

**COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA  
BOARD OF SUPERVISORS  
ACTING as the GOVERNING BOARD for the  
CONTRA COSTA COUNTY FLOOD CONTROL and WATER CONSERVATION  
DISTRICT**

RESOLUTION NO. 2011/467

**A RESOLUTION ADOPTING  
BALLOT PROCEEDING PROCEDURES  
FOR THE CONTRA COSTA COUNTY FLOOD CONTROL and WATER  
CONSERVATION DISTRICT'S PROPOSED  
2012 COMMUNITY CLEAN WATER INITIATIVE (CAL. CONST., ART. XIII D, § 6)**

**WHEREAS**, Proposition 218 was adopted on November 6, 1996, adding Articles XIII C and XIII D to the California Constitution; and

**WHEREAS**, Article XIII D of the California Constitution imposes certain procedural and substantive requirements relating to property related fees; and

**WHEREAS**, some of the requirements of Article XIII D of the California Constitution may require, or have required, judicial interpretation and/or legislative implementation; and

**WHEREAS**, the Board of Supervisors ("Board") of Contra Costa County, acting as the governing board of the Contra Costa County Flood Control and Water Conservation District ("District"), finds it to be in the best interest of the District to record its decisions regarding implementation of the provisions of Article XIII D of the California Constitution relating to property related fees and to provide the community with a guide to those decisions and how they were reached; and

**WHEREAS**, barring a protest by a majority of affected property owners, the District intends to conduct a ballot proceeding to obtain approval of a proposed property related fee, called the "2012 Community Clean Water Initiative" ("Clean Water Fee") consistent with the procedures established in Article XIII D of the California Constitution. If approved, the Clean Water Fee would raise revenue to pay for services provided by the District, County and 19 cities and towns that are necessary to comply with requirements of current joint National Pollutant Discharge Elimination System (NPDES) stormwater permits issued to those public entities by the San Francisco Bay and Central Valley Regional Water Quality Control Boards. NPDES stormwater permits require the public agency permittees to take certain prescribed measures to keep pollutants from entering storm drain systems and being discharged into other bodies of water, such as our local creeks, reservoirs, lakes, and the Delta and the Bay; and

**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.

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

**SECTION 1. Statement of Legislative Intent.** In adopting this resolution, it is the Board's intent to adopt property related fee ballot proceedings that are consistent and in compliance with Article XIII D of the California Constitution. It is not the intent of the Board to vary in any way from the requirements of either the California Constitution or the laws of the State of California.

**SECTION 2. Definition of Property Related Fee.** Article XIII D of the California Constitution defines "fee" as "any levy other than an ad valorem tax, a special fee, tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user, or charge for a property related service."

**SECTION 3. Property Related Fee Ballot Proceeding.** Article XIII D of the California Constitution states "an agency may adopt procedures similar to those for increases in assessments in the conduct of elections" for a property related fee. The following procedures shall be used to conduct a ballot proceeding to seek property owner approval of the proposed Clean Water Fee:

**A. Property Related Fee Ballots:** The following guidelines shall apply to the property related fee ballots:

1. The record owner(s) of each parcel to be subject to the Clean Water Fee shall be determined from the last equalized property tax roll.
2. The ballot shall be designed in such a way that, once sealed, its contents are concealed.
3. The ballot and ballot guide shall be sent at least forty-five (45) days prior to the date set for the close of balloting on the proposed Clean Water Fee;
4. The ballot and/or ballot guide provided by this section shall contain the following information:
  - a. The total amount to be charged to parcels County-wide;
  - b. The amount to be charged to the owner's particular parcel;
  - c. The duration of Clean Water Fee payments;
  - d. The reason for the proposed Clean Water Fee;

- e. The basis upon which the amount of the proposed Clean Water Fee was calculated;
  - f. A summary of the procedures for the completion, return and tabulation of the ballots;
  - g. A statement that the failure to receive a majority of ballots in support of the proposed Fee will result in the Fee not being imposed; and
  - h. Failure of any person to receive a ballot(s) shall not invalidate the proceedings.
5. All ballots must be returned either by mail or by hand delivery not later than the date for return of ballots stated on the ballot described in this section. Mailed ballots must be returned to the entity delegated to tabulate the ballots (the "Tabulator"), at the address shown on the ballot and pre-printed on the ballot return envelope. Hand delivered ballots must be returned to the Clerk of the Board of Supervisors of Contra Costa County at 651 Pine Street, 1st Floor, Room 106, Martinez, California.
6. Each ballot must be signed under penalty of perjury. In the event that more than one of the record owners of a parcel submits a Clean Water Fee ballot, the amount of the proposed Clean Water Fee to be imposed upon the parcel shall be allocated to each ballot submitted in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the District by documentation provided by the record owners.
7. If a parcel has multiple owners, any owner may request a proportional Clean Water Fee ballot. If the ownership interest of the owner is not shown on the last equalized secured property tax property related fee roll, such request must include evidence, satisfactory to the District, of the owner's proportional rights in the parcel. The District will provide the proportional ballot to the owner at the address shown on the property related fee roll. Any request for a ballot to be mailed to another location must include evidence, satisfactory to the District, of the identity of the person requesting the ballot. Each proportional ballot will be marked to identify it as a proportional ballot and to indicate the owner's proportional rights in the parcel. The District will keep a record of each proportional ballot provided to an owner.
8. The District will only accept official ballots issued by the District.
9. If a Clean Water Fee ballot is lost, withdrawn, destroyed or never received, the District will mail or otherwise provide a replacement ballot to the owner upon receipt of a request delivered to the District. The replacement ballot will be marked to identify it as a replacement ballot or a replacement proportional ballot. Any request for a replacement or replacement proportional ballot to be mailed to another location must include evidence, satisfactory to the District, of the identity of the person requesting the ballot. The same procedure applies to replacement

ballots or replacement proportional ballots which are lost, withdrawn, destroyed, or never received.

10. If a Clean Water Fee ballot is returned by the United States Post Office as undeliverable, the District may mail a redelivered ballot to the current property owner, if updated ownership or owner mailing address can be determined. The redelivered ballot will be marked to identify it as a redelivered ballot.
11. A property related fee ballot is a disclosable "public record" as that phrase is defined by Government Code section 6252 during and after tabulation of the ballots. However, property owner names and corresponding ballot votes will remain strictly confidential, except as necessary to count the votes or as may be required by California law.
12. To complete a Clean Water Fee ballot, the owner of the parcel or his or her authorized representative must (1) mark the appropriate box supporting or opposing the proposed Clean Water Fee, and (2) sign, under penalty of perjury, the statement on the ballot that the person completing the ballot is the owner of the parcel or the owner's authorized representative. Only one box may be stamped or marked on each ballot. All substantially incomplete or improperly marked ballots shall be disqualified from balloting. The Tabulator will retain all such invalid ballots.
13. After returning a Clean Water Fee ballot to the Tabulator or Clerk of the Board, the person who signed the ballot may withdraw the ballot by submitting a written statement to the District directing the District to withdraw the ballot. Such statement must be received by the District prior to the close of the public input portion of the balloting period. When ballots for the Clean Water Fee are tabulated, the Tabulator will segregate withdrawn ballots from all other returned ballots. The District will retain all withdrawn ballots and will indicate on the face of such withdrawn ballots that they have been withdrawn.
14. In order to change the contents of a ballot that has been submitted, the person who has signed that ballot may (1) request that such ballot be withdrawn, (2) request that a replacement ballot be issued, and (3) return the replacement ballot fully completed. Each of these steps must be completed according to the procedures set forth above.

**B. Tabulating Ballots.** The following guidelines shall apply to tabulating Clean Water Fee ballots:

1. Clean Water Fee ballots shall remain sealed until tabulation commences at the conclusion of the balloting period.

2. An independent third party shall tabulate the Clean Water Fee ballots. The Tabulator shall follow the rules and procedures of the laws of the State of California, this resolution and any other rules and procedures of the Board or the District. If the Tabulator needs clarification, then he or she shall inquire of the District, which is the final arbiter. All ballots shall be accepted as valid and shall be counted except those in the following categories:
  - a. A photocopy of a ballot, a letter or other form of a ballot that is not an official ballot issued by the District or on behalf of the District;
  - b. An unsigned ballot, or ballot signed by an unauthorized individual;
  - c. A ballot which lacks an identifiable mark in the box for a "yes" or "no" vote or with more than one box marked;
  - d. A ballot which appears tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;
  - e. A ballot for which the parcel number is damaged or obstructed, unless the parcel number or property ownership information is legible and allows the Tabulator to clearly determine the property(s) identified on the ballot.
  - f. A ballot received after the close of the balloting time period.
3. The Tabulator's decision, after consultation with the District's legal counsel that a ballot is invalid, shall be final and may not be appealed to the District.
4. If more than one of the record owners of a parcel submits a Clean Water Fee ballot, the parcel vote shall be allocated to each ballot in proportion to the respective record ownership interests, as shown on the record or as established to the District's satisfaction by documentation provided by the record owners.
5. In the event of a dispute regarding whether the signer of a ballot is the owner of the parcel to which the ballot applies, the District will make such determination from the official County Assessor records and any evidence of ownership submitted to the District prior to the conclusion of the balloting period. The District will be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership will be final and conclusive.
6. In the event of a dispute regarding whether the signer of a ballot is an authorized representative of the owner of the parcel, the District may rely on the statement on the ballot signed under penalty of perjury that the person completing the ballot is the owner's authorized representative, and any evidence submitted to the District prior to the conclusion of the balloting period. The District will be under no duty to obtain or consider any other evidence as to whether the signer of the ballot is an authorized representative of the owner and its determination will be final and conclusive.

7. A property owner who has submitted a Clean Water Fee ballot may withdraw the ballot and submit a new or changed ballot up until the conclusion of the balloting period. Clean Water Fee ballots may be withdrawn and newer changed ballots submitted up until the conclusion of the balloting period.
8. A property owner's failure to receive a Clean Water Fee ballot shall not invalidate the proceedings conducted under this section and Article XIII D, section 6 of the California Constitution.
9. The District shall retain all Clean Water Fee ballots for a period of two (2) years from the date of the close of the balloting period.
10. The period of time in which ballots may be submitted (balloting period) shall end on April 6, 2012 at 5:00 p.m. All Clean Water Fee ballots must be received by this date and time to be tabulated.
11. At the conclusion of the balloting period, the Tabulator shall tabulate the ballots at the direction of the Board.
12. If, according to the final tabulation of the ballots, ballots submitted against the Clean Water Fee exceed the ballots submitted in favor of the Clean Water Fee, the Board shall not impose the Clean Water Fee.

PASSED AND ADOPTED at a regular meeting of the Contra Costa County Board of Supervisors held on the 6th day of December 2011, by the following vote:

AYES:	SUPERVISORS:
NOES:	SUPERVISORS:
ABSENT:	SUPERVISORS:
ABSTAIN:	SUPERVISORS:

Attest: David Twa, Clerk of the Board and  
County Administrator

By: \_\_\_\_\_  
Deputy