hydrocarbon remediation, and we have given ConocoPhillips a permit to access the site for the monitoring wells. They did more drilling in mid-August and discovered that the ground water had been impacted. The remediation will be a lengthy process.

As far as the lead abatement, the report by Earth Systems stated that it is very localized and recommended that remediation should not be undertaken until the ConocoPhillips work is done. It may be that soils will need to be removed by ConocoPhillips and we don't know yet if the lead-tainted soil might go away in that process. I sent Earth Systems' report to Don, so please let me know if you cannot locate it.

Don also asked about the planning processes that need to be accomplished in order to proceed with the park. I inquired with Chuck Stevenson, and he told me that a Minor Use Permit will be required for approval of the park plans, which will include review of the proposed layout, parking, building(s), lighting (cut sheets), fencing and landscaping, trash receptacles and enclosure(s), signage, grading, and drainage. Chuck offers his assistance in that process and said that the NCS D may request a fee waiver for the MUP process.

That may be more information than you needed at this time, since it does not sound like this project will be rising to the top of the NCS D's priority list right away. That probably works out for the best, since the remediation projects will take time. I look forward to continue working with you on this project, and please let me know if there is any other information you need.

--Linda

**NIPOMO COMMUNITY SERVICES DISTRICT
SUPPLEMENTAL WATER COST SUMMARY**

A/C #	DESCRIPTION	7/1/2004 TO 6/30/2005	7/1/2005 TO 6/30/2006	7/1/2006 TO 6/30/2007	7/1/2007 TO 6/30/2008	7/1/2008 TO 6/30/2009	7/1/2009 TO 6/30/2010	7/1/2010 TO 6/30/2011 (July -Nov)	GRAND TOTAL
1645	Reservation Fee-City of Santa Maria	37,500.00	0.00	0.00	0.00	0.00	0.00	0.00	37,500.00
1590-A1	Feasibility Study (Cannon)	25,887.29	0.00	0.00	0.00	0.00	0.00	0.00	25,887.29
1590-A2	EIR Preparation (Wood & Assoc)	29,037.48	87,100.23	16,053.83	45,407.70	76,544.11	500.00	0.00	254,643.35
1590-A3	Est/Preliminary Schedule (Cannon)	3,706.19	2,602.75	0.00	0.00	0.00	0.00	0.00	6,308.94
1590-A4	Proposed Routes/Facilities (Cannon)	5,050.07	520.00	0.00	0.00	0.00	0.00	0.00	5,570.07
1590-A5	Prop 50 Grant Application	2,757.00	6,210.00	0.00	1,857.60	0.00	0.00	0.00	10,824.60
1590-A6	Project Support (Cannon)	0.00	11,797.44	0.00	0.00	0.00	0.00	0.00	11,797.44
1590-A7	Groundwater Grant Assistance (SAIC)	0.00	0.00	0.00	15,000.00	0.00	0.00	0.00	15,000.00
1590-B1	Shipsey & Seitz	0.00	23,095.55	17,564.25	2,201.50	18,224.00	16,601.58	12,179.20	89,866.08
1590-B2	McDonough, Holland & Allen	0.00	34,177.28	15,871.65	0.00	0.00	0.00	0.00	50,048.93
1590-B3	Richard, Watson & Gershon	0.00	9,472.38	27,954.81	0.00	0.00	0.00	0.00	37,427.19
1590-C1	Appraisals (Tarvin & Reeder Gilman)	0.00	0.00	16,170.00	10,000.00	0.00	8,000.00	0.00	34,170.00
1590-C2	Property Negotiations (Hamner Jewell)	0.00	0.00	0.00	0.00	15,250.00	14,748.75	18,385.79	48,384.54
1590-C3	Property Acquisitions	0.00	0.00	0.00	0.00	673.00	2,772.00	0.00	3,445.00
1590-D1	Reed Group and Wallace Group	0.00	2,809.85	0.00	0.00	7,585.45	4,476.25	0.00	14,871.55
1590-D2	Lobbying	0.00	0.00	0.00	38,801.11	38,950.00	54,000.00	9,000.00	140,751.11
1590-E1	Preliminary Engineering Design (Boyle)	0.00	6,470.33	223,286.67	103,460.19	2,194.43	0.00	0.00	335,411.62
1590-E2	Water Modeling by Carollo (City of SM)	0.00	0.00	24,942.00	0.00	0.00	0.00	0.00	24,942.00
1590-E3	Alternative Water Supplies (Boyle)	0.00	0.00	164,230.48	70,772.01	0.00	0.00	0.00	235,002.49
1590-E4	Project Information (Boyle)	0.00	0.00	0.00	6,000.00	0.00	0.00	0.00	6,000.00
1590-E5	Project Design (AECOM)	0.00	0.00	0.00	0.00	752,319.66	228,952.01	151,018.29	1,132,289.96
1590-E6	Pressure Testing	0.00	0.00	0.00	0.00	8,682.92	0.00	0.00	8,682.92
1590-E7	Peer Review	0.00	0.00	0.00	0.00	7,571.05	37,349.25	12,134.80	57,055.10
1590-E8	Pot Holing	0.00	0.00	0.00	0.00	0.00	29,053.05	0.00	29,053.05
1590-F1	Lab Testing (FGL Environmental)	0.00	0.00	5,047.00	0.00	0.00	0.00	0.00	5,047.00
1590-F2	Copy/Print	0.00	0.00	740.24	1,022.01	0.00	0.00	0.00	1,762.25
1590-G1	Permits	0.00	0.00	0.00	0.00	130.00	0.00	0.00	130.00
1590-H1	Assessment District	0.00	0.00	0.00	0.00	83,030.71	21,227.92	22,552.82	126,811.45
1590-H2	SLO County Reimb Agreement-JPA	0.00	0.00	0.00	0.00	0.00	36,603.80	0.00	36,603.80
1590-H3	Purveyor Partner Reimbursements to NCSA	0.00	0.00	0.00	0.00	0.00	0.00	(10,492.04)	(10,492.04)
1590-H4	A/D Financial Advisor	0.00	0.00	0.00	0.00	0.00	0.00	8,835.63	8,835.63
1590-I1	Construction Management (MNS)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1590-I2	Arborist (A&T Arborist)	0.00	0.00	0.00	0.00	0.00	2,830.00	0.00	2,830.00
1590-Z1	Wages-Capitalized	0.00	29,076.92	35,884.51	28,197.08	31,926.57	50,005.29	20,428.26	195,518.63
1590-Z2	Payroll Taxes-Capitalized	0.00	587.22	587.42	455.96	504.53	2,058.44	316.28	4,509.85
1590-Z3	Retirement-Capitalized	0.00	8,418.08	10,344.53	8,110.84	8,690.47	9,443.17	4,376.56	49,383.65
1590-Z4	Medical-Capitalized	0.00	2,861.36	3,367.02	2,564.88	2,757.36	3,390.94	2,340.84	17,282.40
1590-Z5	Dental/Vision-Capitalized	0.00	0.00	247.90	328.23	348.15	459.62	111.62	1,495.52
1590-Z6	Workers Compensation-Capitalized	0.00	260.35	341.83	225.21	259.81	271.21	121.44	1,479.85
		103,938.03	225,459.74	562,634.14	334,404.32	1,055,642.22	622,743.28	251,309.49	3,056,131.22

**NIPOMO COMMUNITY SERVICES DISTRICT
CERTIFICATES OF PARTICIPATION
DEBT SERVICE SCHEDULE**

	PRINCIPAL	INTEREST	TOTAL DEBT SERVICE	PRINCIPAL BALANCE
				4,000,000.00
FY June 30, 2004	0.00	136,384.79	136,384.79	4,000,000.00
FY June 30, 2005	75,000.00	169,950.00	244,950.00	3,925,000.00
FY June 30, 2006	80,000.00	167,625.00	247,625.00	3,845,000.00
FY June 30, 2007	80,000.00	165,225.00	245,225.00	3,765,000.00
FY June 30, 2008	85,000.00	163,132.50	248,132.50	3,680,000.00
FY June 30, 2009	85,000.00	161,198.75	246,198.75	3,595,000.00
FY June 30, 2010	85,000.00	158,988.75	243,988.75	3,510,000.00
FY June 30, 2011	90,000.00	156,425.00	246,425.00	3,420,000.00
FY June 30, 2012	90,000.00	153,545.00	243,545.00	3,330,000.00
FY June 30, 2013	95,000.00	150,397.50	245,397.50	3,235,000.00

NIPOMO COMMUNITY SERVICES DISTRICT
WATERLINE INTERTIE PROJECT
MONTHLY REPORT TO THE BOARD OF DIRECTORS
(FY JUNE 30, 2011)

REVENUES FY 2010-2011 (1)	<u>MONTH OF</u> <u>NOVEMBER</u>	<u>FISCAL YEAR</u> <u>7/1/2010 TO</u> <u>6/30/2011</u>
Supplemental Water Capacity Fees Collected	67,258.25	77,878.00
Interest Income (monthly & quarterly posting)	899.80	5,315.70
Revenue Subtotal	68,158.05	83,193.70
EXPENDITURES FY 2010-2011 (2)		
<u>CONSULTANTS</u>		
1590-A1 Feasibility Study (Cannon)	0.00	0.00
1590-A2 EIR Preparation (Wood & Assoc)	0.00	0.00
1590-A3 Estimate/Preliminary Schedule (Cannon)	0.00	0.00
1590-A4 Proposed Routes/Facilities (Cannon)	0.00	0.00
1590-A5 Prop 50 Grant Applicatin	0.00	0.00
1590-A6 Project Support (Cannon)	0.00	0.00
1590-A7 Groundwater Grant Assistance (SAIC)	0.00	0.00
<u>LEGAL</u>		
1590-B1 Shipsey & Seitz	1,672.00	12,179.20
1590-B2 McDonough, Holland & Allen	0.00	0.00
1590-B3 Richards, Watson & Gershon	0.00	0.00
<u>LAND ACQUISITION</u>		
1590-C1 Appraisals (Tarvin & Reeder Gilman)	0.00	0.00
1590-C2 Property Negotiations (Hamner Jewell)	2,425.00	18,385.79
1590-C3 Property Acquisitions	0.00	0.00
<u>FINANCIAL</u>		
1590-D1 Reed Group and Wallace Group	0.00	0.00
1590-D2 Lobbying	0.00	9,000.00
<u>ENGINEERING</u>		
1590-E1 Preliminary Engineering Design (AECOM)	0.00	0.00
1590-E2 Water Modeling by Carollo (City of Santa Maria)	0.00	0.00
1590-E3 Alternative Water Supplies (AECOM)	0.00	0.00
1590-E4 Project Information (AECOM)	0.00	0.00
1590-E5 Project Design (AECOM)	14,318.29	151,018.29
1590-E6 Pressure Testing	0.00	0.00
1590-E7 Peer Review	1,785.00	12,134.80
1590-E8 Pot Holing	0.00	0.00
<u>OTHER</u>		
1590-F1 FGL Environmental	0.00	0.00
1590-F2 Copy/Print	0.00	0.00
<u>PERMITS</u>		
1590-G1 Santa Maria Valley Water Conservation District	0.00	0.00
<u>ASSESSMENT DISTRICT</u>		
1590-H1 Wallace Group	0.00	22,552.82
1590-H2 SLO County Reimbursement Agreement for JPA	0.00	0.00
1590-H3 Purveyor Partner Reimbursements to NCSD	0.00	(10,492.04)
1590-H4 A/D Financial Advisor	8,835.63	8,835.63
<u>CONSTRUCTION</u>		
1590-I1 Construction Management (MNS)	0.00	0.00
1590-I2 Arborist (A&T Arborists)	0.00	0.00
<u>SALARY AND BENEFITS (3)</u>		
1590-Z1 Wages-Capitalized	6,730.03	20,428.26
1590-Z2 Payroll Taxes-Capitalized	97.55	316.28
1590-Z3 Retirement-Capitalized	788.42	4,376.56
1590-Z4 Medical-Capitalized	470.24	2,340.84
1590-Z5 Dental/Vision-Capitalized	23.98	111.62
1590-Z6 Workers Compensation-Capitalized	37.45	121.44
Expenditure Subtotal	37,183.59	251,309.49
Net Revenues less Expenditures	30,974.46	(168,115.79)
Beginning Fund Balance as of July 1, 2010		2,373,651.69
Ending Fund Balance as of November 30, 2010		2,205,535.90

(1) See attached "Supplemental Water Fees Collected" Schedule for more detail.
(2) See attached "Supplemental Water Cost Summary" for more detail.
(3) Salary and Benefits of GM and District Engineer are allocated among NCSD projects and capitalized as part of the cost of the project.

NIPOMO COMMUNITY SERVICES DISTRICT
WATERLINE INTERTIE PROJECT
MONTHLY REPORT TO THE BOARD OF DIRECTORS
(FY JUNE 30, 2011)

REVENUES FY 2010-2011 (1)	<u>MONTH OF</u> <u>OCTOBER</u>	<u>FISCAL YEAR</u> <u>7/1/2010 TO</u> <u>6/30/2011</u>
Supplemental Water Capacity Fees Collected	0.00	10,619.75
Interest Income (monthly & quarterly posting)	1,008.53	4,415.90
Revenue Subtotal	1,008.53	15,035.65
EXPENDITURES FY 2010-2011 (2)		
<u>CONSULTANTS</u>		
1590-A1 Feasibility Study (Cannon)	0.00	0.00
1590-A2 EIR Preparation (Wood & Assoc)	0.00	0.00
1590-A3 Estimate/Preliminary Schedule (Cannon)	0.00	0.00
1590-A4 Proposed Routes/Facilities (Cannon)	0.00	0.00
1590-A5 Prop 50 Grant Applicatin	0.00	0.00
1590-A6 Project Support (Cannon)	0.00	0.00
1590-A7 Groundwater Grant Assistance (SAIC)	0.00	0.00
<u>LEGAL</u>		
1590-B1 Shipsey & Seitz	2,455.20	10,507.20
1590-B2 McDonough, Holland & Allen	0.00	0.00
1590-B3 Richards, Watson & Gershon	0.00	0.00
<u>LAND ACQUISITION</u>		
1590-C1 Appraisals (Tarvin & Reeder Gilman)	0.00	0.00
1590-C2 Property Negotiations (Hamner Jewell)	2,251.15	15,960.79
1590-C3 Property Acquisitions	0.00	0.00
<u>FINANCIAL</u>		
1590-D1 Reed Group and Wallace Group	0.00	0.00
1590-D2 Lobbying	0.00	9,000.00
<u>ENGINEERING</u>		
1590-E1 Preliminary Engineering Design (AECOM)	0.00	0.00
1590-E2 Water Modeling by Carollo (City of Santa Maria)	0.00	0.00
1590-E3 Alternative Water Supplies (AECOM)	0.00	0.00
1590-E4 Project Information (AECOM)	0.00	0.00
1590-E5 Project Design (AECOM)	0.00	136,700.00
1590-E6 Pressure Testing	0.00	0.00
1590-E7 Peer Review	0.00	10,349.80
1590-E8 Pot Holing	0.00	0.00
<u>OTHER</u>		
1590-F1 FGL Environmental	0.00	0.00
1590-F2 Copy/Print	0.00	0.00
<u>PERMITS</u>		
1590-G1 Santa Maria Valley Water Conservation District	0.00	0.00
<u>ASSESSMENT DISTRICT</u>		
1590-H1 Wallace Group	14,197.50	22,552.82
1590-H2 SLO County Reimbursement Agreement for JPA	0.00	0.00
1590-H3 Purveyor Partner Reimbursements to NCSD	0.00	(10,492.04)
<u>CONSTRUCTION</u>		
1590-I1 Construction Management (MNS)	0.00	0.00
1590-I2 Arborist (A&T Arborists)	0.00	0.00
<u>SALARY AND BENEFITS (3)</u>		
1590-Z1 Wages-Capitalized	5,271.37	13,698.23
1590-Z2 Payroll Taxes-Capitalized	76.39	218.73
1590-Z3 Retirement-Capitalized	1,371.33	3,588.14
1590-Z4 Medical-Capitalized	467.65	1,870.60
1590-Z5 Dental/Vision-Capitalized	21.91	87.64
1590-Z6 Workers Compensation-Capitalized	29.35	83.99
Expenditure Subtotal	26,141.85	214,125.90
Net Revenues less Expenditures	(25,133.32)	(199,090.25)
Beginning Fund Balance as of July 1, 2010		2,373,651.69
Ending Fund Balance as of October 31, 2010		2,174,561.44

(1) See attached "Supplemental Water Fees Collected" Schedule for more detail.
(2) See attached "Supplemental Water Cost Summary" for more detail.
(3) Salary and Benefits of GM and District Engineer are allocated among NCSD projects and capitalized as part of the cost of the project.

Rio Linda water district won't hire part-time GM

By Brad Branan

bbranan@sacbee.com

Published: Saturday, Jan. 1, 2011 - 12:00 am | Page 2B

Directors at the Rio Linda-Elverta water district have scuttled plans to hire a temporary and part-time general manager, saying the troubled district needs regular oversight. Directors debated the decision behind closed doors for nearly three hours Thursday night, after a testy discussion in a public meeting.

In the end, they decided not to hire [Dave Andres](#), who ran the district from 2002 to 2006, and to conduct a search for a permanent general manager. Because he's retired, Andres said he wanted to work around 20 hours a week and only through July. He also came under criticism from some directors because he wanted to be paid \$95 an hour and do some of the work from his home in [Calaveras County](#).

Directors last month ousted [Joseph Sherrill](#), who held the job for less than two months. He was the water district's seventh general manager in four years.

Sherrill, who had no previous experience working for a utility, was hired by a different board of directors. A new majority took [office](#) shortly after he was hired. They cited a series of conflicts with them and district employees as reasons for Sherrill's dismissal.

[Martin Smith](#), part of the new majority on the board, said the district needs a permanent and qualified general manager. "There have been so many interim managers and it's causing concern," he said. "There's an appearance of instability in the district."

The board didn't set a timeline for finding a replacement but plans to advertise for applications in coming weeks. Smith and fellow Director Vivien Spicer-Johnson will sit on a committee reviewing applicants.

The district's attorney, [Ravi Mehta](#), will serve as acting general manager until a permanent one is hired. The new manager faces a long list of challenges.

The state has twice issued orders to fix the system serving 15,000 customers and questioned the safety of its water. Some observers have suggested that the state needs to take over the district. The district has been the subject of investigations by grand juries and the Sacramento County District Attorney's [Office](#).

Sherrill said he found many financial problems in his short stint at the district, but struggled to get an accurate picture of how bad things were. Yet the cash-strapped district couldn't even afford to pay an auditor to fully review the books, he said.

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WATER: Up, up and away with water rates

By BRADLEY J. FIKES - bfikes@nctimes.com North County Times - The Californian | Posted: Sunday, January 2, 2011 12:00 am

With double-digit hikes in water rates common in 2010, customers have been taking a financial bath without even turning on the tap.

Just as most of Southern California's water is delivered in bucket-brigade style from a series of importers, cost increases get passed along at each step of the way. These agencies include Metropolitan Water District, Southern California's main importer; the San Diego County Water Authority, the county's main importer; and local water agencies that sell directly to customers.

Water agencies say they have to pay for building more reservoirs and pipelines and conservation programs. Supplies have also been strained because of a long drought and court decisions limiting water imports from Northern California.

Most of the water agencies' costs ---- to service their reservoirs, pipelines, treatment plants and other infrastructure ---- are fixed. That limits their ability to cut costs. So when customers respond to calls for conservation, total revenue goes down, and in response, the agencies raise their rates.

Here are some highlights from 2010:

-- In April, Metropolitan Water District imposed a two-step rate hike, with rates going up 7.5 percent on Jan. 1, 2011, and another 7.5 percent a year later. After the second increase, rates will have risen a total of 15.56 percent.

Metropolitan said the increase was necessary because its water sales have dropped substantially, reducing its revenue. The agency said sales dropped because of the recession, along with water conservation.

-- In June, the San Diego County Water Authority voted to raise its rates by 14.7 percent. The authority said it was responding to a rate increase from its supplier, Metropolitan Water District.

The cost increase for the authority's retail agencies, who sell directly to individuals and businesses, varies by agency. In agriculture-heavy Valley Center, for instance, growers under Metropolitan's Interim Agricultural Water Program will pay 12.7 percent more as of Jan 1. Farmers using the Special Agricultural Water Rate, a companion program from the Water Authority, will pay 7.5 percent more. Residential customers will pay 12.2 percent more.

-- In July, the Water Authority said San Diego County residents and business customers used 12.8 percent less water in the 12 months that ended in June than the same period a year ago. The savings exceeded the 8 percent mandatory conservation target for the 12-month period. Reaching that goal means the region avoids financial penalties from Metropolitan Water District.

There is some good news amid the drumbeat of rate hikes: While water will become more costly, the supply is less precarious than it was earlier in the drought.

In November, Southern California water officials said an increased allocation from the state will allow them to stash away more water next year. The California Department of Water Resources officials said the agency can send cities and farms about 25 percent of the water they've requested for 2011.

That conservative first estimate was raised in December to 50 percent, with an additional increase likely. A year earlier, the department estimated it could supply just 5 percent, but increased that to 50 percent of the requested water.

With California being soaked end to end by a series of storms, the supply outlook is brighter than it has been in several years.

Call staff writer Bradley J. Fikes at 760-739-6641.

Chromium 6 report unleashes legislative, regulatory responses

Editor's note: See link below to comment on this article.

A report from the Environmental Working Group on hexavalent chromium in tap water has spurred responses from US senators, the US Environmental Protection Agency, [AWWA](#) and a number of utilities and prompted USEPA Administrator Lisa Jackson to anticipate a specific regulation for hexavalent chromium.



The results of EWG's tests for hexavalent chromium (chromium 6) in 35 cities show tap water levels higher than a proposed California public health goal in 25 of the cities and the presence of chromium 6 in all but four of the tested cities' tap waters. The report, [Chromium-6 in US Tap Water](#), was released Dec. 20.

Public concern raised by the report led US Environmental Protection Agency Administrator Lisa Jackson to meet with a group of 10 senators Dec. 21 and to commit to several actions, including assessing occurrence and offering technical assistance to utilities. In a press release about the meeting, one of Jackson's points was that "it is likely that EPA will tighten drinking water standards to address the health risks posed by chromium 6."

Even before the meeting, Sens. Barbara Boxer (D-Calif.) and Diane Feinstein (D-Calif.) pledged to introduce legislation setting a deadline for the development of a drinking water standard for chromium 6, according to news reports.

"Drinking water quality and public health are the highest priority for drinking water utilities. It's important, however, to establish health standards on the basis of science and not public outcry," said Tom Curtis, AWWA deputy executive director for government affairs.

"**EWG targeted a mix** of large cities and some smaller ones where testing by local utilities had previously detected potentially significant amounts of 'total chromium,'" according to the report. Using its own database of water quality data from utilities, EWG extrapolates that 74 million Americans in 42 states may be drinking water with hexavalent chromium.

Made famous in the movie *Erin Brockovich*, chromium 6 is "likely to be carcinogenic to humans," according to a [draft toxicological report](#) from the US Environmental Protection Agency's Integrated Risk Information System, which assesses health effects data used to set drinking water standards. The toxicological report is undergoing expert review that is to be completed in late 2011; the comment period closes Dec. 29. In August 2009, California proposed a public health goal of 0.06 micrograms/liter.

Currently, USEPA has a maximum contaminant level (MCL) of 100 micrograms/liter for total chromium and reports that no utilities are out of compliance with this MCL.

Jackson promised the senators a series of actions related to chromium 6. The agency will

- Work with local and state officials to determine how widespread the occurrence of hexavalent is.
- Issue guidance to water utilities on monitoring and sampling for chromium 6.
- Offer technical assistance to the cities cited in the EWG report with high levels of chromium 6.
- Review the chromium standard quickly once the draft toxicological report is finalized to determine if new standards need to be set.

Earlier that day USEPA issued a statement, saying in part, "The agency regularly re-evaluates drinking water standards and, based on new science on chromium-6, had already begun a rigorous and comprehensive review of its health effects. In September, we released a draft of that scientific review for public comment. When this human health assessment is finalized in 2011, USEPA will carefully review the conclusions and consider all relevant information, including the Environmental Working Group's study, to determine if a new standard needs to be set."

In AWWA's public statement, Executive Director David LaFrance supported the scientific rigor used to consider health effects and set drinking water standards. "The key question to answer is whether the substance presents health concerns at the level it is detected. ... A thorough evaluation of [health, exposure and occurrence] data increases the likelihood that new regulations will offer meaningful risk reduction."

- EWG is pushing USEPA and the state of California to regulate chromium 6 sooner than the current process would. The organization wrote about its concerns for vulnerable populations, especially fetuses, infants, children and people with less acidic stomachs.

Meanwhile, the American Chemistry Council posted a statement supporting "a uniform, national standard for hexavalent chromium in drinking water, based on sound science. ... Research is underway to provide EPA with critical data that will allow for a more informed risk assessment of hexavalent chromium. This data will be complete by mid-2011. Given the potential impact on drinking water supplies, EPA should incorporate this data in its assessment."

Chromium is a naturally occurring element with three main forms found in the environment: chromium 0, chromium 3 and chromium 6 (or hexavalent chromium). Chromium 3 is a nutrient required to metabolize sugars and lipids.

Chromium is widely used in manufacturing processes and can be found in many consumer products such as wood treated with copper dichromate, leather tanned with chromic sulfate and stainless steel cookware. Individuals may be exposed to chromium through inhalation, ingestion and skin contact.

A *Los Angeles Times* article in mid-December reported that a California Cancer Registry survey of Hinkley residents did not find a disproportionately high number of cancers in the town that made Erin Brokovich famous. The survey did not type the cancers or try to explain what caused them, nor did it provide any basis for scaling back on groundwater cleanup in the area.

Additional AWWA Resources

- "Hex chrome review underway," *AWWA Streamlines*, Oct. 19, 2010
- "Hot Topics," *AWWA Streamlines*, Nov. 30, 2010
- Breaking News: California seeks comment on chromium VI PHG, Aug. 21, 2009
- "Pilot-Scale Studies of Hexavalent Chromium Removal From Drinking Water," *Journal AWWA*, Feb. 2006

Mary A. Parmelee, Editor

Comments

12/28/2010 John Gaston

There are several points that need to be made. Chromium +6 (CR+6) has been tested in many water supplies and found in California in numerous supplies where there is no obvious man made source. Much has been made about Cr+6 as the horrific industrial pollutant created by industry and released into the environment. The vast majority of water systems with positive results from testing for Cr+6 in California have it as a naturally occurring element. There is also quite a bit of evidence that the ingestion of Cr+6 in drinking water results in the transformation into Cr+3 in the human stomach due to interaction with stomach acid. Cr+3 is recognized as a required nutrient and chromium in various forms can be found in common foods and vitamins as well as special supplements meant for human consumption. This is not to say that there are no sites that are grossly contaminated with chromium from industrial activities. These sites are being, and should be, cleaned up. The comment by Tom Curtis that the drinking water standards should be driven by hard science versus chemo-phobic outcry is right on.

From my investigation of this elemental problem the greatest risk by far is to those individuals that may have been exposed to Cr+6 via inhalation. This would include individuals that engaged in welding and other industrial activities where Cr+6 exposure was high and frequent.

Let us remember our basic toxicology and the fact that everything is, or can be, a "poison" depending upon the dose and frequency of exposure. The maximum contaminant level set by the USEPA at 100 ppb is currently thought to be fully protective of public health. It is appropriate to review and examine that MCL on a routine basis especially if new evidence is present to warrant such a review. Lets get a life folks, the end of the world is not upon us because we have found Cr+6 in our drinking water especially since most of it is naturally occurring and we have been drinking it for as long as those sources have been in service.

Interactions Among AB 715 (Laird 2007), SB 407 (Padilla 2009), and CALGreen Building Standards

Assessing for Provisions of Water Use Efficiency Regulations

Existing law provides for the following:

- requires that all toilets or urinals sold or installed in the state use no more than an average of 1.6 gallons or one gallon per flush, respectively;
- requires that certain disclosures be made upon the transfer of real estate; and
- authorizes water purveyors to adopt and enforce water conservation programs.

These three matters are affected by the regulations AB 715 (Laird 2007), SB 407 (Padilla 2009), (both already chaptered), and the CALGreen Building Standards (waiting formal inclusion in California Building Standards Code - CBSC on January 1, 2011). Between the three regulations, however, there is some degree of confusion or uncertainty regarding what happens when, and how it happens. Specifically, this relates to water efficiency measures, as altered by the regulations' effect on the plumbing code and building standards.

Per the table below ("Toilet and Urinal Fixtures in the California Code"), there are differing standards for toilets and urinals, and differing dates for implementation of high-efficiency models, i.e., HETs and HEUs. In addition, SB 407 and CalGreen address general plumbing fixtures, while AB 715 addresses exclusively toilets and urinals.

AB 715

COVERS: Toilets and Urinals

CHAPTERED AS: Health and Safety Code 17921.3

This law requires that, on or after January 1, 2014, 100% of toilets and urinals (other than blow-out urinals) sold or installed in California be high-efficiency (maximum of 1.28 gallons per flush for high-efficiency toilets – HETs - and 0.5 gallons per flush for high-efficiency urinals - HEUs). (In addition, the law requires that non-water urinals be approved for sale and installation in California.) The law requires that any state agency adopting or proposing building standards for plumbing systems to consider developing building standards that would govern the use of non-water urinals for submission to the CBSC. This law imposes a state-mandated local program, and violation of the State Housing Law is punishable as a misdemeanor. This law addresses exclusively toilets and urinals, and no other residential or commercial plumbing fixtures, fittings, appliances, or equipment.

The challenge with this bill is enforcement. As with all instances where additional inspection and enforcement burdens are placed upon municipalities, there is doubt as to whether either the technical capabilities or the municipal budgets currently exist to take on the added responsibilities associated with these requirements. This can be demonstrated with the lack of full enforcement of *today's* plumbing codes in new commercial construction.

AB 715 contained no provisions related to the retrofit on resale of existing single-family or multi-family homes, nor is there mention of existing commercial. However, by virtue of the 100% requirement relating to sales after January 1, 2014, all commercial and residential renovations involving toilet and/or urinal replacement would be subject to the HET and HEU requirements. As such, the expectation is for natural turnover/replacement to ultimately lead to the replacement of all toilets and urinals throughout the State over a period of time.

The bill also does not address what contractors, plumbers, or installers of the new HETs and HEUs are to do with the fixtures being replaced. Experience suggests that there is a secondary recycling market for the chinaware and other components of the toilets and urinals being removed.

SB 407

COVERS: Toilets, Urinals, Showerheads, Interior Faucets

SB 407 mandates all buildings in California come up to 1992 State plumbing fixture standards at some point in the next decade. This law establishes requirements that residential and commercial property built and available for use on or before January 1, 1994 replace plumbing fixtures that are not water conserving, defined as "noncompliant plumbing fixtures" as follows:

- (1) any toilet manufactured to use more than 1.6 gallons of water per flush;
- (2) any urinal manufactured to use more than one gallon of water per flush;
- (3) any showerhead manufactured to have a flow capacity of more than 2.5 gallons of water per minute;
- and
- (4) any interior faucet that emits more than 2.2 gallons of water per minute.

Conversely, the law defines the category of "water-conserving plumbing fixtures" as fixtures that are compliant with current standards and use water equal to or less than the amounts shown above.

On or before January 1, 2019, all noncompliant plumbing fixtures in multi-family residential and commercial properties must be replaced by the property owner with water-conserving plumbing fixtures. For single-family residential property, the compliance date is January 1, 2017.

Building Alterations & Improvements

In advance of the above dates, the law requires, on and after January 1, 2014, for building alterations/improvements to all residential and commercial property, that water-conserving plumbing fixtures replace all noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department.

Real Property Sales and Transfers (disclosures)

The law requires, on and after January 1, 2017, that a seller or transferor of single-family residential, disclose to the purchaser or transferee, in writing, the specified requirements for replacing plumbing fixtures and whether the real property includes noncompliant plumbing. For multi-family residential and commercial property, the date is January 1, 2019.

Special Provision: Postponement of Requirements

The law provides that the application of its requirements may be postponed up to one year with respect to a building for which a demolition permit has been issued.

Special Provision: Fixture Operation in Tenant Spaces

Regarding rental or leased properties, the law requires that, on and after January 1, 2019, the water-conserving plumbing fixtures prescribed within the law operate at the manufacturer's rated water consumption at the time that a tenant takes possession.

Special Provision: Local Ordinances

The law permits a city or county or retail water supplier to enact a local ordinance or policy that promotes compliance with the provisions of the law, or that will result in greater water savings than otherwise provided by the law. Any city, county, or city and county that has adopted an ordinance requiring retrofit of noncompliant plumbing fixtures prior to July 1, 2009, is exempt from its requirements so long as the ordinance remains in effect.

Enforcement

Again, however, the complication or barrier to implementation occurs in the enforcement, i.e., how this law will be enforced in the various situations covered in the law. The law does not specify punishment for noncompliance, but only requires that the purchaser or transferee be notified of the noncompliance. The law includes a strong reliance on building inspectors and real estate agents to ensure/enforce that all faucets, showerheads, urinals, and toilets are, in fact, water conserving and operate at the manufacturers' specified standard. As with AB 715, the question remains as to whether either the technical capabilities or the municipal budgets currently exist to take on the added responsibilities at the local level.

Like AB 715, the law does not address what contractors, plumbers, or installers of the new toilets are to do with the replaced fixtures.

CALGreen Building Standards Code

This component is the 11th of 12 parts of the official compilation and publication of the adoptions, amendments and repeal of regulations to California Code of Regulations, Title 24, also referred to as the CBSC. This component is known as the California Green Building Standards Code, and it is intended that it shall also be known as the *CALGreen* Code.

The CBSC is published in its entirety every three years by order of the California Legislature. These building standards have the same force of law, and take effect 180 days after their publication unless otherwise stipulated. There are two non-mandatory appendices to CALGreen that may be adopted locally if an agency chooses to require more stringent conservation. The CBSC applies to all occupancies in the State of California as annotated. A city, county or city and county may establish more restrictive standards reasonably necessary because of local climatic, geological, or topographical conditions. For the purpose of this code, these conditions include local environmental conditions as established by a city, county, or city and county. Findings of the local condition(s) and the adopted local building standard(s) must be filed with the California Building Standards Commission to become effective and may not be effective sooner than the effective date of the most recent edition of the CBSC. Local building standards that were adopted and applicable to previous editions of the CBSC do not apply to the most recent edition without appropriate adoption and the required filing.

Water efficiency requirements begin on page 17 of the CALGreen Code
http://www.hcd.ca.gov/codes/shl/2010_CA_Green_Bldg.pdf

While this is the most thorough of all laws discussed here, it covers ONLY new construction and renovations. It does not cover such areas as property resales, seller disclosures, or product sales. Indoor provisions of CALGreen include: commercial submetering, excess consumption submetering, efficient fixtures, faucet aerators, toilets, urinals, lavatory and metering faucets, multiple showerheads, and non-potable water use systems. Outdoor considerations include: water budgets, landscape submetering, and irrigation design (including rain sensors and weather-based irrigation controllers). There is to be a section on water reuse systems, though it is not yet included within the document.

Mandatory provisions

CalGreen prescriptive indoor provisions for maximum water consumption of plumbing fixtures and fittings are as follows:

<u>Fixture/Fitting</u>	<u>Baseline consumption (Tables 4.303.1 & 5.303.2.2)</u>	<u>High-Efficiency consumption (Tables 4.303.2 & 5.303.2.3)</u>
Water Closets (Toilets) – all types	1.6 gallons per flush	1.28 gallons per flush
Urinals	1.0 gallon per flush	0.5 gallons per flush
Residential showerheads	2.5 gallons per minute	2.0 gallons per minute
Residential lavatory faucets	2.2 gallons per minute	1.5 gallons per minute
Kitchen faucets	2.2 gallons per minute	1.8 gallons per minute
Replacement faucet aerators	2.2 gallons per minute	not specified
Non-residential lavatory faucets	0.5 gallons per minute	0.4 gallons per minute
Metering faucets	0.25 gallons per cycle	0.2 gallons per cycle

The high-efficiency consumption levels shown above represent CalGreen’s prescriptive path to compliance.

However, Sections 4.301.1 and 5.303.2 provide that an optional performance path may be chosen instead. That option requires an overall aggregate 20% reduction in indoor water use from a calculated baseline using a set of worksheets provided within the CalGreen document. This trade-off method does not extend to exterior water uses at the building. That is, landscape measures cannot be traded for indoor plumbing measures, and vice-versa.

Mandatory outdoor water use provisions consist of requiring a weather-based or soil moisture-sensing irrigation controller.

Voluntary provisions

In addition to the above mandatory requirements, further efficiencies are available to the jurisdiction or builder through application of two voluntary “tiers”. For water use efficiency, tiers are as follows:

Tier 1 requires that all of the mandatory requirements be satisfied PLUS the following:

Residential development (up to 3 stories):

- Kitchen faucet flow rate reduced from 1.8 gallons per minute to 1.5 gallons per minute
- Potable water use for landscape applications be reduced to a quantity that is ≤65% of ETo
- Incorporation of at least one other elective measure from a list of measures provided (including such items as waterless toilet, waterless urinal, low-consumption irrigation system, rainwater capture system, water budgeting, water reuse system)

Non-residential development (including mixed use with some residential):

- Aggregate indoor water use reduction of 30% from the established baseline **OR** 30% reduction in individual water use for each of the plumbing fixtures listed above.
- Potable water use for landscape applications be reduced to a quantity that is ≤60% of ETo
- Incorporation of at least one elective measure from a list of measures provided (including such items as clothes washers, commercial and residential dishwashers, ice makers, food steamers, water softeners, dual plumbing, landscape submeters, water budget, potable water elimination from outdoor use, graywater irrigation system)

Tier 2 is more aggressive and requires that all of the mandatory requirements be satisfied PLUS the following:

Residential development (up to 3 stories):

- Kitchen faucet flow rate reduced from 1.8 gallons per minute to 1.5 gallons per minute
- Dishwashers be Energy Star qualified and use no more than 5.8 gallons per cycle
- Potable water use for landscape applications be reduced to a quantity that is ≤60% of ETo

- Incorporation of at least two elective measures from a list of measures provided (including such items as waterless toilet, waterless urinal, low-consumption irrigation system, rainwater capture system, water budgeting, water reuse system)

Non-residential development (including mixed use with some residential):

- Aggregate indoor water use reduction of 35% from the established baseline **OR** 35% reduction in individual water use for each of the plumbing fixtures listed above.
- Potable water use for landscape applications be reduced to a quantity that is $\leq 55\%$ of ETo
- Incorporation of at least three elective measures from a list of measures provided (including such items as clothes washers, commercial and residential dishwashers, ice makers, food steamers, water softeners, dual plumbing, landscape submeters, water budget, potable water elimination from outdoor use, graywater irrigation system)

Conclusion:

After careful reading and assessment of the documents, these laws are not found to be contrary, but simply 'one-up' each other as dates pass and action is taken. The provision in AB 715 that all fixtures sold or installed after January 1, 2014 must be HETs and HEUs (sections 17921.3 (b)(1) and (2)) is primary until January 1, 2014, or until the date on which the California Building Standards Commission includes standards in the CBSC that conform to this section, whichever date is later (section 17921.3 (i)). When the CBSC is updated to conform to the AB 715 legislation (this is a required action by this legislation), it will become the primary plumbing code efficiency provision, a regulation that is, in effect, law.

The efficiency provisions in SB 407 are augmented by those in AB 715 and the CALGreen Code (SB 407 only requires toilet efficiency of 1.6/1.0 gallon per flush for a toilet and urinal versus the high-efficiency provision for 1.28 gallons per flush in AB 715 and CALGreen). The more stringent restrictions in AB 715 and the CALGreen Code will supersede the equipment flow standards included in SB 407. SB 407 requires entities to disclose non-efficient fixtures in real-estate transactions and requires that all toilets in single-family residential, multi-family residential, and commercial buildings have efficient fixtures by January 1, 2017, 2019, and 2019 (respectively). This provision will complement the other regulations, as it rounds out the requirements, including all buildings, whether transfer of ownership occurs or not, and all plumbing fixtures (though this will likely be covered by the update of the CBSC). As noted earlier, the very significant challenge of enforcement remains for all of these laws.

Options for clarifying these incongruencies include rectifying/clarifying legislation. This would be helpful in two cases:

- that of strengthening SB 407 to include some kind of enforcement for existing homes and real estate transactions, as the plumbing code will be enforced on new development; and
- changing the standards listed in SB 407 to those in the CALGreen code at some point in the future.

Toilet and Urinal Fixtures in the California Codes

Condition, Activity, or Event	AB 715 (2007)	SB 407 (2009)	CalGreen
Sale of toilet and urinal fixtures through retail or other outlets	All fixtures sold or installed after Jan 1, 2014 must be HETs or HEUs ³	Not addressed	Not addressed
Existing¹ single family residential			
Resale	Not addressed	As of Jan 1, 2017, requires written disclosure by Buyer to Seller of non-compliant fixtures in property	Not addressed
Renovation ²	All fixtures installed after Jan 1, 2014 must be HETs or HEUs ³	Renovated SFR must be 1.6 max (toilets) or 1.0 max (urinals) on or after Jan 1, 2014 to obtain bldg or occupancy permit	1.28 maximum ³ IF prescriptive path is chosen (per 4.303.1) – Jan 1, 2011
All other SFR	Not addressed	ALL SFR must be 1.6/1.0 max by Jan 1, 2017	
Existing¹ multi-family residential			
Resale	Not addressed	As of Jan 1, 2019, requires written disclosure by Buyer to Seller of non-compliant fixtures in property	Not addressed
Renovation ²	All fixtures installed after Jan 1, 2014 must be HETs or HEUs ³	Renovated MFR must be 1.6 max (toilets) or 1.0 max (urinals) on or after Jan 1, 2014 to obtain bldg or occupancy permit	1.28 maximum ³ IF prescriptive path is chosen (per 4.303.1) – Jan 1, 2011
All other MFR	Not addressed	ALL MFR must be 1.6/1.0 max by Jan 1, 2019 ⁶	
Existing¹ commercial			
Resale	Not addressed	As of Jan 1, 2019, requires written disclosure by Buyer to Seller of non-compliant fixtures in property	Not addressed
Renovation ⁴	All fixtures installed after Jan 1, 2014 must be HETs or HEUs ³	Renovated Comm'l must be 1.6 max (toilets) or 1.0 max (urinals) on or after Jan 1, 2014 to obtain bldg or occupancy permit	1.28 max (toilets) and 0.5 max (urinals) ³ IF prescriptive path is chosen (per 5.303.2) – Jan 1, 2011
All other Commercial	Not addressed	ALL Commercial must be 1.6 max on or after Jan 1, 2019 ⁵	
New single family residential		Not addressed	1.28 max (toilets) and 0.5 max (urinals) ³ IF prescriptive path is chosen (per 4.303.1) – Jan 1, 2011
New multi-family residential	All fixtures installed after Jan 1, 2014 must be HETs or HEUs ³	Not addressed	1.28 max (toilets) ³ and 0.5 max (urinals) IF prescriptive path is chosen (per 5.303.2) – Jan 1, 2011
New commercial		Not addressed	1.28 max (toilets) ³ and 0.5 max (urinals) IF prescriptive path is chosen (per 5.303.2) – Jan 1, 2011

¹ Existing as of the effective date of the provision

² Alterations or improvements

³ Toilet effective flush rate of 1.28 gallons, where dual flush toilets are measured as the average of one full flush and two reduced flushes. Urinal flush rate of 0.5 gallons.

⁴ SB407 applies only where building additions increase total building size by more than 10 percent OR for building alterations or improvements, where the total construction cost estimated in the building permit exceeds \$150,000

⁵ Places continuing responsibility on the owner of rental property to guarantee that the toilet "shall be operating at the manufacturer's rated water consumption at the time that the tenant takes possession."

Proposition 26: Voters' Measure to Draw the Line between Taxes and Fees Provides Uncertainty for Local Governments

By Trisha Ortiz and Robin D. Harris

With the November 2, 2010 approval of Proposition 26, California's local governments are left wondering how this latest limit on local fees will impact their operations.

Background

In 1996, the voters approved Proposition 218, adding Articles XIIC and XIID to the California Constitution. Article XIIC provides that local governments may not impose, extend or increase general taxes unless a majority of the voters approve, or approve special taxes unless two-thirds of the voters approve. Many of Article XIIC's provisions overlap with similar limitations contained in Proposition 13, which the voters approved in 1978, and Proposition 62, which the voters approved in 1984.

Article XIIC defines a general tax as any tax imposed for general governmental purposes, and defines a special tax as any tax imposed for specific purposes including taxes deposited into the general fund. Article XIID imposes substantive and procedural requirements on assessments and property-related fees. Generally, assessments must be approved in a property owner balloting proceeding and certain property-related fees must be approved by a vote of the property owners or registered voters. Article XIIC or XIID do not govern regulatory fees.

According to the authors of Proposition 26, despite passage of Proposition 218, and its predecessor, Proposition 13, local governments "have disguised new taxes as 'fees' in order to extract even more revenues from California taxpayers without having to abide by ... constitutional voting requirements." Further, the authors contend that "fees couched as 'regulatory' but which exceed the reasonable costs of actual regulation or are simply imposed to raise revenue for a new program and are not part of any licensing or permitting program" are actually taxes. *See*, Proposition 26, Section 1(c), Findings and Declaration of Purpose.

Discussion

Proposition 26 amends Article XIIC by adding an expansive definition of "tax," which currently is not defined in the California Constitution. Now, a "tax" is any levy, charge, or exaction of any kind imposed by a local government, except the following:

1. A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

2. A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
3. A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
4. A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
5. A fine, penalty, or other monetary charge imposed as a result of a violation of law.
6. A charge imposed as a condition of property development.
7. Assessments and property-related fees imposed in accordance with the provisions of Proposition 218.

Under Proposition 26, local government fees that fund programs with broad public benefit constitute a "tax." According to the Legislative Analyst's Office, the measure's definition of "tax" includes fees that fund programs to mitigate public health, social, and environmental problems. Examples include public information and education programs and public nuisance abatement programs commonly associated with the operation of retail alcohol and tobacco businesses, bar and restaurant operations, and solid waste services. If fees for these programs are deemed "taxes," a local government would need to obtain two-thirds voter approval to enact or increase the fees.

Fees that Proposition 26 exempts from the definition of a "tax" include development impact fees, facility and equipment rentals, and administrative fines. With respect to charges for specific benefits, privileges, services, or products, examples of exempt fees include fees for park and recreation programs, street closure permits, and utility fees that are not subject to Proposition 218. However, Proposition 26 only exempts such fees if they do not exceed the cost of the benefits, privileges, services, and products provided and the benefits, privileges, services are not provided to persons not charged.

Proposition 26 also exempts benefit assessments and property-related fees, such as fees for solid waste, storm drains, sewers, or water, levied in accordance with Proposition 218. While assessments or property-related fees that do not comply with Proposition 218 would be deemed to be special taxes that require a two-thirds vote, this is not a substantive change in the law. Under existing law, a benefit assessment or property-related fee that does not comply with Proposition 218 (for example, a fee which exceeds the cost of providing the service) is vulnerable to a successful legal challenge under Proposition 218.

Proposition 26 does not provide an effective date for the new definition of taxes imposed by local governments. However, the Legislative Analyst's Office opined that local fees in existence on November 2, 2010 would not be affected by the passage of the measure.

Proposition 26 leaves many open questions because local governments charge a wide variety of fees to serve their local communities and some fees might not fit squarely within the definition of "tax" or one of the seven exemptions to the definition. For example, a solid waste franchise fee

paid pursuant to a negotiated agreement might not be subject to Proposition 26 at all. Alternatively, it might be an exempt fee for the use of property or an exempt fee for a benefit conferred. Classified as the former, a local government may charge whatever the franchisee is willing to pay. Classified as the latter, however, a local government must limit the fee to the cost of providing the franchise. This is just one example of the uncertainties created by Proposition 26. Until the courts or legislature provide guidance, local governments are advised to review all of their revenue measures carefully in light of Proposition 26's new limitations.

FOR ADVICE FROM RW&G ON PROPOSITION 26, PLEASE CONTACT TRISHA ORTIZ, ROBIN D. HARRIS, OR ANY OF THE ATTORNEYS IN THE FIRM'S PUBLIC FINANCE DEPARTMENT.