

FILED

SEP 25 2015

Clerk of the Napa Superior Court
By: C. Baernas
Deputy

September 24, 2015

The Honorable Rodney G. Stone
Presiding Judge of the Napa County Superior Court
825 Brown Street
Napa, CA 94559

Subject: **Transmittal of City of Napa Response to Napa County Grand Jury 2014-2015 Final Report on Management of Groundwater and Recycled Water: Is Napa County in Good Hands?**

The City of Napa City Council took action on the subject item on August 4, 2015. We intended to send the attached letter as an official response to the Grand Jury Report (dated August 11, 2015), however, there was inadvertently an error since no hard copy of the executed letter was filed and presumably not transmitted.

Please accept the attached City Council Report and Letter Response.

The City acknowledges the members of the 2014-2015 Grand Jury for the time and effort they have devoted in preparing this report.

Sincerely,


Mike Parness
City Manager

Attachments: 1. City Council Report August 4, 2015
2. Letter Response to Grand Jury, August 11, 2015

Cc (with attachments): Grand Jury Foreman
Mayor and Council
City Attorney

CITY OF NAPA CITY COUNCIL
AGENDA REPORT

CONSENT CALENDAR
AGENDA ITEM 11.C.
Date: August 04, 2015

To: Honorable Mayor and Members of City Council
From: Jacques R. LaRoche, Public Works Director
Prepared by: Phil Brun, Deputy Director of Public Works (Operations)
Subject: Response to Grand Jury Report on Management of Groundwater and Recycled Water

ISSUE STATEMENT:

Approve the City response to the 2014-2015 Napa County Grand Jury Report – Management of Groundwater and Recycled Water: Is Napa County In Good Hands?

DISCUSSION:

On June 2, 2015, the City received the Napa County Grand Jury Report entitled "Management of Groundwater and Recycled Water: Is Napa County In Good Hands?" The same report was issued to all affected agencies. In essence, the report was conducted to look at the management of groundwater and recycled water in Napa County. The groundwater portion of the report focused on the activities of Napa County and the Grand Jury did not request a response from the City. The recycled water portion of the report focused primarily on the Napa Sanitation District (NSD) and plans to deliver recycled water to the Milliken-Sarco-Tulocay area, Los Carneros/Stanly Ranch area and Napa State Hospital. The Grand Jury requested a response from the City on two specific recommendations related to recycled water. Those responses and a response to one of the findings related to recycled water are outlined below.

The City's response to the Grand Jury's Findings and Recommendations:

Grand Jury Finding F6: There have been no discussions to date to renew the agreement between NSD and the City of Napa Water Department, expiring in 2017, requiring NSD to reimburse the city one year's revenue for every customer converted from city water to recycled water.

Response to Grand Jury Finding F6: The City respectfully disagrees with these findings, and provides the following clarifications: (1) The agreement is between NSD and the City of Napa (and not the City of Napa Water Department). The Public Works Department, Water Division is responsible for administering the agreement on behalf of the City; (2) The agreement expires on August 4, 2018; (3) Reimbursement from NSD to the City for customers converting from City water is based on a formula to offset impacts on water rate revenue where infrastructure investments have already been

made, and not necessarily one year's revenue; (4) the geographical scope of the existing agreement does not cover the entire City of Napa, but rather only those parcels toward the south of the City that were determined, at the time of the agreement, to be potentially served by recycled water during the term of the agreement. As noted below, staff from the City and NSD have been in discussions to expand the geographical reach of the agreement, which would also include an extended term of the agreement.

Grand Jury Recommendation R5: By June 30, 2016 NSD and the City of Napa Water Department to begin negotiations to extend the current agreement that requires NSD to reimburse the Water Department for lost revenue when city water customer converts to recycled water.

Response to Grand Jury Recommendation R5: This recommendation has been implemented. The City and NSD have had communications over the past year regarding the potential to expand the service area covered by the agreement to include Silverado Middle School and Tulocay Cemetery. As noted above, these discussions will require an extension of the term of the current agreement. The City remains open to continuing those discussions with NSD to extend the term of the current agreement, and negotiate necessary amendments to the agreement as a part of that negotiation.

Grand Jury Recommendation R6: By December 31, 2015, that NSD and the City of Napa Water Department to begin working with local officials, lobbying groups, and trade associations to persuade the State to fund the conversion of Napa State Hospital to recycled water for their irrigation purposes.

Response to Grand Jury Recommendation R6: This recommendation has been implemented. The City has been supportive of the State Hospital conversion to recycled water for many years. On multiple occasions, City staff has worked with NSD to calculate the amount of reimbursement to the City for the conversion so that local officials could meet with State Hospital representative. Page 5-13 of the City's 2010 Urban Water Management Plan (submitted to the State) specifies that the City will continue to support the expansion of NSD recycled water for irrigation by fulfilling the agreement for recycled water with NSD and supporting the conversion of Napa State Hospital.

FINANCIAL IMPACTS:

None.

CEQA:

The Public Works Director has determined that the Recommended Action described in this Agenda Report is not subject to CEQA, pursuant to CEQA Guidelines Section 15060(c).

DOCUMENTS ATTACHED:

1. Attachment 1: Agreement Between City and Napa Sanitation District for Sale of Recycled Water within the City (August 4, 1998).

NOTIFICATION:

None

RECOMMENDED ACTION:

Staff recommends that the City Council move, second and approve each of the actions set forth below, in the form of the following motion. Move to:

Approve the City response to the 2014-2015 Napa County Grand Jury Report – “Management of Groundwater and Recycled Water: Is Napa County In Good Hands?” as set forth in this report, and incorporating any changes made to the responses by the City Council during the meeting, and direct the City Manager to submit the response on behalf of the City Council to the Presiding Judge of the *Superior Court of Napa County*.

City Agreement
7247
Budget Account

**AGREEMENT BETWEEN CITY OF NAPA
AND
NAPA SANITATION DISTRICT
FOR
SALE OF RECYCLED WATER WITHIN
CITY OF NAPA WATER SERVICE AREA**

This Agreement is made this 4th day of Aug., 1998, by and between the City of Napa ("City"), a Charter City incorporated under the laws of the State of California, and Napa Sanitation District ("NSD"), a public district formed and governed by California Health and Safety Code section 4700 et seq.

WHEREAS, under its municipal powers CITY acquires water supplies and treats and delivers potable water to inhabitants and businesses within its water service area:

WHEREAS, NSD treats the wastewater generated by the inhabitants and businesses within the CITY's water service area and thus has a ready supply of recycled water available for non-potable uses:

WHEREAS, both the CITY and NSD desire to utilize the water supplies which they each have available to maximize the efficiency and minimize the costs of water supply for various purposes to the inhabitants and businesses within the CITY's water service area.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. CITY Water Service Area Defined

a. The CITY's water service area covers the area generally shown on the map attached hereto as Exhibit A.

b. CITY is the sole purveyor of water within its water service area, provided however, that during the term of this Agreement, CITY agrees that NSD may provide and deliver recycled water within the CITY's water service area to the extent provided herein.

2. Service area for Recycled Water Delivery Designated:

a. Upon execution of this Agreement, and during its term, CITY shall permit NSD to solicit customers for its recycled water and to deliver recycled water to

customers within the portion of the CITY's water service area shown on Exhibit A as the ReUse Area, being;

(1) The area east of the Napa River, south of Imola Avenue, west of Highway 221, and north of the City of American Canyon water service area, and;

(2) The properties known as "Stanley Ranch", "South Napa Market Place", and "Napa State Hospital", and the NSD property north of and adjacent to Imola Avenue east of the Napa River.

b. Delivery of recycled water within additional portions of the CITY's water service area shall require the prior written approval of the CITY notwithstanding any approval or authority from SWRCB to convey recycled water within the entire area set forth on Exhibit A.

c. The area within which NSD may deliver recycled water pursuant to this Agreement or any amendment thereof shall be referred to as the "ReUse Area."

d. CITY shall not agree to or approve of the delivery of recycled water within the ReUse Area other than by NSD during the term of this Agreement.

3. Recycled Water Facilities:

a. Construction of facilities, including without limitation pipelines, meters and pumps, for treatment, conveyance and delivery of recycled water within the ReUse Area shall be subject to all applicable regulatory approvals and procedures, and subject further to the CITY's review and imposition of conditions designed to avoid conflicts with other facilities and utilities to the extent they are within the CITY rights-of-way.

b. NSD shall own, construct, maintain, operate and repair all facilities necessary for the treatment, conveyance, delivery, and measurement of recycled water.

c. NSD shall notify CITY of new recycled water customers within the reuse area at least 60 days prior to connection to NSD recycled water facilities.

4. Reimbursement for Loss of Revenue:

a. NSD shall reimburse CITY for CITY's loss of potable water sales revenue due to CITY's existing customers ("prior CITY customers") taking delivery of recycled water from NSD in lieu of purchasing potable water supplies from the CITY. The amount of reimbursement shall be calculated for the aggregate total of all prior CITY customers, as set forth below:

ATTACHMENT 1

(1) Within 30 days of [the end of the calendar year], NSD shall report to CITY the identities and addresses of all recycled water customers within the ReUse Area, and the date that each customer connected to the recycled water system.

(2) The CITY shall determine whether each such recycled water customer is a prior CITY customer. For all such prior CITY customers, CITY shall determine the aggregate net revenue CITY would have received from the sale of potable water based on:

- a. The quantity of potable water each prior CITY customer consumed the average of three year's prior to conversion to recycled water, and
- b. The applicable potable water rates during the current calendar year that the prior CITY customer would have paid if remaining on CITY's potable system, less the costs of energy and chemicals required to produce and treat such water. Costs of producing and treating potable water shall be determined on a proportional basis with the cost of producing and treating all potable water delivered by CITY during the same period.

(3) CITY shall notify NSD in writing of its determination of the amount of reimbursement due CITY from NSD pursuant to this Article, together with the costs and calculations supporting its determination, and within 30 days of such notification NSD shall pay to CITY the amount of reimbursement owed (see Exhibit "B" for example calculation). If NSD disagrees with CITY's determination of the amount of reimbursement due, NSD shall notify CITY within 20 days of NSD's receipt of notice and pay any undisputed amount within 30 days of CITY's original notice to NSD. Thereafter, the parties shall meet as soon as possible to discuss the disagreement and attempt to resolve the matter within 60 days of CITY's original notice to NSD. If no resolution is achieved, the matter shall be arbitrated pursuant to the provisions of Section 10, below.

b. NSD's reimbursement obligation shall continue from year to year until the amount of CITY potable water sales, measured in gallons, has regained its previous level prior to such conversion. For purposes of calculating the amount of reimbursement due the CITY for conversion to recycled water by a prior CITY customer.

(1) The rate of increase of CITY potable water sales, measured in gallons, is deemed by the parties to be three-quarters of one percent (0.75%) per year, and

(2) The year from which growth in CITY's potable water sales is to be measured in gallons is the last preceding year in which NSD's reimbursement obligation was zero, and

(3) CITY's increase of .75% per year shall be subtracted from CITY's net lost potable water sales measured in gallons as defined in Section 4 a. (2) above (See Exhibit "B" for example calculation).

c. Reimbursement obligations shall apply only to customers which, prior to taking delivery of recycled water from NSD, purchased potable water supplies from CITY.

d. For purposes of water conservation reporting, NSD shall provide CITY with quantities of recycled water delivered to each recycled water customer within the ReUse Area.

5. Disclosure of Recycled Water Costs:

So that potential customers in the ReUse Area understand the cost factors associated with determining the price of recycled water, NSD shall advise all potential customers of the various components of the recycled water rate in advance of obtaining a service commitment including, but not limited to:

- a. Capital Costs of Delivery Facilities (Pipelines, Pumps, Meters, etc.)
- b. Operating and Maintenance Costs of Delivery Facilities
- c. Capital Costs of Wastewater Treatment Facilities
- d. Energy and Chemical Costs of Wastewater Treatment

6. Reciprocal Rights to Water Service:

a. NSD shall make available at no cost up to 16,300,000 gallons (approximately 50 acre feet) of recycled water per year to CITY for irrigation of Kennedy Park, not including the Kennedy Golf Course, for irrigation purposes. NSD shall make available at no cost up to 16,300,000 gallons (approximately 50 acre feet) of recycled water per year to Napa Valley College for irrigation purposes. Any water used by CITY's Kennedy Park in excess of 16,300,000 gallons per year shall be billed to CITY at NSD's recycled water rate charged to other comparable recycled water customers. Any water used by the Napa Valley College in excess of 16,300,000 gallons per year shall be billed to Napa Valley College at NSD's recycled water rate charged to other comparable recycled water customers.

b. CITY shall make available to NSD at no cost up to 3,600,000 gallons (approximately 11 acre feet) of potable water per year for use at NSD's wastewater treatment plants on Imola Avenue and Soscol Ferry Road and for flushing of sewer mains, but not for filling recycled water reservoir at NSD's Soscol Treatment Facility to allow delivery to NSD's recycled water customers for irrigation use. All potable water used by NSD in excess of 3,600,000 gallons per year or for filling recycled water reservoir for irrigation water deliveries, shall be billed to NSD at the rates which CITY then imposes on other potable water customers within CITY's incorporated boundaries.

c. All recycled water use provided for in this Agreement shall be metered and reported to the CITY. In addition, NSD shall meter separately and report to CITY the amount of all potable water used for filling recycled water reservoir for irrigation water deliveries to NSD customers.

d. NSD and City agree to execute the attached Agreement for Supply of Recycled Water to Kennedy Park (Exhibit "C") obligating NSD to provide and City to utilize NSD recycled water in place of City potable water to irrigate the Kennedy Golf Course and Park. NSD and City agree to treat the Kennedy Golf Course as a "prior City customer" pursuant to Section 4 hereof for purposes of NSD reimbursing City for its "loss of revenues" attributable to the use of reclaimed water for irrigation on the Kennedy Golf Course. NSD shall supply the recycled water to Kennedy Golf Course upon the same favorable rates and terms offered other users; provided, however, that should NSD impose a monthly surcharge on its recycle rates in order to recoup the monies paid to City under the reimbursement requirement of Section 4 hereof, the amount of the monthly surcharge to City together with NSD's regular rates charged for recycled water shall not exceed eighty percent (80%) of the rates charged by City to its customers within the City of Napa for potable water. The surcharge shall cease when NSD has recouped the reimbursement to City under Section 4.

In the event City chooses to directly bill recycled water costs to an operator, lessee, etc., of the Kennedy Golf Course, City agrees that such billings shall not exceed the rates charged by NSD plus such reasonable charges necessary to cover City's administrative costs in connection therewith. The City agrees not to utilize the well water on City property for irrigation of the Golf Course except in the event that NSD is unable to deliver sufficient reclaimed water to the City and use is in compliance with all applicable federal and state laws.

NSD and City agree to execute an Agreement for Sale of Recycled Water in substantially the form as attached hereto as Exhibit "C", within 30 days of this Agreement becoming effective as specified in Section 8 and Section 11, below.

7. Indemnification and Hold Harmless:

NSD shall indemnify CITY and hold harmless the CITY, its officers, officials, agents, and employees from and against any and all claims, damages, demands,

liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees arising out of or in connection with the treatment, conveyance, delivery of NSD's recycled water for subsequent use, except such loss or damage which was caused by the active negligence or willful misconduct of CITY.

8. Term of Agreement:

This Agreement shall become effective upon the later of the dates of approval and adoption of the Agreement by the Napa City Counsel and the NSD Board of Directors.

The Agreement shall remain effective until twenty years from its effective date, and may be renewed for successive terms upon conditions acceptable to both parties. The parties agree that NSD may continue to serve properties receiving recycled water pursuant to the terms of this Agreement on the termination date whether or not the Agreement is renewed. The parties also agree that Napa Sanitation District shall continue to supply recycled water to the City for Kennedy Park and to Napa Valley College and that the City will in return provide potable water to the District for main flushing and use at Districts treatment plants pursuant to Section 6 after the termination date of this Agreement whether or not this Agreement is renewed. District agrees that, if by virtue of changes in its treatment process and regulatory requirements, its recycled water is deemed "potable" pursuant to state law, it will not deliver said water to its recycled water customers within City's service area as "potable" water unless City grants written permission.

9. Miscellaneous:

a. This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and duly authorized and executed by both parties.

b. If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

c. This Agreement shall be binding on and inure to the benefit of the successors of the respective parties.

d. Any notice of demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

CITY:

Mike O'Bryon, Public Works Director
City of Napa, Public Works Department
1600 First Street
P. O. Box 660
Napa, CA 94559

NSD:

Manager
Napa Sanitation District
950 Imola Avenue, West
Post Office Box 2480
Napa, CA 94558

Either party may, from time to time, designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

- e. This Agreement shall be governed by the laws of the State of California.
- f. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.
- g. All Exhibits annexed hereto form material parts of this Agreement.
- h. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

10. Arbitration:

Any dispute or claim in law or equity between the parties arising out of this Agreement which is not settled through mediation shall be decided by neutral, binding arbitration and not by court action, except as provided by California Law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The parties may agree in writing to use different rules and/or arbitrators. In all other respects, the arbitration shall be conducted in accordance with Part 3, Title 9 of the California Code of Civil Procedure. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties have the right to discovery in accordance with the Code of Civil Procedure Section 1283.05.

11. Effective Date:

NSD has filed a Petition for Change with the State Water Resources Control Board to permit it to convey recycled water within the area specified in the petition which is attached hereto as Exhibit C. This Agreement shall only become effective when NSD secures a permit from the State Water Resources Control Board permitting the change and obtains the required permissions from the Regional Water Quality

Control Board necessary to sell recycled water within the area encompassed by this Agreement.

Executed the day and year first above written, by the parties as follows:

CITY OF NAPA:

Ed Henderson

NAPA SANITATION DISTRICT

Richard Hamilton
By:

ATTEST:

Paula Ingwers
CITY CLERK

ATTEST:

Susan Stapes
SECRETARY
NAPA SANITATION DISTRICT

COUNTERSIGNED:

Jed Christensen
FINANCE DIRECTOR

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

APPROVED AS TO FORM:

Date: 7-8-98

[Signature]
DISTRICT LEGAL COUNSEL

EXHIBIT A

ATTACHMENT 1

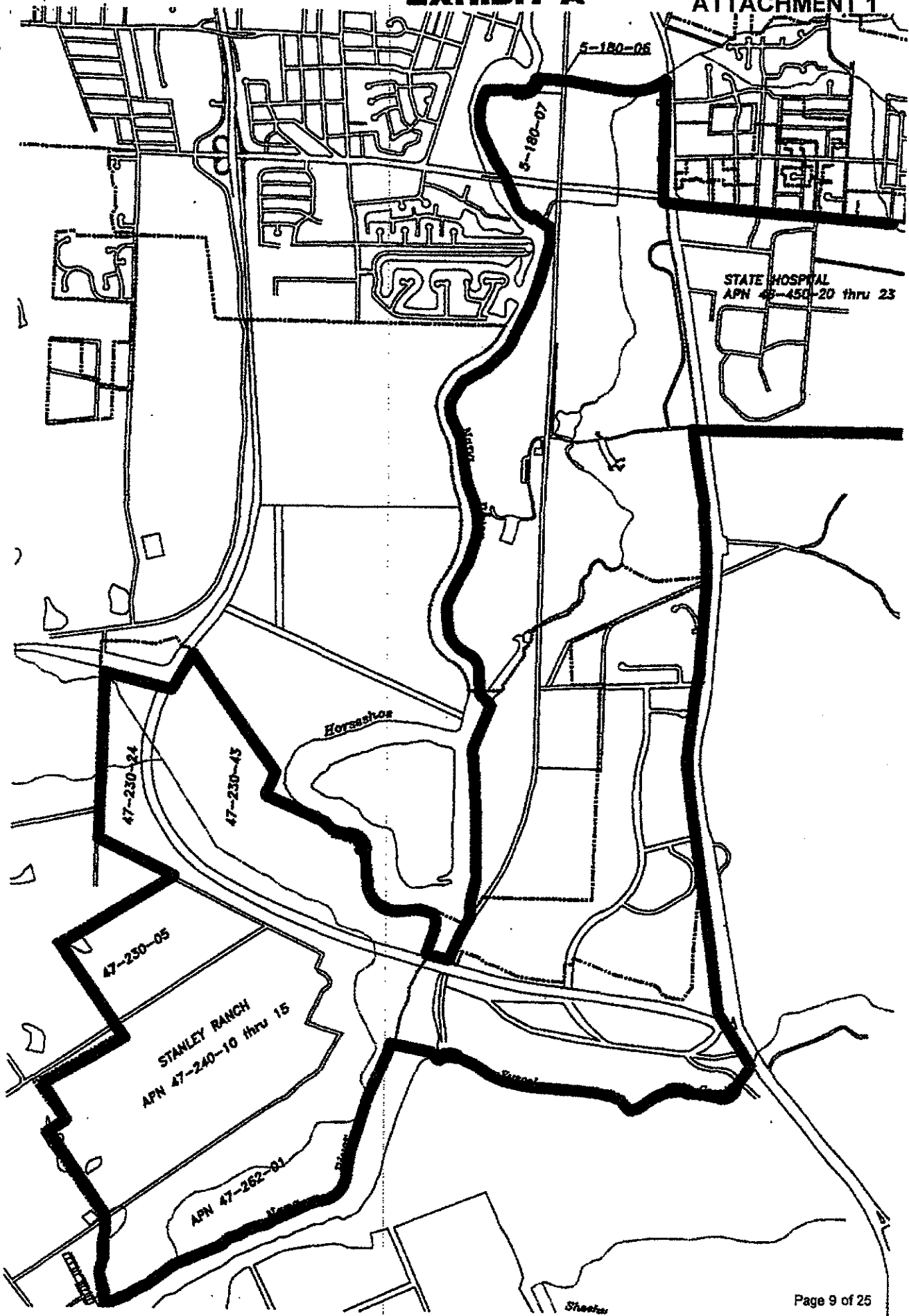


EXHIBIT "B"**Example of Reimbursement to the City for Conversion to NSD Recycled Water**

- Notes:**
1. Reimbursement for each customer is calculated independently from other customers converted to NSD Recycled Water.
 2. The First year is the full calendar year following the date the potable water customer connects to NSD Recycled Water.
 3. The First Year net potable water sales is used for revenue reimbursement calculations until reimbursement obligations are fulfilled.
 4. The City of Napa's net potable water sales growth is determined to be 0.75% for the purpose of calculating the City's revenue reduction do to lost customers.
 5. Potable annual water consumption is determined to be the average potable water use for the previous three years from the date of connection to NSD Recycled Water. Average annual water consumption will be based on less than three years of water use information if water use history is not available.
 6. The current year potable water rate shall be used for calculating revenue loss to the City.

Example One:

Existing City of Napa water customer with the following characteristics:
 Water Consumption = 50,000,000 gallons per year (prior 3 year average)
 Current Water Rate (year 2000) = \$3.00 per thousand gallons
 Annual Revenue to City from Customer = \$150,000
 City Chemical and Energy Costs for Treatment = \$0.20/ thousand gallons
 City Revenue Reduction from Conversion to NSD = \$140,000.00
 Net Potable Water Sales (year 2000) = \$11,500,000.00

Customer switches to NSD Recycled Water April 1, 1999. NSD notifies City of customer switch to recycled water and reimbursement begins with the following calendar year (for this example the year 2000). In January of 2001 the City bills NSD for Revenue lost due to conversion to Recycled Water for full calendar year.

First Year:

Reimbursement the first year equals the total revenue loss by the City.

City Revenue Reduction from Conversion to NSD:
 $\$150,000 - (\$0.20 \times 50,000 \text{ units}) = \$140,000.00$

Reimbursement to the City for January 1 through December 31, 2000 = \$140,000.00.

Second Year:

Reimbursement is reduced by City's net potable water sales growth for year (0.75%). Use First Year as base year net potable water sales:

Revenue Growth = $\$11,500,000.00 \times 0.0075 = \$86,250.00$

Current Water Rate (year 2001) = \$3.25 per thousand gallons

Annual Revenue Loss to City from Customer = \$162,500.00

City Chemical and Energy Costs for Treatment = \$0.22/ thousand gallons

City Revenue Reduction from Conversion to NSD:

$\$162,500 - \$86,250 - (\$0.22 \times 50,000 \text{ units}) = \$65,250.00$

Reimbursement to the City for January 1 through December 31, 2001 = \$65,250.00.

Third Year:

Reimbursement is reduced by City's net potable water sales growth for year (0.75%). Use First Year as base year net potable water sales:

Revenue Growth = $\$86,250 + (\$11,586,250 \times 0.0075) = \$173,146.88$

Current Water Rate (year 2002) = \$3.35 per thousand gallons

Annual Revenue Loss to City from Customer = \$167,500.00

City Chemical and Energy Costs for Treatment = \$0.24/ thousand gallons

City Revenue Reduction from Conversion to NSD:

$\$167,500 - \$173,146.88 - (\$0.24 \times 50,000 \text{ units}) = \0.00

Reimbursement to the City for January 1 through December 31, 2002 = \$0.00. Reimbursement obligation for customer is complete.

Example Two:

Existing City of Napa water customer with the following characteristics:

Water Consumption = 3,500,000 gallons per year (prior 3 year average)

Current Water Rate (year 2003) = \$3.55 per thousand gallons

Annual Revenue to City from Customer = \$12,425

City Chemical and Energy Costs for Treatment = \$0.26/ thousand gallons

City Revenue Reduction from Conversion to NSD = \$11,515.00

Net Potable Water Sales (year 2003) = \$12,500,000.00

Customer switches to NSD Recycled Water July 25, 2002. NSD notifies City of customer switch to recycled water and reimbursement begins with the following calendar year (for this example the year 2003). In January of 2004 the City bills NSD for Revenue lost due to conversion to Recycled Water for full calendar year.

