Contra Costa County

To: Contra Costa County Flood Control District Board of Supervisors

From: Julia R. Bueren, Public Works Director/Chief Engineer

Date: February 7, 2012

Subject: Public Hearing to consider protests to proposed Clean Water Fee

RECOMMENDATION(S):

Acting as the governing board of the Contra Costa County Flood Control and Water Conservation District:

1. OPEN the public hearing on the proposed Clean Water Fee in accordance with Resolution No. 2011/467 adopted by this Board on December 6, 2011, CONSIDER all protests against the proposed fee, and CLOSE the public hearing.

2. DIRECT the Clerk of the Board to tabulate the written protests presented by owners of identified parcels upon which the Clean Water Fee is proposed for imposition.

3. DETERMINE whether a majority of owners of the identified parcels have presented written protests against the proposed fee.

4. If there is no majority protest, ADOPT Resolution No. 2012/43, Attachment 1, directing the Chief Engineer of the Contra Costa County Flood Control and Water Conservation District, or her designee, to conduct a mailed ballot election to seek approval of the Clean Water Fee, according to the procedures set forth in Resolution No. 2011/467.

☑ APPROVE ☐ OTHER

☑ RECOMMENDATION OF CNTY ADMINISTRATOR ☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **02/07/2012** ☑ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

NO: Mary N. Piepho, District III Supervisor

ABSENT: Gayle B. Uilkema, District II Supervisor

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.

ATTESTED: February 7, 2012

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

By: June McHuen, Deputy

Contact: Mitch Avalon (925) 313-2203

cc: David Twa, Julie Bueren, Mitch Avalon, Mike Carlson, Tom Dalziel, Don Freitas

5. If a majority protest exists, ADOPT Resolution No. 2012/47, Attachment

RECOMMENDATION(S): (CONT'D)

2, terminating proceedings to obtain approval of the proposed fee.

FISCAL IMPACT:

If a majority protest is not achieved, and the Board calls for an election, the election will cost approximately $526,500. The election costs will be paid by the participants of the Contra Costa Clean Water Program (CCCWP), which includes the Flood Control District, County and 19 cities and towns. The cost sharing in the CCCWP is based on population. The District, which has no population, does not have a share. The County's share will be paid from a CCCWP reserve fund paid into with Clean Water Program funds over the last several years to fund the balloting procedures. If the proposed fee is approved by a majority of the property owners voting, the fee is expected to generate approximately $8,750,000 annually, countywide. The unincorporated County's share would be approximately $1,225,000 to be spent to fund 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.

BACKGROUND:

The Contra Costa County Flood Control and Water Conservation District ("Flood Control District") on behalf of the Contra Costa Clean Water Program is proposing the imposition of a countywide property related fee to improve water quality and fund clean water and pollution control projects, services and facilities. The February 7, 2012 Public Hearing is the next step in the proposed implementation of the fee, which was initiated by Resolution Nos. 2011/465 and 2011/467 adopted by this Board at the December 6, 2011 Board meeting.

Beginning on December 19, 2011, and at least 45 days before the Public Hearing, the Flood Control District mailed out 306,823 Notices of Public Hearing to all property owners in the County of identified parcels where the Clean Water Fee is proposed to be imposed, as required by Article XIIID of the California Constitution. The Notice invited property owners to file a written protest and to attend the February 7, 2012 Public Hearing. The Notice also described the reason for the fee, services and projects funded with fee revenue, the strict fiscal safeguards that will be put in place, and other information.

To date, the Clerk of the Board of Supervisors has received 161 written protests regarding the Clean Water Fee. Written protests can be submitted up to the close of the February 7, 2012 Public Hearing. Copies of the protest letters received by January 23, 2012, the release date of this Board report, are attached. Protests received between January 23 and the Board meeting will be presented at the Public Hearing. Most of the written protests are brief and simply protest the fee while some list specific reasons. These will all be entered into the public record at the Public Hearing.

The Contra Costa Clean Water Program (CCCWP) has also received approximately 167 phone calls regarding the Notice of Public Hearing. In each case, CCCWP staff, with technical assistance when needed from the Project Engineer, has provided clarification and answered questions. Most calls have been associated with parcel ownership changes or clarifications or questions about the fees and how the funding would be used. In some cases, additional clean water service and process questions have been asked, and there have been several requests for copies of the Fee Report.

Working with the Project Engineer and the community outreach consultant, the CCCWP has also responded to a small number of other types of requests including local media as well as a conference call with the East Bay Regional Park District to provide additional information on the proposed fee.

Typical and Expected Results

The number of written protests and phones calls received as a result of the Notice of Public Hearing is consistent with the experience of the consultant team in similar throughout California. It is likely that a wider public discussion of the Clean Water Fee will occur once the ballots have been mailed out.

Process for Public hearing

The following is an outline of the process steps for the February 7, 2012 Public Hearing.
1. Introductory comments and general overview of proposed improvements by Staff.
2. Board Chair opens the Public Hearing.
3. Board Chair outlines the procedures for this agenda item and public hearing. The Chair indicates that each public speaker must fill out a speaker card and will have 3 minutes to address the Board. Chair also informs the public that they must submit a written protest to the clerk of the Board prior to the end of the Public input portion of the hearing.
4. Board Chair invites comments from the public and reiterates that all issues raised will be noted and addressed after all speakers have addressed the Board.
5. Staff writes down or logs issues raised by speakers or provided in written correspondence.
6. After all input has been received and there are no more speaker cards, Board Chair asks if anyone else wishes to speak, add written comment, or provide other information to the Board.
7. Staff responds to questions and issues raised.
8. Board Chair makes last call for submittal of written protests before closing the public input portion of the hearing.
9. Board Chair asks for a motion to close the Public Input portion of public hearing.
10. Board Chair directs Clerk of the Board to tabulate the written protests and determine if a majority protest exists.
11. Board Chair proceeds with agenda, and Board then considers and adopts appropriate Resolution, depending on whether or not a majority protest is achieved.

Next Steps

If written protests are submitted by a majority of owners (>50% of 306,823 = 153,411+1), then a majority protest has been achieved and the Clean Water Fee will not be implemented. However, if there is not a majority protest, staff recommends the Board, by resolution, direct the Contra Costa County Flood Control and Water Conservation District to conduct an election to obtain approval of the Clean Water Fee consistent with the procedures stipulated by Article XIIID of the State Constitution, and described in Resolution No. 2011/467.

CONSEQUENCE OF NEGATIVE ACTION:

If this election does not proceed, unless there is a majority protest requiring termination, property owners in Contra Costa County will not have the opportunity to vote on funding to improve water quality and reduce pollution. If an election is unsuccessful, Contra Costa County and its 19 cities/towns (municipalities) will not have sufficient dedicated revenue to fund all NPDES Permit compliance mandates. Each Contra Costa municipality will need to determine how it will fund permit compliance activities. The most likely funding source will be a municipality's general fund. Funding from municipal general funds for compliance with the Federal and State mandated stormwater rules will necessitate cuts in funding for other community services. Failure to identify and obtain additional funding for stormwater compliance mandates will result in municipalities not being able to fully fund all their stormwater compliance activities resulting in permit non-compliance and potential Administrative Civil Liabilities imposed by the California Regional Water Quality Control Boards up to $10,000 per day in violation and $10 per gallon of polluted discharge. Additionally, Contra Costa municipalities may face potential liabilities resulting from third party lawsuits allowable under the Federal Clean Water Act.

CHILDREN'S IMPACT STATEMENT:

Not applicable.

CLERK'S ADDENDUM

Speakers: Meredith Morrow, resident of Martinez; Dorothy Miller, resident of Pittsburg; William Dick, resident of Moraga; Paul Baldacci, resident of San Ramon; Bruce R. Peterson, resident of Lafayette; Peter M. Wiebens, resident of Walnut Creek; Joan Bruzzone, resident of Lafayette; Art Mijares, resident of Oakley; Don Wood, resident of Danville; Harriet Newman, resident of Pleasanton; Craig Bender, resident of Walnut Creek; James R. Hunt, resident of Walnut Creek; Jamie Bolt, resident of Bethel Island; Glenn Dunham, resident of El Cerrito; Lillian Padilla, resident of Hercules; Margie Liberty, resident of Hercules; Rich Verrilli, resident of Martinez;

Kristine S. Hunt, resident of Walnut Creek; Earl Burris, resident of Danville; Warren Clayton, resident of Pinole; Jody Mazzarella, resident of Bethel Island; Virginia Fuller, resident of Pinole; Mike Vukelich, Contra Costa Farm Bureau; Dan Boatwright, resident of Danville; Joan Gallegos, resident of Kensington; Kris Hunt, Contra Costa Taxpayers Association; Lee Lawrence, League of Women Voters of Diablo Valley; Burt Kallender, resident of Martinez; Sandra Kallender, resident of Pacheco. CLOSED the public hearing; DIRECTED the Clerk of the Board to tabulate the written protests presented by owners of identified parcels upon which the Clean Water Fee is proposed for imposition; DETERMINED no majority protest exists; and ADOPTED Resolution No. 2012/43 directing the Chief Engineer of the Contra Costa County Flood Control and Water Conservation District, or designee, to conduct a mailed ballot election to seek approval of the Clean Water Fee.

ATTACHMENTS

Resolution No. 2012/43

letter log

CWP Feet Sets 1234 Glacier

Terminate Proceedings