

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA
and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 12/06/2011 by the following vote:

AYES: ☐

NOES: ☐

ABSENT: ☐

ABSTAIN: ☐

RECUSE: ☐



Resolution No. 2011/465

IN THE MATTER OF a resolution initiating a proceeding to obtain approval of the Contra Costa County Flood Control and Water Conservation District's Proposed 2012 Community Clean Water Initiative. (CAL. CONST., ART. XIII D, §6)

WHEREAS the Contra Costa County Flood Control and Water Conservation District ("District") is initiating the 2012 Community Clean Water Initiative on behalf of the Contra Costa Clean Water Program; and,

WHEREAS, the Contra Costa Clean Water Program ("Program") is composed of twenty-one public agencies including Contra Costa County, all nineteen of its incorporated cities and towns, and the Contra Costa County Flood Control and Water Conservation District, all of which are joint permittees under National Pollutant Discharge Elimination System ("NPDES") permits issued by the San Francisco Bay and Central Valley Regional Water Quality Control Boards; and

WHEREAS, NPDES stormwater permits require public agency permittees to take certain prescribed measures to keep pollutants from entering storm drain systems and from being discharged into other bodies of water, such as local creeks, reservoirs, lakes, and the Delta and the Bay; and

WHEREAS, if these Federal and State requirements are not satisfied, the joint permittees may be subject to fines and/or third-party lawsuits; and

WHEREAS, the Program's primary purpose is to provide clean water and pollution control services and facilities, and implement federal and state mandated regulations for reducing pollution and harmful or toxic materials in water; and

WHEREAS, each year, tons of harmful and dangerous pollutants, bacteria and trash are carried through our neighborhoods, into our local creeks, reservoirs, lakes, and the Delta and the Bay; and as water drains from streets, parking lots, and lawns, pollutants are picked up and enter the storm drainage system through thousands of catch basins throughout Contra Costa County; and from there, this polluted water flows through a massive system of pipes, open channels and creeks into the Delta and the Bay; and

WHEREAS, these pollutants include trash such as cigarette butts, plastic, fast-food wrappers, and bottles; toxins such as motor oil, PCBs, antifreeze, fertilizer, and pesticides; microbes such as dangerous bacteria, viruses, sewage and pet waste; and heavy metals such as lead, mercury, arsenic, etc.; and

WHEREAS, the Program and joint permittees do not have adequate funding to pay for the services necessary to comply with requirements of the above-referenced NPDES permits and to provide the mandated level of clean water and pollution control services and facilities ("Services").

NOW, THEREFORE, the Contra Costa County Board of Supervisors ("Board") acting as the governing board for the Contra Costa County Flood Control and Water Conservation District, does hereby resolve as follows:

SECTION 1. Intention to Seek Approval of a Property Related Fee. The District intends to seek property owner approval of a proposed property related fee to fund the Services ("Clean Water fee"), pursuant to Article XIII D, section 6 of the California Constitution. The Clean Water fee measure will be called the "2012 Community Clean Water Initiative."

SECTION 2. Fee Report. SCI Consulting Group has prepared and submitted to the District a Fee Report concerning the proposed Clean Water fee. The Fee Report has been made, filed with the Program and duly considered by the Program and is hereby deemed sufficient and approved. The Fee Report shall stand as the Fee Report for all subsequent proceedings under and pursuant to this resolution. Reference is hereby made to the Fee Report for the following: (a) a description of the Services; (b) the identification of the parcels upon which a Clean Water fee is proposed; (c) the proportional cost of the Services attributable to each parcel; (d) the amount of the Clean Water fee proposed for each parcel; and (e) the basis upon which the amount of the

proposed Clean Water fee was calculated.

SECTION 3. Total Amount of Clean Water Fee. The proposed Clean Water fee, if approved, would collect approximately \$8,758,148, County-wide.

SECTION 4. Clean Water Services. The proposed 2012 Community Clean Water Initiative will protect local sources of clean drinking water from contamination and pollution; remove harmful and dangerous pollutants, toxic chemicals, and potentially infectious bacteria and viruses from local creeks, reservoirs, lakes, and the Delta and the Bay; capture, clean and use rainwater to irrigate local parks and landscaping; prevent illegal or toxic discharges from industrial and commercial properties; keep trash and pollution off our shorelines and out of our local creeks, reservoirs, lakes, and the Delta and the Bay; and provide other clean water and pollution control services and facilities required by Federal and State regulations.

SECTION 5. Public Hearing. A noticed public hearing shall be held before this Board at the Board of Supervisors Chambers, Room 107, at 651 Pine Street in Martinez, California, on February 7, 2012, at 10:00 a.m. for the purpose of conducting a hearing and to consider all protests of property owners regarding the proposed Clean Water fee and this Board's determination whether the public interest, convenience and necessity require the Services.

SECTION 6. Notice of Public Hearing. The District is hereby directed to cause notice of the hearing ordered hereof ("Notice") to be given in accordance with law by mailing, postage prepaid in the United States mail, and such Notice shall be deemed to have been given when so deposited in the mail. The Notice shall be mailed to all record owners, who shall be those persons whose names and addresses appear on the last equalized secured property tax assessment roll for the County of Contra Costa, or in the case of any public entity, the representative of such public entity at the address thereof known to the Clerk of the Board or SCI Consulting Group. The Notice shall be mailed not less than forty-five (45) days before the date of the public hearing.

SECTION 7. Majority Protest. If written protests against the proposed Clean Water fee are presented to the Board by a majority of owners of the identified parcels before the end of the public hearing, the Clean Water fee shall not be imposed. Otherwise, this Board may authorize the District to proceed with a property owner ballot proceeding.

SECTION 8. Description of the Proposed Clean Water Fee. Information regarding the Clean Water fee, including but not limited to the amount of the Clean Water Fee proposed to be imposed upon each parcel, the basis upon which the amount of the proposed Clean Water fee was calculated, the reason for the Clean Water fee, the duration of the Clean Water fee, and other elements of the Clean Water fee shall be described in the Fee Report, Notice of Public Hearing, Ballot Guide and/or Ballot.

SECTION 9. Annual Fee Report. In each subsequent year in which the Clean Water fee may be levied, an updated annual Fee Report, including a proposed budget and Clean Water fee rate, shall be prepared. The updated annual Fee Report shall serve as the basis for the continuation of the Clean Water fee and for any proposed cost-of-living adjustment. The updated annual Fee Report shall be presented to the Board each year.

SECTION 10. Fiscal Controls Including Clean Water Fee Expiration. All revenues received from the proposed Clean Water fee will be spent only to fund the Services. Clean Water fee revenues received will be used in the city, town or unincorporated area from which the revenues were collected. The Clean Water fee will expire after ten years.

SECTION 11. Cost-of-Living Adjustment Mechanism. If approved by property owners, the Clean Water fee shall be imposed annually. The Clean Water fee may be adjusted in future years by an amount equal to the annual change in the Consumer Price Index for All Urban Consumers in the San Francisco Bay Area, not to exceed 2% (two percent) per year without a further vote or balloting process. Under no circumstances, can the cost of living adjustment be put in place without the proposed modification of the Clean Water fee being described in the annual Fee Report and placed on the agenda of this Board's regular meeting with an opportunity for public input and discussion.

SECTION 12. Mandatory Annual Audits. An annual review shall be performed by the County Auditor to ensure accountability and proper disbursement of the proceeds in accordance with the objectives stated herein.

SECTION 13. Independent Citizens' Oversight Committee. The District shall create an Independent Citizens' Oversight Committee ("Committee") to review the Annual Audit, the annual Fee Report and other records of how revenue generated by this Clean Water fee has been spent in order to ensure that such revenues have been spent only for the Services and have been spent properly. The Committee will be comprised of seven members of the public who own property subject to the Clean Water fee and will be comprised of citizens representing the broad perspective of Contra Costa County. The Committee will not have independent legal authority. The Committee shall be deemed to be subject to the Ralph M. Brown Act (Gov. Code, § 54951 et seq.) and shall comply with all requirements of the Act. The District shall provide necessary administrative support to the Committee as shall be consistent with the Committee's purposes. To carry out its stated purposes, the Committee shall perform the following duties:

(a) Inform the Public: The Committee shall inform the public and the Board concerning the expenditure of Clean Water fee revenues.

(b) Review Expenditures: The Committee shall review expenditure reports and relevant documents produced by the District to ensure that Clean Water fee revenue was expended only for the Services; and

(c) Annual Committee Report and Presentation: The Committee shall present to the Board, in public session, at a regularly scheduled meeting, an Annual Committee Report.

SECTION 14. Terms of Use of Revenues. All Clean Water fee revenues received by the District will be used to pay the costs of the Services.

SECTION 15. Appeals. If a property owner disagrees with the calculation of his or her Clean Water fee, based on the property type, parcel area or impervious area assigned to the property, then the property owner may appeal the Clean Water fee calculation as follows:

(a) The property owner must provide documentation to District staff or its designee, including, but not limited to:

(1) The name, phone number and mailing address of the property owner.

(2) The Assessor's Parcel Number of the property subject to the Clean Water fee review.

(3) The reason why the property owner thinks the Clean Water fee should be revised.

(b) District staff or its designee will contact the property owner if additional information is required.

(c) After District staff or its designee has determined that sufficient documentation and information has been provided by the property owner, District staff or its designee will review the documentation and determine whether the Clean Water fee amount will be revised. Such determination will be made within four weeks from the date sufficient documentation was provided by the property owner.

(d) If District staff or its designee determines that the Clean Water fee amount should be revised, District staff will revise the Clean Water fee amount.

(e) If District staff or its designee determines that the Clean Water fee amount should not be revised, the property owner may appeal the determination to the District Chief Engineer. The District Chief Engineer will make his or her decision within four weeks of the appeal. Such decision will be final.

(f) Any appeal under this section is limited to correction of a Clean Water fee during the current fiscal year and no more than the previous past two fiscal years. SECTION 16. Special Account. The District shall deposit into a special account(s) all Clean Water fee revenues collected by the County and shall appropriate and expend such funds only for the purposes authorized by this resolution.

SECTION 17. Terms of Clean Water Fee Imposition. If approved by property owners, the Clean Water fee shall be imposed for a term not to exceed ten (10) years from fiscal year 2012-13 through, and including fiscal year 2021-22.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

Contact: Mitch Avalon, (925) 313-2204

ATTESTED: December 6, 2011

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

cc: David Twa, Tom Geiger, Mitch Avalon, Mike Carlson, Tom Dalziel