

TO: SOLID WASTE COMMITTEE
 FROM: MICHAEL S. LEBRUN *MSL*
 GENERAL MANAGER
 DATE: APRIL 29, 2013

AGENDA ITEM
2
APRIL 29, 2013

CONSIDER SOLID WASTE ENTERPRISE FUND USE

ITEM

Consider Solid Waste Enterprise Fund Use. [PROVIDE DIRECTION TO STAFF]

BACKGROUND

The District provides administrative services for solid waste services to our customers under a 2001 franchise agreement with South County Sanitary Services (Garbage Company). Under the terms of the agreement, the District is paid a franchise fee. Below is a summary of solid waste rate increases and franchise fee since adoption in 2001.

| | |
|----------------------|---|
| Resolution 2001-777 | Board approved Franchise Agreement – Franchise Fee 10% |
| Ordinance 2005-104 | Board approved mandatory collection |
| Resolution 2007-1045 | Board approved reduction in Franchise Fee from 10% to 7.3% in lieu of a 3% rate increase to customers |
| August 2011 | South County Sanitary Services (SCSS) requested a 5% rate increase. The Board agreed to pay SCSS monthly to offset the rate increase. |
| Nov 2011 to Feb 2013 | NCSD paid SCSS \$95,547 for deferral of rate increase. |
| December 2012 | SCSS requested a 3.2% rate increase |
| Resolution 2013-1288 | Board approved 3.2% rate increase and restored Franchise Fee to 10% (net rate increase of 11.6%) |

In 2010, the Board of Directors considered potential uses of solid waste funds (Staff Report and Minutes attached). The only action taken was to adopt Resolution 2011-1205, *Authorizing the Expenditure of Solid Waste Funds to Abate Solid Waste Entering Wastewater Treatment Facilities* (attached).

The FY 2013-2014 budget includes the following:

| | | |
|--|------------|-----------|
| Estimated Beginning Fund Balance, July 1, 2013 | | \$315,000 |
| Franchise Fee Revenues | \$137,900 | |
| Solid Waste Program (TO BE DETERMINED) | (\$75,000) | |
| General and Administrative | (\$23,985) | |
| Net Results from Operations | | \$39,915 |
| Estimated Ending Fund Balance, June 30, 2014 | | \$354,915 |
| | | |
| Solid Waste Fund Cash Reserve Goal | | \$115,000 |

FISCAL IMPACT

The proposed FY 2012-2013 Budget includes a proposed \$75,000 expenditure on Solid Waste Programs. This figure is a "place-holder" for solid waste program expenditures and can be amended by the Board of Directors. Current solid waste expenditures include servicing public trash cans in Olde Towne (\$2000 annually) and a grant program with the Chamber of Commerce to provide general trash pickup in the community (\$16,000 annually). Additional expenditures are to be determined by the Board of Directors.

In the past, District Legal Counsel has provided the Board of Directors his opinion that franchise fees must be used for solid waste purposes. These funds cannot be diverted for other uses.

STRATEGIC PLAN

Strategic Plan Goal 7.A.1. – Promote recycling to ensure reduction target compliance
Strategic Plan Goal 7.A.2. – Provide Additional Solid Waste Services

RECOMMENDATION

Provide direction to Staff.

ATTACHMENTS

- A. Staff Report and Board Minutes from October 13, 2010 Board Meeting to Consider Recommendation of the Finance Committee to Expend Solid Waste Funds.
- B. District Legal Counsel Opinion on using solid waste revenues to abate solid waste discharged into the sewer collection systems
- C. Resolution 2011-1205 approving use of solid waste funds

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AGENDA ITEM

E-4

DATE OF MEETING

AGENDA ITEM



DATE OF MEETING

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11

AGENDA ITEM

APRIL 29, 2013

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ITEM 2

AGENDA ITEM

ATTACHMENT A

AGENDA ITEM

AGENDA ITEM

AGENDA ITEM

TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO
GENERAL MANAGER



AGENDA ITEM E-4

DATE: OCTOBER 15, 2010

OCTOBER 20, 2010

CONSIDER RECOMMENDATION OF THE FINANCE COMMITTEE TO EXPEND SOLID WASTE FUNDS [APPROVE COMMITTEE RECOMMENDATION]

ITEM

Consider recommendation of the finance committee to expend solid waste funds [APPROVE COMMITTEE RECOMMENDATION]

BACKGROUND

NCSD holds a franchise agreement, with South Coast Sanitation (SCC) and Integrated Waste Management Agency (IWMA), for curbside collection of NCSD customers' solid waste and recycling. Over the years, funds have accumulated in the Solid Waste Franchise Fund. The NCSD Board of Directors requested a discussion of options for expending some of the accumulated funds.

This issue was presented and discussed at the 8/20/2010 Solid Waste Franchise Discussion Group, at which time the initial selection process began, and some options for expenditure were eliminated, and request for further information was requested for some options. Refer to the attached *Solid-Waste Franchise Fund Expenditure Options – Updated, and 2010 – 2011 Expenditures*.

In response to question from both the Board and the Committee, please find attached a *Memorandum* from District Legal Counsel regarding us of solid waste revenues.

RECOMMENDATIONS

Staff recommends that your honorable Board accept the Finance Committee's recommendation and direct Staff to implement the proposed expenditures.

ATTACHMENTS

- *Solid-Waste Franchise Fund Expenditure Options – Updated.*
- *2010 – 2011 Expenditures Table*
- *Memo, Jon Seitz, District Counsel*

| Solid-Waste Franchise Fund Expenditure Options | | | \$656,685 |
|--|---|---|---------------|
| Item# | Potential Projects | Estimated Cost | |
| 1 | Provide credits on customers' bills | Residential: \$75,148.33/month Commercial: \$26,590.40/month | \$0 |
| 2 | Solid-waste and recycle bins cleaning service | See attached proposal. | \$0 |
| 3 | Extra recycle bin(s) to customers: Indoor recycle bin w/ recycling brochure, recycling sticker, a household hazardous waste flyer and a letter from the NCSD inside each one. | \$8/bin = \$32,000 \$0.63/bin delivery = \$2500 | \$0 |
| 4 | Recycling outreach coordinator to work in Nipomo to help businesses and apartments implement or improve their recycling program. | Assuming up to 400 hours at \$35 per hour = \$14,000. | \$0 |
| 5 | Paying for large objects at Spring/Fall Clean-up events | Pay for the collection of large objects in the Spring/Fall Clean-Up Events. There were 95 "extra charges" (large items to be picked up) in the Spring 2010 clean-up event. The total charges were \$1050, with an average charge of \$11.05 each. Per SCS, this is typical for Fall/Spring Clean-Up Events RECOMMENDED with modification of a total annual budget of \$2500, or \$1250 per each twice-yearly event. | \$2500 |
| 6 | Extended HH waste collection facility expanded hours | Extending operation 2 hrs on Saturday (9-3): \$35/hr, \$75/day, \$3640/yr (\$35 is the hourly rate for the on-site staff person, 4-hour minimum. In addition might need to change the permit if we open during the week; cost for that is up to \$1000. | \$0 |
| 7 | Additional advertising of HHW Facility | Direct mail: \$0.75 ea, \$3000 for NCSD customers, \$7500 for Mesa-wide mailing. | \$0 |
| 8 | NCSD mailing, post cards: Clean-up days, Xmas tree pick-up. | Estimated to be \$1300/ mailing x 3 = \$1980/yr | \$0 |
| 9 | Trash and Recycle containers at "Miller Park" | Estimated to be \$10,000/yr | \$0 |
| 10 | Nipomo Creek Day (County-Wide) | Estimated to be \$600/yr RECOMMENDED | \$600 |

| | | | |
|---|--|--|-----------------|
| 11 | Nipomo Creek Clean-Up Day (NCS D separate event) | | |
| 12 | Nipomo Mesa Chipping Event | 2008: \$13,412* – 133,628 CuFt – 121.5 tons – 172 participants 2009: \$12,438*- 179,841 CuFt – 160 tons - 238 participants RECOMMENDED that this option be considered by the Board of Directors once the NCS D percentage of participants is known. ** Committee Recommendation: \$5000 - \$10,000/year | \$6000 |
| 13 | Grant program at Nipomo High School for community clean-up | Estimated to be \$5000/yr | \$0 |
| 14 | Installation of trash rack/bar screen at S WWTF. | \$600,320 (\$414,155 available based on 59% customer breakdown of WW T customers). *** RECOMMENDED | \$414,155 |
| 15 | Installation of trash rack/bar screen at Blacklake WWTF. | \$90,000 (\$91,255 available, based on percentage customer breakdown of WW T customers) *** RECOMMENDED | \$90,000 |
| 16 | Street sweeping | Exhibit B of Contract: "\$20/curb-mile actually swept;" NCS D Payment: \$1832/mo. RECOMMENDED | \$21,984 |
| 17 | Reserves | | \$48,000 |
| BALANCE AFTER RECOMMENDED EXPENDITURES | | | \$73,446 |

*Fire Safe Council (Invoiced Costs)

***Charge for disposal depends on volume.

| ** 2008 Chipping Event Summary | | | | | | | | |
|---|---------------|-------------------------|------------|-------------|-------|---|-----------|-------------------|
| | #Participants | % of Total Participants | Cubic Feet | Cubic Yards | Tons | % of Total Ft ³ , Yd ³ , Tons | Cost | Cost/ Participant |
| TOTAL | 172 | 100% | 133,628.5 | 4,949.2 | 121.5 | 100.0% | \$13,412* | \$78 |
| NCS D | 64 | 37% | 44,902.5 | 1,663.1 | 40.8 | 33.6% | \$4,507* | \$70 |
| OTHER | 108 | 63% | 86,621.0 | 3,208.2 | 78.7 | 64.8% | \$8,694* | \$80 |
| Estimate for NCS D 2009: (238 attendees) x (NCS D 37%) x (\$70 each)= \$6164 | | | | | | | | |

2010 – 2011 Expenditures

Current amount in Franchise Fee Fund:

\$656,865

One-Time

Paying for pick-up of large objects \$2,500

Installation of trash rack/bar at Southland WWTF \$414,155

Total cost \$600,320

59% of sewer customers connected to Southland.

Installation of trash rack/bar at Blacklake Village WWTF \$90,000

Total Cost \$90,000

13% of sewer customers connected to Blacklake (\$91,255)

Total \$506,655

On-going (\$89,000 est. yearly)

Pay for the collection of large objects \$2,500

Nipomo Creek Clean-Up Day \$600

Nipomo Mesa Chipping Event (\$5k to \$10k) \$10,000

Resume street sweeping throughout the District \$21,984

Total \$35,216

| | | | <i>One-Time</i> | | <i>On-Going</i> | |
|------------------|---------|---|-----------------|---|-----------------|-----------|
| 2010-2011 | 656,865 | - | 506,655 | - | 35,084 | = 115,126 |

K. ADJOURN TO CLOSED SESSION

President Harrison adjourned to Closed Session at 12:05 p.m.

02:54:02

L. OPEN SESSION

ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

The Board came back into Open Session at 1:08 p.m.

Jon Seitz, District Legal Counsel, announced that the Board heard an update on items one thru three listed above for closed session, but took no reportable action, however, item four listed above in closed session will resume after the regular agenda. There was no public comment.

02:55:47

E-4) CONSIDER RECOMMENDATION OF THE FINANCE COMMITTEE TO EXPEND SOLID WASTE FUNDS

Don Spagnolo, General Manager, introduced the item. Celeste Whitlow, Water Conservationist, reviewed the report as presented in the Board packet. Jon Seitz, District Legal Counsel, General Manager Spagnolo, and Mrs. Whitlow answered questions from the Board. There was no public comment.

Upon the motion of Director Winn and seconded by Director Vierheilig the Board members present voted to approve the 2010-2011 Solid-Waste Expenditures, with \$600 as a place holder for future Creek Days until that is amended and with a note to explore ways that the franchise fees could clearly benefit septic tank users.

Vote 3-1.

| YES VOTES | NO VOTES | ABSENT |
|-------------------------------------|-------------------|-----------------|
| Directors Winn, Vierheilig, and Eby | Director Harrison | Director Nelson |

04:14:27

E-5) CONSIDER FORTH QUARTER REVIEW OF STRATEGIC PLAN REVIEW

Don Spagnolo, General Manager, reviewed the report as presented in the Board packet and took suggestions from the Board. The Board thanked Mr. Spagnolo for the report and directed Staff to continue with this process and fill in the blanks. There was no public comment.

04:28:58

F. GENERAL MANAGER'S REPORT

Don Spagnolo, General Manager, reviewed the Manager's Report presented in the Board packet. Mr. Spagnolo answered questions from the Board. There was no public comment.

The following Board members made the following recommendations during this item:

Director Winn

- ◊ We need to get the process going again for the County to institute an In-Lieu fee for Supplemental Water.
- ◊ The County is continuing to process a General Plan Amendment for the Jack's Helping Hands Project and we want them to succeed without scuttling County Ordinance §3090.
- ◊ Look into the water thefts at Maria Vista.

MEMORANDUM
TO: [Illegible]
FROM: [Illegible]

MEMORANDUM
TO: [Illegible]
FROM: [Illegible]

DATE: [Illegible]

MEMORANDUM

APRIL 29, 2013

ITEM 2

ATTACHMENT B

JON S SEITZ
MICHAEL W SETIZ

SHIPSEY & SEITZ, INC.


A LAW CORPORATION
1066 PALM STREET
POST OFFICE BOX 953
SAN LUIS OBISPO, CALIFORNIA
(805) 543-7272 FAX (805) 543-7281
JON S SEITZ
District Legal Counsel
Nipomo Community Services District

JOHN L SEITZ
(1924-1984)

GERALD W SHIPSEY
(RETIRED)

MEMORANDUM

To: NCSD Board of Directors
From: Jon S. Seitz, District Legal Counsel
Date: September 13, 2010
Subject: Use of Solid Waste Revenues



ISSUE

Can the District use solid waste revenues to abate solid waste discharged into the sewer collection systems?

SHORT ANSWER

The discharge of solid waste into the District's collection system is a violation of the District's Solid Waste Regulations and Sewer Regulations and constitutes a nuisance. The District Board has the discretion to use either solid waste or sewer revenues, or a combination of the same, to abate the nuisance. The District should only use solid waste revenues collected within the sewer zones (Town division/Blacklake division) in the abatement effort.

ANALYSIS

Residents and commercial business within the Town Sewer Zone and Blacklake Sewer Zone discharge "solid waste and rubbish" (within the meaning of § 7.01.010 of the District Code) into the sewer collection systems. The solid waste generally consists of rags, plastics and personal care products. The discharge of solid waste, if unabated, adversely impacts wastewater treatment processes at the District's Southland and Blacklake Wastewater Treatment Plants as described below:

- Materials such as rags and other solid waste refuse can clog pumps resulting in influent pump station malfunctions or in the worst case, overflows. All overflows must be reported to the State and Regional Water Quality Control Boards and the District can be fined for these overflows.
- In addition, rags and other solid waste refuse can also clog aerators to the point that the motor overheats and stops running resulting in lower oxygen levels

in the treatment ponds. Lower oxygen levels lead to lower treatment efficiencies and can impact the ability to meet permit discharge water quality limits. The District can be fined for exceeding the permit water quality limits.

- Materials such as plastic and other refuse from personal care products can end up in the biosolids so the biosolids need to be disposed of at a landfill instead of being beneficially reused, for example, in compost.
- All of the operational issues noted above increase the District's operating costs, maintenance costs and equipment replacement costs. Operating and maintenance costs are increased due to emergency equipment repairs, overtime response to equipment failures and landfill disposal of biosolids. Equipment replacement costs are increased due to premature failure of equipment.

Pursuant to District Code §§ 7.04.010 and 7.04.030 the owner(s)/occupant(s) of property are responsible for the safe and sanitary storage of solid waste. Solid waste is to be disposed of by separating the solid waste by garbage, recyclables and green waste and disposed of through weekly curbside collection and not by use of the District's sewer collection system. See additionally District Code §§ 4.08.130 (D) and (E) which prohibit the discharge of solid waste into the District's sewer collection system.

The adverse impacts of solid waste at the treatment plants, including the potential to trigger violations of the District's Waste Discharge Permit, constitute a public nuisance within the meaning of California Civil Code which provides:

§ 3480. Public nuisance A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon an individual may be unequal.

Further, Section 7.28.030 provides in relevant part that "violation of District solid waste regulations shall be deemed a public nuisance and may be abated as such",....

The discharge of solid waste into the District's sewer collection system constitutes a violation of Title 7 (Solid Waste Regulations) and Title 4 (Sewer Regulations). Therefore, the District has the discretion to use either sewer system revenues or solid waste revenues or a combination of the same to abate (remove, store and dispose of) the solid waste discharged into the District's sewer collection systems.

To the extent the District elects to use the solid waste revenues in the abatement, then the solid waste revenues generated within the specific sewer zones should be used in the abatement process.

END OF MEMORANDUM

APRIL 29, 2013

ITEM 2

ATTACHMENT C

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2011-1205**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
AUTHORIZING THE EXPENDITURE OF SOLID WASTE FUNDS
TO ABATE SOLID WASTE ENTERING
WASTEWATER TREATMENT FACILITIES**

WHEREAS, on October 13, 2010, the Nipomo Community Services District (District) Board of Directors reviewed the recommendation of the Finance Committee for the expenditure of solid waste revenues, and

WHEREAS, at the October 13, 2010 Board meeting the Board considered the staff report, staff presentation and public comment and thereon approved the Finance Committee's recommendation to:

1. Allocate \$415,155 of solid waste revenues for the installation of a trash rack/bar screen at the Southland Wastewater Treatment Facility to abate solid waste from entering the Treatment Facility; and
2. Allocate \$90,000 of solid waste revenues for the installation of a trash rack/bar screen BlackLake Wastewater Treatment Facility to abate solid waste from entering the Treatment Facility.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:

1. The above recitals and referenced staff reports are incorporated herein by this reference.
2. The transfer of \$415,155 from the solid waste fund to the Town Division Sewer Fund to be used exclusively for the purpose of the installation of a trash rack/bar screen at the Southland Wastewater Treatment Facility is hereby approved.
3. The transfer of \$90,000 from the solid waste fund to the Black Lake Sewer Fund to be used exclusively for the purpose of the installation of a trash rack/bar screen at the BlackLake Wastewater Treatment Facility is hereby approved.
4. There remains adequate revenues in the excess of \$180,000 in the Solid Waste Fund to address contingencies and budgeted expenditures.

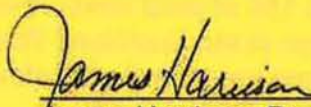
NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2011-1205

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
AUTHORIZING THE EXPENDITURE OF SOLID WASTE FUNDS
TO ABATE SOLID WASTE ENTERING
WASTEWATER TREATMENT FACILITIES

On the motion of Director Winn, seconded by Director Vierheilig, and on the following roll call vote, to wit:


AYES: Directors Winn, Vierheilig, Eby, Gaddis, and Harrison
NOES: None
ABSENT: None
CONFLICTS: None

THIS RESOLUTION IS PASSED AND ADOPTED by the Board of Directors of the Nipomo Community Services District this 12th day of January, 2011.



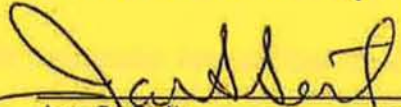
James Harrison, President
Nipomo Community Services District

ATTEST:



Michael LeBrun, Interim General Manager
and Secretary to the Board

APPROVED AS TO FORM:



Jon S. Seitz
District Legal Counsel