

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # \*B-10

Urgent  Routine

AGENDA DATE April 26, 2011

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Amend the Agreement for Legal Services with Meyers Nave, a Professional Law Corporation, for the Geer Road Landfill

STAFF RECOMMENDATIONS:

1. Amend the Agreement for legal services with Meyers Nave, a professional law corporation, to increase the not to exceed limit to \$300,000.
2. Authorize the Director of Environmental Resources, or her designee, to sign the Agreement.

FISCAL IMPACT:

The original Agreement with Meyers Nave for legal services was for \$100,000, dated December 9, 2010. The Agreement was amended on March 1, 2011, to increase the total not to exceed limit to \$225,000; an amount which estimated expenditures through the April 8, 2011, Regional Water Quality Control Board Hearing. To complete their advisement following the Hearing, an additional amendment is necessary.

(Continued on next page)

BOARD ACTION AS FOLLOWS:

No. 2011-248

On motion of Supervisor O'Brien, Seconded by Supervisor Withrow  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Amend the Agreement for Legal Services with Meyers Nave, a Professional Law Corporation, for the Geer Road Landfill

FISCAL IMPACT (Continued):

Total compensation for legal services, including the cost of any necessary subcontractors, consultants, experts, or investigators which are retained, is estimated to require an additional \$75,000. Staff recommends amending the Agreement to include a not to exceed limit of \$300,000. Sufficient appropriations exist within the current Geer Road Landfill Operating Budget for this purpose.

DISCUSSION:

Stanislaus County and the City of Modesto entered into an agreement in 1970 to purchase property and establish the Geer Road Landfill in order to provide disposal capacity for local residents. Landfill operations in the State of California are overseen by various regulatory agencies that enforce an array of statutes and regulations. One of these agencies is the Regional Water Quality Control Board (RWQCB). Regulatory oversight from the RWQCB occurs in the form of Waste Discharge Requirements (WDRs) which serve as a type of permit for the site.

Unlike today's regulatory standards for building landfills, bottom liners were not required when the Geer Road Landfill (GRLF) was constructed. While the County has diligently strived to comply with the WDRs for the site, the lack of a bottom liner has required the County to implement various corrective action measures for the past many years. Despite the County's efforts and spending roughly \$20 million on GRLF since it closed in 1990, the RWQCB issued a Draft Cease and Desist Order on November 22, 2010, alleging that the efforts to date have been inadequate.

A Cease and Desist Order (Order) is a serious matter and the County felt the action was unjustified. As such, under the direction of County Counsel, the Department of Environmental Resources contracted with the law firm of Meyers Nave on December 9, 2010, to represent the County's interests. Meyers Nave is a firm that specializes in environmental compliance issues.

Staff, together with outside counsel, attended a series of meetings with RWQCB staff in January to try and resolve differing viewpoints regarding several of the items in the Order. While much progress was made in the meetings, there were basic differences in approach that remained unresolved. As such, the County elected to contest the Order at the scheduled April 8, 2011 hearing. In preparation for the hearing, Meyers Nave retained Bryan A. Stirrat and Associates (BAS), a firm with extensive expertise in landfill corrective action measures, to conduct a peer review of the County's existing consulting firm: SCS Engineers. The goal was to ensure the approach that BAS and the County believed was correct for the site, was backed up with science and facts and that the County could realistically comply with any work ordered to be performed by the Order.

The expert witness testimony BAS provided at the hearing was pivotal in the County's successful effort to convince the RWQCB of the need to focus its remedial efforts on controlling landfill gas (LFG) as the source of contamination. In addition, the existing groundwater system will be enhanced to provide a focused effort on groundwater on the most problematic area, versus installing a new, multi-million dollar system which would not have

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controlled the source of the problem. At this time, the County must move quickly to design a vastly enhanced LFG system. To do so and in order to make significant progress by September 30, 2011, as required by the Order, it is necessary for BAS to provide guidance regarding the practicality of compliance and the necessary steps the County must take to comply.

Additional legal work is also necessary. The RWQCB, at the last minute, amended the Order by shortening the time for the County to comply with the Order from December 31, 2013, to December 31, 2012. Specifically, the County must now submit a Report of Waste Discharge (ROWD) one year earlier than originally anticipated. A ROWD involves an extensive amount of data gathering regarding the site upgrades required by the Order, proposed new water quality protection standards, an evaluation of whether additional corrective action measures and permanent monitoring wells are needed, and updated financial assurance estimates for post-closure maintenance and corrective action. Staff is concerned that this portion of the Order will be difficult to comply with and recommends exploring any potential grounds for appeal with counsel.

The above work constitutes the remaining legal and expert services to be provided under the Meyers Nave contract. County policy requires Board of Supervisors approval for any contract or agreement where the total cumulative compensation exceeds \$100,000. The total compensation, including this work, is estimated to be \$300,000.

**POLICY ISSUES:**

Approval of this agenda item to amend the Agreement for legal services with Meyers Nave for the Geer Road Landfill, is consistent with the Board's priorities of providing A Safe Community, A Healthy Community, and the Efficient Delivery of Public Services.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this item.

**CONTACT PERSON:**

Sonya K. Harrigfeld, Director of Environmental Resources Telephone: 209-525-6770



DEPARTMENT OF ENVIRONMENTAL RESOURCES

3800 Cornucopia Way, Suite C, Modesto, CA 95358
Phone: (209) 525-6700
Fax: (209) 525-6773

AMENDMENT NO. 2
TO
LEGAL SERVICE AGREEMENT
MEYERS NAVE

BOARD OF SUPERVISORS
2011 APR 29 11 AM 10:25

This Amendment No. 2 to the Agreement for Legal Services ("Amendment No. 2") by and between the COUNTY OF STANISLAUS ("County") and Meyers Nave ("Attorney") is made and entered into on April 26, 2011.

Whereas, the County and Attorney entered into an Agreement for Legal Services dated December 9, 2010 ("the Agreement"); and

Whereas, Paragraph 17 says the Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties; and

Whereas, Amendment 1 increased the initial calendar year "not to exceed" amount to \$225,000.00; and

Whereas, the County has a need to increase the initial calendar year "not to exceed" amount in Section 2.2 by \$75,000.00, due to the complexity of the project; and

Whereas, this amendment is for the mutual benefit of County and Attorney;

Now, therefore, the County and Attorney agree as follows:

1. In Section 2.2, is amended as follows:

"The parties hereto acknowledge the maximum amount to be paid by the Client for services provided shall not exceed \$300,000.00 during the initial calendar year, including without limitation, the cost of any subcontractors, consultants, experts or investigators retained pursuant to Paragraph 1.3 of the Agreement, unless fees and compensation exceeding \$300,000.00 are approved by the Client.

If the Agreement is not terminated after the initial calendar year, and continues on a year-to-year basis until terminated, the parties hereto acknowledge the maximum amount to be paid by the Client for services provided in the continued term shall not exceed \$100,000.00 during the any single calendar year, including without limitation, the cost of any subcontractors, consultants, experts or investigators retained pursuant to Paragraph 1.3 of the Agreement, unless fees and compensation exceeding \$100,000.00 are approved by the Client "

2. Section 7 is amended as follows:

Section 7.1 is amended as follows:

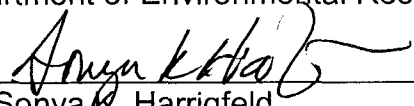

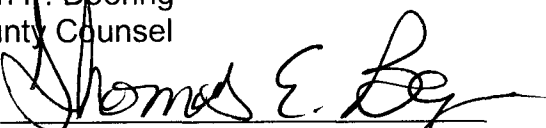
"To the fullest extent permitted by law, Attorney shall indemnify, hold harmless and defend the client from and against any and all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this agreement by the Attorney, the Attorney's employees, agents, representatives or subcontractors (except as provided in section 7.4 below). Notwithstanding the foregoing, Attorney's obligation to indemnify the client and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Attorney in contributing to such claim, damage, loss and expense.

A new Section 7.4 is added as follows:

"7.4 If Attorney hires or retains consultants or subcontractors to perform work other than the analysis of data, such as work to operate equipment at the Geer Road Landfill or conduct investigative activities at the Geer Road Landfill, and any claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arise out of, or result from or in connection with such work by consultants or contractors, the Client will not seek indemnity or a defense from Attorney for such, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees."

3. Except as stated herein, all other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

<p><b>COUNTY OF STANISLAUS</b> Department of Environmental Resources</p> <p>By:  Sonya R. Harrigfeld Director "Client"</p>	<p><b>MEYERS NAVE</b></p> <p>By:  Steven T. Mattas, Esq. Principal "Attorney"</p>
<p>APPROVED AS TO FORM: John R. Dpering County Counsel</p> <p>By:  Thomas E. Boze Deputy County Counsel</p>	