



Agenda Report

Date: June 13, 2013
To: West Contra Costa Integrated Waste Management Authority Board
From: Chris Lehon Executive Director
Subject: County Voting Membership on Authority Board of Directors

ACTION REQUESTED

1. BOARD DISCUSSION on whether the Authority Board of Directors (BOD) supports providing the County a voting seat on the BOD in response to the County's request.
2. CONSIDERATION of ADOPTION of a MOTION authorizing the Executive Director to work with the County to develop proposed language changes so the County would have a voting seat on the Authority Board, which would then be brought back to the BOD for approval in the form of official amendments to the Authority-County Contract and Joint Powers Agreement.

DISCUSSION

John Gioia, County Supervisor - District I, expressed a strong interest in pursuing the matter of obtaining voting membership on the BOD as a part of the process/changes needed to proceed with implementation of proposed enhanced collection and post-collection services beyond December 2013. On April 9, the County Board of Supervisors directed the Conservation and Development Director to request that the County Board of Supervisors be provided with a voting seat on BOD in order to provide for adequate representation for ratepayers in the unincorporated areas falling within the Authority's service area.

The contract between the County and the Authority was established to regulate the IRRF and acknowledge the County's assumption of franchising for the unincorporated area (1993). The contract does not provide the County with a voting seat on the BOD. The existing Joint Powers Agreement and County-Authority Contract would have to be amended to provide the County with a voting seat and conform to the Joint Powers Agreement JPA and eliminate any terms inconsistent with the Joint Powers Agreement. However, this matter is relatively straight-forward and should require relatively minor edits that can be considered concurrently with more substantial modifications likely to be necessary to adequately address proposed changes to the post-collection system and associated regulatory oversight beyond 2013 (including eliminating/replacing existing Agreement and Contract language referring to the IRRF).

BACKGROUND

The County is not a party to the Joint Powers Agreement (JPA) nor is it a member of the Regional Agency formed to allow joint implementation, reporting and measurement to comply with the Integrated Waste Management Act (AB939). The Authority's role with respect to the County is currently governed by the provisions of the 1993 Authority-County Contract which was established to regulate the IRRF and provide services to the unincorporated area served by Richmond Sanitary Service (RSS). The 1993 Contract does not provide the County with a voting seat on the BOD.

Decisions made by the BOD potentially impact County unincorporated area ratepayers served by RSS in the same way as incorporated area ratepayers served by RSS are impacted. County area ratepayers have funded the Authority in the same way as the member agencies' since the IRRF began operation in 1994. Therefore, it seems reasonable to be responsive to the County's request to become a voting member as it will provide more equitable representation.

Although this issue has come up in the past (as summarized below), this seems to be the most appropriate time to proceed with negotiating language changes to allow the County to become a voting member because it can be handled efficiently in conjunction with the planned amendments to the JPA and 1993 Contract which will be negotiated and considered in the near future to address regulation of post-collection beyond 2013.

The County expressed interest in becoming a voting member in 1997; however the issue was dropped for financial reasons (see Attachment 1, page A-3 for historical details). At the time, the County was asked to provide a one-time "fair share" payment in order to become a voting member based on costs prior to IRRF operation. Although true that neither the County nor its ratepayers contributed an equivalent level of funding to offset Authority costs prior to the IRRF operation, it is important to realize that was a brief period of time and all ratepayers started paying the IRRF rate 20 years ago. Since that time the County ratepayers have paid equivalent amounts without having the benefit of voting representation on the BOD. All ratepayers pay for the costs associated with the Regional Integrated Waste Management Plan, and on-going AB939 monitoring and reporting costs done on behalf of the Regional Agency, which do not include the County and solely benefit the member agencies.

FISCAL IMPACT

Prior to ratepayers covering Authority expenses it is true that cities and/or ratepayers paid certain up-front costs associated with formation of the Authority (see Attachment 2 for fiscal impacts identified when this issue was considered in the late 1990s). The County became a non-voting member under a separate agreement when the local wastewater district left the JPA. Since the IRRF became fully operational, the Authority costs have solely been covered by all ratepayers paying the same amount.

Any amount the County may not have paid up front, has arguably been offset by subsequent County area ratepayer contributions which helped cover the costs associated with forming and functioning as an AB939 "Regional Agency" that only includes and benefits the incorporated areas. The JPA prepares and submit reports and is responsible for demonstrating compliance with the waste diversion mandates of AB939 on behalf of the cities, but the County continues to

be responsible and accountable for handling this on their own. The County is and will remain a standalone "regional agency" because the County as a whole cannot be part of regional JPA unless that agency encompasses the entire unincorporated area.

Additionally, County area ratepayers help fund preparation and staffing of BOD meetings without having the benefit of a voting representative. Actions have solely been made by the designated voting Directors, not true for the County as they had no voting seat.

RECOMMENDED ACTION

ADOPTION of a MOTION authorizing the Executive Director to work with the County to develop proposed language changes so the County would have a voting seat on the Authority Board, which would then be brought back to the BOD for approval in the form of official amendments to the Authority-County Contract and Joint Powers Agreement.

Submitted by



Chris Lehon
Executive Director

Attachments:

1. Board of Supervisors Report D.1 - "Voting Seat for the County on the Authority Board of Directors," pp. A3-A5.
2. Table 1: Revenue Contributions to Authority Prior to Start of IRRF Operation on January 1, 1996.

Item 8.1, Attachment 1



Contra
Costa
County

To: Board of Supervisors
From: Catherine Kutsuris, Conservation and Development Director
Date: April 9, 2013

Subject: Draft Term Sheet for a Post Collection Service Agreement between the West Contra Costa Integrated Waste Management Authority and Republic Services

RECOMMENDATION(S):

1. RECEIVE a presentation from Chris Lehon, the Executive Director of the West Contra Costa Integrated Waste Management Authority ("Authority") describing the proposed terms of the new Post-Collection Services Agreement between the Authority and Republic Services Inc. as well as the associated collection service enhancements being offered to the County and West County cities;
2. DIRECT the Director of Conservation and Development to transmit any County Board of Supervisor revisions to the Draft Term Sheet for the new Post-Collection Services Agreement between the Authority and Republic Services Inc. (Exhibit A) to the Authority Board of Directors for consideration at their meeting on April 11, 2013;
3. DIRECT the Director of Conservation and Development to request that the County Board of Supervisors be provided with a voting seat on the Authority's Board of Directors in order to provide for adequate representation for ratepayers in the unincorporated areas falling within Authority's service area; and
4. DIRECT the Director of Conservation and Development and County Counsel to confer on the need to amend the County's agreements with Republic Services Inc. and the Authority for collection and post-collection services for the unincorporated West County areas beyond October 2013 consistent with the principles described in this Board Order and report back

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: 04/09/2013 APPROVED AS RECOMMENDED OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYES _____ NOES _____

ABSENT _____ ABSTAIN _____

RECUSE _____

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: April 9, 2013

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

Contact: Deidra Dingman - 674-7203

By: , Deputy

cc:

A-1

RECOMMENDATION(S): (CONT'D)

to the Board of Supervisors.

FISCAL IMPACT:

No impact to the General Fund. Costs associated with collection franchising and associated collaboration with the West Contra Costa Integrated Waste Management Authority is covered within the Department of Conservation and Development's operating budget.

BACKGROUND:

The West Contra Costa Integrated Waste Management Authority ("Authority") is a joint powers agency created on April 2, 1991 by the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo. There are seven voting seats on the Authority Board of Directors which are filled by City Council members designated by the five Member Agencies. Representation on the Board of Directors consists of three Richmond City Council members and one City Council member from each of the four remaining cities. The Authority is responsible for providing post-collection processing services (disposal, recyclables processing, composting and management of household hazardous waste) for the waste stream governed under the franchise agreements administered by the five Member Agencies as well as the waste stream governed by the County's franchise agreement with Richmond Sanitary Service. The Authority also implements a variety of waste diversion programs targeting the waste stream generated within the above mentioned West County franchise areas.

The Authority participated in the public-private partnership responsible for financing the development and operation of the Integrated Resource Recovery Facility (IRRF) located on Pittsburg Avenue in North Richmond. In July 1993, the County Board of Supervisors approved a Land Use Permit allowing the development and operation of the IRRF. In May 1993, the County and Authority entered into an agreement ("County/Authority Contract") to provide for, among other things, joint regulation of the IRRF.

The Authority (also known as RecycleMore) separately contracts with Republic Services, Inc. (Republic) for post-collection services including recyclables processing, composting, operation of a household hazardous waste facility, and the transfer, transportation and disposal of solid waste. The current post-collection service contracts expire on December 31, 2013.

The Authority conducted a competitive Request for Qualifications and Statement of Interest (SOI) procurement process for the post-collection processing and disposal services required within the West County areas franchised by each of its Member Agencies and the County. An evaluation team reviewed the proposals from six companies. The two highest rank proposals were submitted by Republic and Waste Management Inc. As the collection service provider to the majority of the service area, Republic offered some enhanced collection services in addition to the range of requested post-collection services. On December 13, 2012, the Authority Board of Directors directed Authority staff to enter into negotiations with Republic to develop a mutually agreeable Term Sheet.

Over the past several months, Department of Conservation and Development (DCD) staff has been engaged with staff from the Authority and the five Member Agency cities to work with representatives of Republic on issues related to Republic's Draft Term Sheet. The Draft Term Sheet provides a framework for developing agreements for post-collection and enhanced collection services beyond December 31, 2013. The Draft Term Sheet covers the key financial and operational considerations for a new agreement including: contract term, program/service descriptions, compensation approach, adjustments to compensation, public education and outreach approach and requirements, insurance and performance surety, approach to performance standards and reporting requirements.

Staff presented Republic's Draft Term Sheet to the Authority Board of Directors at their meeting on March 14, 2013. Authority and Republic representatives reported that they are in substantial agreement on the Term Sheet and were prepared to negotiate a new contract on the basis of those terms. The Authority Board of Directors requested final pricing from Republic and directed Authority staff to present/discuss the Term Sheet with the respective city councils of the Member Agencies and the Board of Supervisors prior to the next Authority Board of Directors meeting on April 11, 2013. The Authority plans to begin negotiating contract language over the next several months and consider a new contract within about four months.

In order to fully understand each franchising agency's intentions, prior to negotiating the final contract, the Authority is seeking input from the city councils of the Member Agency's and the County Board of Supervisors. Each Member Agency and the County must, individually, accept or decline Republic's offer for the collection services that will be detailed in a Final Term Sheet. Chris Lehon, the Authority's Executive Director will be making a presentation before the Board of Supervisors on April 9, 2013 to help solicit the County's input on the Draft Term Sheet for post-collection services and collection service enhancements offered by Republic.

Recommended Revisions to Republic's Draft Term Sheet

DCD staff has reviewed the Draft Term Sheet and although staff generally agrees with much of it, there are a number of items which warrant revision. Therefore, staff does not recommend the County Board of Supervisors accept the Term Sheet unless the Authority and Republic agree to revise the Draft Term Sheet as reflected in redline/strikeout format in Exhibit A. The revisions address eight key areas of concern which are summarized in the following.

- Authority's obligations to be included in the Post-Collection Services Agreement should not be assigned to the County unless mutually agreed upon in writing pursuant to authorization by the governing boards of both agencies. *(Changes recommended to Section I.C of the Draft Term Sheet);*
- Term Sheet should not propose to restrict or otherwise attempt to control the manner in which each franchising agency amends their respective agreements to address implementation of enhanced collection services ultimately approved by each respective governing board. *(Changes recommended to multiple sections of the Draft Term Sheet, including but not limited to Sections I.C, II.B, IV.A and X);*
- County's authority over control of the waste stream should be retained consistent with County policy and existing franchise agreements. *(Changes recommended to Sections II.D and IV.B of the Draft Term Sheet);*
- Obligations pertaining to the waste generated within the unincorporated West County areas franchised by the County shall not extend beyond the term of the County's existing franchise agreement. *(Changes recommended to Section III of the Draft Term Sheet);*
- Household Hazardous Waste (HHW) program services should continue to be contractually guaranteed for the unincorporated West County area in a manner generally consistent with the terms of the existing HHW Agreement between the County, the Authority and Republic. *(Changes recommended to Section IV.B.1 of the Draft Term Sheet);*
- County's authority over rate setting for collection services should be retained and administered consistent with the County's rate setting methodology manuals and processes used for the County's other franchise areas. *(Changes recommended to Section V.B and V.D of the Draft Term Sheet);*
- Proposed methodology for adjusting post-collection service rates should: 1) ensure future requested rate increases can be independently verified, 2) ensure increased costs are appropriately applied throughout the Authority service area, and 3) require Member Agency concurrence on the establishment of verified/verifiable baseline costs for collection labor and other collection services falling within the purview of rate setting authority retained by franchising agencies. *(Changes recommended to Section V.G of the Draft Term Sheet); and*
- Acknowledge that the per ton Host Mitigation Fees, including Processibles, are adjusted annually based on the applicable Consumer Price Index. *(Changes recommended to Section V.I of the Draft Term Sheet).*

Voting Seat for the County on the Authority Board of Directors

The contract between the County and the Authority was established to regulate the IRRF and acknowledge the County's assumption of franchising for the unincorporated area previously covered by the West County Wastewater District. The contract does not provide the County with a voting seat on the Authority's Board of Directors.

On July 8, 1997, the County Board of Supervisors determined that they were interested in pursuing a voting seat for a member of the Board of Supervisors on the Authority Board of Directors. At their meeting in October 1997 the Authority Board directed their staff to develop and submit recommendations regarding the principles for full County membership in the Authority. On December 16, 1997 the Board of Supervisors reviewed the Authority's proposal and expressed concern regarding the cost of membership and how it would be paid. County staff was directed to further review potential funding sources, the possibility of negotiating a reduction on the proposed cost of

membership and to review the agreements that would require modification.

County staff completed its review and recommended a counter proposal on June 9, 1998 that would reduce the cost to the County to \$98,220 and bring the County contribution to the same level as the other Member Agencies. The \$98,220 proposal included the estimated cost for reviewing and modifying necessary agreement, then estimated to cost approximately \$50,000. Staff also recommended that the cost of obtaining membership be paid over a period of 4.5 years which was the time frame that the other jurisdictions had for paying their share.

At their June 9, 1998 meeting, the County Board of Supervisors formed an ad hoc committee to assess and make recommendations about the total amount that the County should be willing to pay to the Authority for the ability to have a voting seat on the Authority Board and possible source or sources of funds. This committee determined that it should be the responsibility of the County to pay any costs accrued by the Authority in modifying agreements and attorney reviews that would be necessary to accomplish the change in membership. The subcommittee set a maximum of \$55,000 for those costs. The committee recommended that there should not be a 'buy-in' cost over and above this actual cost.

In November 1998, the Authority Board concluded that acceptance of the County's proposal would not be fair to ratepayers within the five West County cities as the County would not pay its "fair" share of the costs incurred by the Authority prior to the start of the IRRF operations.

At their February 23, 1999 meeting, the County Board of Supervisors directed staff to request the Authority Board of Directors to allow the County to defer the decision on obtaining a voting membership until after the County had implemented its state mandated solid waste programs and had evaluated its compliance with Assembly Bill 939 (the California Integrated Waste Management Act of 1989) goals. The County chose to defer membership until such time that the County had completed the implementation of its *Source Reduction and Recycling Element* to be in compliance with the Assembly Bill 939 mandate.

Recently, the Authority's Executive Director has indicated that the member cities have now been paid back their 'buy-in' costs. As such, it is assumed that the County would not be expected to provide any payment for a voting seat on the Authority Board.

The District I Supervisor has expressed a strong interest in pursuing the matter of obtaining voting membership on the Authority Board of Directors as a part of the process/changes needed to proceed with implementation of proposed enhanced collection and post-collection services beyond December 2013.

EXISTING COUNTY AGREEMENTS NEEDING TO BE AMENDED:

The County is a party to the following three existing Agreements that will need to be amended to address issues related to enhanced collection services and post-collection services proposed beyond October 2013:

1. AGREEMENT FOR HOUSEHOLD AND SMALL QUANTITY GENERATOR HAZARDOUS WASTE SERVICES (2000)
2. CONTRACT BETWEEN WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY AND CONTRA COSTA COUNTY (1993)
3. FRANCHISE AGREEMENT BETWEEN CONTRA COSTA COUNTY AND RICHMOND SANITARY SERVICE (1993)

Prior to reporting back to the Board of Supervisors regarding next steps, Department of Conservation and Development staff need to work with the District I Supervisor, County Counsel's office and the other Parties to the above-noted agreements (the Authority and Republic Services, Inc.) in order to determine the extent and nature of the amendments needed to address issues related to enhanced services and post-collection changes.

DCD staff and the District I Supervisor have identified some additional desired changes appropriate to incorporate into said amendments due to the anticipated retirement of bonds used to finance the IRRF, including but not limited to reversion of certain regulatory oversight/responsibility previously delegated to the Authority for various Conditions of Approval of the IRRF Land Use Permit (e.g. Host Community Mitigation Fee). Additionally, DCD staff anticipates

recommending additional changes to said agreements to, among other things, reflect changed circumstances and policies since said Agreements were developed 13-20 years ago.

CONSEQUENCE OF NEGATIVE ACTION:

The Authority and Republic Services, Inc. would potentially move forward negotiating a final post-collection service agreement with the expectation that the County is agreeable to implementing service enhancements and rate changes in the manner proposed, some of which are potentially inconsistent with existing County policies, agreements and code requirements, and potentially adversely impact County rate payers. The County would continue not having any voting seat on the Authority Board of Directors to represent unincorporated areas of West County.

CHILDREN'S IMPACT STATEMENT:

Not applicable.

TABLE 1
REVENUE CONTRIBUTIONS TO AUTHORITY PRIOR TO START OF IRRF OPERATION ON JANUARY 1, 1996
 Period Beginning April 2, 1991 and Ending January 1, 1996

Revenue Type	El Cerrito	Hercules	Pinole	Richmond	San Pablo	Subtotal	County Area	Total
Member Agency Contributions Pursuant to Exhibit A to Joint Powers Agreement (1)	\$25,000	\$25,000	\$25,000	\$75,000	\$25,000	\$175,000	\$12,180	\$187,180
Member Agency Contributions Pursuant to Board of Directors Resolution No. 92-13	\$64,225	\$64,225	\$64,225	\$192,675	\$64,225	\$449,575	\$0	\$449,575
Contribution at time of Execution of Authority - County Contract	\$0	\$0	\$0	\$0	\$0	\$0	\$28,794	\$28,794
Member Agency Contributions Pursuant to Approved Fiscal Year 1993/94 Budget	\$64,000	\$64,000	\$64,000	\$192,000	\$64,000	\$448,000	\$0	\$448,000
Member Agency Contribution Pursuant to Approved Fiscal Year 1995/96 Budget	\$64,000	\$0	\$0	\$0	\$0	\$64,000	\$0	\$64,000
Transition Surcharge Revenue (2)	\$0	\$64,000	\$64,000	\$192,000	\$64,000	\$384,000	\$64,000	\$448,000
Totals	\$217,225	\$217,225	\$217,225	\$651,675	\$217,225	\$1,520,575	\$104,974	\$1,625,549

CALCULATION OF COUNTY FINANCIAL CONTRIBUTION

Total Number of Voting Directors with County Voting Membership (3)	8
Member Agency Contribution as \$/Voting Director (4)	\$203,194
Additional Amount Needed From County Area (5)	\$98,220

Data Source: Authority Financial Records provided by Authority Treasurer
 (1) Amount Shown for County Area is the amount contributed by West County Wastewater District upon withdrawal from voting membership in the Authority
 (2) Amount from Excess Residential Surcharge Collection and Transition Surcharge in RSS Service Area.
 (3) Currently existing Voting Directors total 7. Addition of County Voting Director raises total number to 8.
 (4) Section 9 of the Joint Powers Agreement provides that Member Agency Contributions are to be an equal amount per voting Director seat to a maximum of \$64,000 per year per Director seat.
 Amount shown equals Total divided by 8
 (5) Member Agency Contribution as \$/Voting Director minus total for County Area.

