



Memorandum

TO: Honorable Mayor &
City Council

FROM: Dennis Hawkins, CMC
City Clerk

SUBJECT: The Public Record
September 7 - 13, 2012

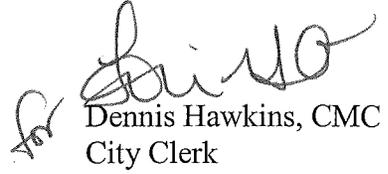
DATE: September 14, 2012

ITEMS TRANSMITTED TO THE ADMINISTRATION

ITEMS FILED FOR THE PUBLIC RECORD

- (a) Letter to Mayor Reed and the City Council from David Wall dated September 5, 2012 regarding "Will WPCP be subject to 'Cap-and-Trade?' WPCP now 'flares methane gas to atmosphere 24/7.'"
- (b) Letter to Mayor Reed and the City Council from David Wall dated September 7, 2012 regarding "Master Consultant Agreement with RMC Water and Environment information request."
- (c) Letter to Mayor Reed and the City Council from David Wall dated September 7, 2012 regarding "ESD 'Grant Program' and the taxpayer monies dispersed information request."
- (d) Letter to Mayor Reed and the City Council from David Wall dated September 7, 2012 regarding "'Flaring of methane gas to atmosphere' requiring S.J. Fire intervention information request."
- (e) Letter to Mayor Reed and the City Council from David Wall dated September 7, 2012 regarding "Does SBWR Master Plan use of FUND 512 violate Proposition 218 with reference to SSUC?"
- (f) Letter to Mayor Reed and the City Council from David Wall dated September 12, 2012 regarding "Mayor Reed's 'Performance: concerning decisions relating to ESD is a grotesque FAILURE.'"
- (g) Letter to Mayor Reed and the City Council from David Wall dated September 13, 2012 regarding "Please give employees & Tributary Agencies my condolences resulting from ESD appointment."
- (h) Letter to Mayor Reed and the City Council from David Wall dated September 13, 2012 regarding "Does CM Liccardo's utopian 'Car Share Program' accommodate the disabled?"
- (i) Letter to Mayor Reed and the City Council from David Wall dated September 13, 2012 regarding "CM Herrera uttered an 'oink' in confirming a new ESD Director."
- (j) Letter to Mayor Reed and the City Council from David Wall dated September 13, 2012 regarding "'Appellate Court Invalidate Salinas' Storm Water Fee' is this still good law?"

Honorable Mayor and City Council Members
September 19, 2012
Subject: The Public Record: September 7 - 12, 2012
Page 2 of 2


Dennis Hawkins, CMC
City Clerk

DH/tld

Distribution: Mayor/Council
City Manager
Assistant City Manager
Assistant to City Manager
Council Liaison
Director of Planning
City Attorney

Director of Transportation
Public Information Officer
San José Mercury News
Library
Director of Public Works
City Auditor
Director of Finance

David S. Wall

RECEIVED
San Jose City Clerk

2012 SEP -5 PM 12: 56

September 05, 2012

Mayor Reed and Members San José City Council
200 East Santa Clara Street
San José, California 95113-1905

Re: Will WPCP be subject to "Cap & Trade?" WPCP now "flares methane gas to atmosphere 24/7."

What has caused the "Gas Holders" at WPCP to fail?

"Gas Holder" failures are just additional "nails in failed ESD administration coffin."

Yet, OCM still supports failed administration at ESD. "Birds of a "failed" feather flock together."

Dateline: City Desk [Wednesday, (09.05.12)]. *Is ESD and OCM a "portrait of substandard performance?"*

Its' official, the San José / Santa Clara Water Pollution Control Plant (WPCP) now "flares methane gas to the atmosphere 24/7." What an achievement for Mayor Reed's "Green Vision!" All that potential electrical power that could be used to support WPCP operations and excess power that could be sold back to PG&E to relieve pressure on rate payers is just unceremoniously "flared off into the atmosphere" creating more Greenhouse Gas to hasten the planets demise via the dreaded Global warming disease. The Office of the City Manager (OCM) continues to flail about the 17th floor at city hall, writhing in their inability to generate acceptable excuses to account for continuous, unabated administrative failures as WPCP progresses towards a raw sewage spill event.

To be fair to his Honor, Mayor Reed's only fault in the continuing melt down of WPCP operations, that could lead to a "spill of raw sewage" this year, is his steadfast support of the City Manager, the Assistant City Manager (who is a Member: Treatment Plant Advisory Committee (TPAC) and the Acting Director of the Environmental Services Department (ESD) to remain on the payroll. Continuing to support "substandard and or incompetent administrative performance" has no defense. Those that support, "substandard and or incompetent administrative performance," risking the public's health and safety as a result of this process, are nothing short of damnable "fools" who are deserved to be vilified, openly mocked and excoriated with foul words for all eternity.

Here are some questions for YOU to have the "Acting Director of ESD" answered in a report on the status of the "gas Holders." The "report" should be a "sworn to tell the full and complete truth document."

1. What was the cause or causes of the gas holder failure(s)?
2. Why such a dramatic failure after just nine years beyond a major rehabilitation of gas holders?
3. What was the cost of the rehabilitation of the gas holders in 2003?
4. How many hours of preventive maintenance have been dedicated and documented to the gas holders since the major rehabilitation in 2003?
5. If the gas holders are critical to WPCP operations, why are there no viable backups?
6. If the gas holders are critical pieces of equipment, what other critical assets have not received minimal preventive maintenance? Headworks #2 comes to mind.
7. What additional pieces of critical equipment are projected to fail during the current year?
8. Are the current employees competent to maintain any of the critical pieces of equipment?

Respectfully submitted,

Cc: City Attorney / City Auditor / City Manager
Members: TPAC

David S. Wall
09.05.12

David S. Wall

RECEIVED
San Jose City Clerk

2012 SEP -7 PM 4:15

September 7, 2012

Mayor Reed and Members San José City Council
200 East Santa Clara Street
San José, California 95113-1905

Re: Master Consultant Agreement with RMC Water and Environment information request.

Here is the text for a "Request for PUBLIC RECORD INFORMATION" that is pending with reference to RMC Water and Environmental for your perusal.

This request for Public Record information concerns itself with the City of San José Office of the City Attorney.

A few weeks ago (08.07.12) during the Rules and Open Government Committee meeting, I objected to the use of the Sewer Service & Use Charge revenue to be transferred to FUND 512 which is being used to fund, "Master Consultant Agreement with RMC Water and Environment to develop a master plan for the South Bay Water Recycling Program."

Councilmember Oliverio requested the City Attorney to investigate this matter and report back via an "Info Memo."

The aforementioned "Master Consultant Agreement" is now on the September 13, 2012 Treatment Plant Advisory Committee (TPAC) Agenda, [Item 4 (A)] and the September 18, 2012 City Council Agenda.

How can the aforementioned "Master Consultant Agreement" go forward without first going back to "Rules" with reference to Councilmember Oliverio's request for the "Info Memo?"

I request all documents pertaining to the aforementioned "Info Memo."

Respectfully submitted,

David S. Wall
09.07.12

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Cc: City Attorney / City Auditor / City Manager
Members: Treatment Plant Advisory Committee (TPAC)

David S. Wall

PUBLIC RECORD C

RECEIVED
San Jose City Clerk

2012 SEP -7 PM 4:16

September 7, 2012

Mayor Reed and Members San José City Council
200 East Santa Clara Street
San José, California 95113-1905

Re: ESD "Grant Program" and the taxpayer monies dispersed information request.

Here is the text for a "Request for PUBLIC RECORD INFORMATION" that is pending with reference to the Environmental Services Department (ESD) and the "Grant Program" were taxpayer monies are given away to support "ESD's cause célèbre."

This request for Public Record information concerns itself with the City of San José Environmental Services Department (ESD).

For some time the Environmental Services Department has been "giving away" taxpayer monies in the form of "Grants."

I request all documents pertaining to the ESD "Grants" such as recipients (for example "Christmas in the Park," etc.) and what "FUND" was used (for example FUND 513) and the rationale for the recipient to receive the "Grant(s)" for the period of time: 2009-2012.

Respectfully submitted,

David S. Wall
eq. 07.12

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Cc: City Attorney / City Auditor / City Manager
Members: Treatment Plant Advisory Committee (TPAC)

David S. Wall

PUBLIC RECORD d

RECEIVED
San Jose City Clerk

2012 SEP -7 PM 4: 16

September 7, 2012

Mayor Reed and Members San José City Council
200 East Santa Clara Street
San José, California 95113-1905

Re: "Flaring of methane gas to atmosphere" requiring S.J. Fire intervention information request.

Here is the text for a "Request for PUBLIC RECORD INFORMATION" that is pending with reference to the Environmental Services Department (ESD) and the San José Fire Department for your perusal.

This request for Public Record information concerns itself with the City of San José Fire Department and the Environmental Services Department (ESD).

For some time the San José / Santa Clara Water Pollution Control Plant (WPCP) has been "flaring methane gas to the atmosphere."

This fact has caused citizens in the area, presumably from Alviso, to call 911 because the citizen(s) feel WPCP is "on fire."

I request all documents pertaining to the aforementioned issue of "flaring methane gas to the atmosphere" by WPCP that precipitated and required interaction by the San José Fire Department, (For example; all ESD communications to Fire Department, to the Office of the City Manager, number of "911 calls" for assistance, number of times S.J. Fire had to respond, identity of Engine Companies and the total cost borne by the S.J. Fire to respond to these unnecessary "911 calls," etc.)

I would also like to express my eternal gratitude to the Heroes and Heroines that comprise the Fire Fighters, Command Officers and Support Staff of the San José Fire Department for their dedication and service to our community, despite the continuous and unjust mistreatment they all receive from the foul hands of the incompetent, heartless and brainless City Councilmembers who supported Measure B.

Respectfully submitted,

David S. Wall
09.07.12

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Cc: City Attorney / City Auditor / Chief San José Fire Department
City Manager
Members: Treatment Plant Advisory Committee (TPAC)

David S. Wall

RECEIVED
San Jose City Clerk

2012 SEP -7 PM 4: 15

September 07, 2012

Mayor Reed and Members San José City Council
200 East Santa Clara Street
San José, California 95113-1905

Re: Does SBWR Master Plan use of FUND 512 violate Proposition 218 with reference to SSUC?

Sewer Service & Use Charge (SSUC) is governed by Proposition 218.

FUND 512 is based on the SSUC.

What rationale is used to justify funding expansion of South Bay Water Recycling (SBWR) via SSUC?

SBWR is a "scam" on the rate payers. SBWR is not needed and is a "Water Utility."

SBWR loses "millions of rate-payer dollars" every year since its inception and expansion.

*****Where is the "Info Memo" the City Attorney was to draft via direction from "Rules?"**

Councilmember Oliverio requested the "Info Memo to the City Attorney."

The Master Consultant Agreement with RMC Water & Environment is at issue.

Should not this issue be resolved at "RULES" prior to the TPAC Agenda for September 13, 2012?

Dateline: City Desk [Friday, (09.07.12)]. *SBWR should not be funded from SSUC.*

"The Master Consultant Agreement with RMC Water and Environment (Agreement) to develop a master plan for the South Bay Water Recycling Program" is at issue.

The Agreement showed up at the Rules and Open Government Committee meeting where this citizen objected to the use of FUND 512 whose base funding flows from the Sewer Service & Use Charge (SSUC).

The SSUC is governed by Proposition 218.

There is no justification to use the SSUC via FUND 512 to fund the aforementioned "Agreement."

The bigger issue is why is this "Agreement" showing up on next week's [Treatment Plant Advisory Committee (TPAC) meeting Agenda (09.13.12); Item 4 (A)]?

Should not this "Agreement" with discussion of City Attorney's "Info Memo" be first discussed at "RULES" per Councilmember Oliverio's initial request?

Respectfully submitted,

**Cc: City Attorney / City Auditor / City Manager
Members: Treatment Plant Advisory Committee (TPAC)**

David S. Wall
09.07.12

David S. Wall

RECEIVED
San Jose City Clerk

2012 SEP 12 PM 12: 37

September 12, 2012

Mayor Reed and Members San José City Council
200 East Santa Clara Street
San José, California 95113-1905

Re: Mayor Reed's "Performance: concerning decisions relating to ESD is a grotesque FAILURE."

Mayor's approval of ESD Director's appointment reaffirms he is a "dullard of the doyen class."

Mayor rejected to "clean the corrupt and incompetent house" at ESD.

All other City Officials acquiesced by exposing their participation in "corrupt administrative acts."

Dateline: City Desk [Wednesday, (09.12.12)] Mayor Reed & Council "whitewashed" corruption at ESD.

The Environmental Services Department (ESD) "a bastion of incompetent administrative performance and corrupt administrative acts" has been sanctified by the substandard performance of the failed "Reed regime" and the responsible swine on the San José City Council.

The evidentiary facts are exceedingly clear, ESD, the scandal ridden city department in the death throes of permanent decay is to be an icon of the "status quo" and a glaring testament that "if you kiss Council "butt" long and hard enough," any incompetent city administrator can achieve the impossible.

With the changes in the ESD command staff, Mayor Reed impliedly declares that his "decision making" is likened to a bungling fool, a true "dullard of the doyen class" whereas, the Councilmembers who participated in perpetrating the aforementioned farce on to the taxpayers are reduced to generic swine of a "whitewashed barnyard."

If the San José / Santa Clara Water Pollution Control Plant fails, which I sincerely hope it does not, the failure will certainly rest upon YOUR incompetent decision making heads.

Respectfully submitted,

David S. Wall
09.12.12

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Cc: City Attorney / City Auditor / City Manager
Members: Treatment Plant Advisory Committee (TPAC)

David S. Wall

RECEIVED
an Jose City Clerk

12 SEP 13 PM 3: 57

September 13, 2012

Mayor Reed and Members San José City Council
200 East Santa Clara Street
San José, California 95113-1905

Re: Please give employees & Tributary Agencies my condolences resulting from ESD appointment.

“Political Patronage: the power to grant political favors” is alive and well in San José.

Mayor Reed and Council’s participation in the farce at ESD will take a few years to correct.

Mayor Reed is a “Dufus” for all time for his participation in the appointment of Director ESD.

Tributary Agencies are forced to bend over, grab their ankles and prepared for a rectal screw job.

Dateline: City Desk [Thursday, (09.13.12)] *Please convey my sincere condolences to ESD employees!*

The good and honorable city employees assigned to the Environmental Services Department (ESD) have been for many years subjected to “a bastion of incompetent administrative performance and corrupt administrative acts” are now once again, witness to the effects of a “political patronage system” of promotions predicated on “politics” and not “performance.”

Previously communicated to Mayor Reed and Council, “The evidentiary facts are exceedingly clear, ESD, the scandal ridden city department in the death throes of permanent decay is to be an icon of the “status quo” and a glaring testament that “if you kiss Council “butt” long and hard enough,” any incompetent city administrator can achieve the impossible.”

The recent appointment of the Director ESD is not without controversy. The Office of the Auditor’s report on ESD was nothing short of complete damnation to the administration to wit the new Director of ESD was a material contributor.

How can a “piss-poor administrator whose administrative performance is either incompetent, substandard or a hybrid of the two,” be appointed to Director ESD when the Auditor’s report speaks to the contrary? Could it be that all the other candidates refuse to work for San José due to the budget and pay cuts leaving only the dregs from the bottom of the barrel to be considered?

Further, the Tributary Agencies who pay the San José / Santa Clara Water Pollution Control Plant (WPCP) to treat their sewage should also be given my condolences for they are paying for San José’s incompetent management team and the pending results that will affect their bottom line.

Mayor Reed and the San José City Council have just communicated to the entire world that they are not only idiots but, the Office of the City Manager calls the shots in San José.

Respectfully submitted,

Cc: City Attorney / City Auditor / City Manager
Members: Treatment Plant Advisory Committee (TPAC)

David S. Wall
09.13.12

David S. Wall

RECEIVED
San Jose City Clerk

2012 SEP 13 PM 3: 57

September 13, 2012

Mayor Reed and Members San José City Council
200 East Santa Clara Street
San José, California 95113-1905

Re: Does CM Liccardo's utopian "Car Share Program" accommodate the disabled?

How does "Car Share Program" integrate into Santa Clara Valley Habitat Plan?

Dateline: City Desk [Thursday, (09.13.12)] *How many "cars for share" will have disabled plates?*

Councilmember Liccardo is an "urbanist" who continues to tout, usually in utopian colors and tone that; high density living projects are good, inclusionary housing is great, bicycles are better than cars, car sharing is really cool, illegal aliens are constituents that need political love and the Santa Clara Habitat Plan is flawed but, I'll support it anyway. He is entitled to express his opinions and vote to confer benefits to illegal aliens, developers, special interest groups like SPUR and to whomever he wants.

I have a few questions to his Honor concerning the "Car Share Program and the Santa Clara Valley Habitat Plan."

How is the issue of "Disabled Access" to the "Car Share Program" going to be addressed?

How many "cars" will have "Disabled plates" or will "disabled folks" have to produce their own "disable placards" to participate in the "Car Share Program?"

How will the "Car Share Program" be integrated into the Santa Clara Valley Habitat Plan?

Respectfully submitted,

*David S. Wall
09.13.12*

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Cc: City Attorney / City Auditor / City Manager

To: Mayor Reed and City Council
200 East Santa Clara Street
San José, CA 95113-1905

RECEIVED
San Jose City Clerk

From: David S. Wall

Dateline: City Desk [Thursday, (09.13.12)] ^{2012 SEP 13 PM 3:57} "CM Herrera uttered an "oink" in confirming a new ESD Director.

The Silicon Valley Newsroom has spoken with reference to the District 8 Council race, here is a noteworthy quote,

"Rose Herrera, despite some missteps earlier in her term, has seasoned politically. She takes stands and communicates them clearly. That's something her district deserves. With the city's challenges, there's just no time for on-the-job training."

I do not want to hurt anyone's feelings in the "Newsroom" or the sitting Councilwoman.

However, Councilmember Herrera's decisions on the Transportation & Environment Committee, where she is Vice Chair, the Community and Economic Development Committee where she is Chair and her consistently incoherent dribblings from the Dais during Council Meetings with one reference to her vote confirming the new ESD Director does make her "seasoned politically"...but surely the "Newsroom" meant, "a politically seasoned pig who is on the District 8 spit; being slowly basted by her incompetence to the issues, blind support for Mayor Reed's continuous flailing and failing agenda, a reckless disregard or congenital indifference to the acts of corruption, mismanagement and waste of taxpayer monies by the bungling fools that comprise the Office of the City Manager, especially the old haggard one who looks like a Vulcan without the bobbed ears.

I for one don't even understand why the voters of District 8 voted for her in the first place and it will be their decision via their vote who will represent their concerns.

As to Mr. Nguyen, the "Newsroom" has spoken and here is their position,

"Although Nguyen is a candidate worth watching for the future, he's not there yet. He came across as unprepared on the issues and out of sync with his district's voters. There's little to suggest that Nguyen is thinking for himself rather than just toeing the union party line.

When asked whether he supported a municipal minimum wage higher than the state's, Nguyen said: "I'm still iffy on it. I'm leaning towards not supporting it, but I'm open to it." Sorry, Jimmy, "iffy" stances aren't a good thing for decision makers in a city this big; voters need to know where you stand on key issues in this election."

Mr. Nguyen has visited me several times at "City Desk" while I was preparing for various Council Committee meetings and was very articulate to the issues of the day. Mr. Nguyen's consistent issues were to fight against corruption / mismanagement at city hall and that Councilmember Herrera was not doing a good job and that he could do much better.

I am not a District 8 voter. However, in my opinion; a corruption / mismanagement fighter is far better than "a well seasoned political pig" who is either on a "spit" or is rooting in the pig parlor with her contemporaries on the 18th floor at city hall.

Cc: City Attorney / City Auditor / City Manager... **Respectfully submitted,**

David S. Wall
09.13.12

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June 4, 2002

Appellate Court Invalidates Salinas' Storm Water Fee

Introduction. The federal Clean Water Act requires local governments which own storm drains that flow to rivers and oceans to obtain a permit from the State's Regional Water Quality Control Boards (RWQCBs) under the National Pollutant Discharge Elimination System (NPDES). In recent years, the State's regional boards have imposed increasingly expensive requirements on the operators of storm drains, such as the recently imposed requirement of the Los Angeles regional board that cities and counties which own storm drains eliminate **all** litter from those storm drains – if a single Styrofoam cup should reach the ocean, the agencies would be in violation of federal law.

The federal and state governments have not funded this mandate, and California's local governments have been looking for resources to fund these programs without harming other important local services such as police, fire, library and park programs. Salinas' decision to impose a storm water fee on owners of improved property in that City who benefit from the storm drain programs was thus closely watched by local governments around the state. That fee was challenged by the taxpayer groups, who argued that it was a "property related" fee which a 1996 ballot measure, Proposition 218, required to be approved by a vote of the affected property owners.

On June 3, 2002, in a decision¹ which this author views as contrary to controlling precedent, the Sixth District Court of Appeal in San Jose reversed a trial court ruling for Salinas. If the case is not reheard by the Court of Appeal or reviewed or republished by the California Supreme Court, it will present a significant roadblock to funding NPDES compliance. This case note summarizes the issues in the case and the appellate court's reasoning and notes options for local governments seeking means to fund storm water programs.

The Decision. The appellate court tells us that Salinas imposed its fee on "every developed parcel of land, within the City, and the owners and occupiers thereof, jointly and severally" and calculated the fee "according to the degree to which the property contributed runoff to the City's drainage facilities" as measured by "impervious area." That phrase, in turn, was defined as areas "modified by the action of persons to reduce the land's natural ability to absorb and hold rainfall." The City argued that this is not a property-related fee within the sweep of Prop. 218, but rather a fee on those who elect to use a city service. The City pointed out that property owners could avoid the fee by not using the storm water service, as by leaving their

¹ The case is *Howard Jarvis Taxpayers Ass'n, et al. v. City of Salinas, et al.*, Sixth DCA Case No. H022665 (filed June 3, 2002).

properties in their natural state or by making other arrangements to prevent storm water from reaching the City's facilities. This last point is not merely hypothetical, as the Los Angeles RWQCB's newest NPDES permit also requires certain new developments to include on-site groundwater recharge facilities sufficient to retain on-site rainfall from all but the largest storms.

The court rejected Salinas' argument in conclusory fashion: "Accordingly, the resolution [imposing the fee] makes the fee applicable to 'each and every developed parcel of land within the City.' This is not a charge directly based on or measured by use, comparable to the metered use of water or the operation of a business, as the City suggests." The court's references to metered water use and to business fees were intended to distinguish a 2000 decision of a Los Angeles panel of the Court of Appeal which had found metered water fees outside the scope of Prop. 218, and a 2001 decision of the California Supreme Court giving Prop. 218's definition of "property related fee" a very narrow sweep in a case involving housing code enforcement fees.

The appellate court in the *Salinas* case labeled the provision of that City's fee resolution allowing a property owner to reduce or eliminate the fee by showing that other arrangements for storm water were in place as "the Proportional Reduction clause." The court dismissed the City's claim that this made the fee non-property related with essentially no analysis, writing: "A property owner's operation of a private storm drain system reduces the amount owed to the City to the extent that runoff into the City's system is reduced. The fee nonetheless is a fee for a public service having a direct relationship to the ownership of developed property." This language quotes part of the definition of the property related fees to which Prop. 218 applies, but not all of it. It would seem that the fees for housing inspection services and metered water charges are also "fees for public services having a direct relationship to the ownership of developed property" but were nonetheless found exempt from Prop. 218 by previous courts. Thus, the decision would appear to be inconsistent with the Supreme Court's construction of Prop. 218 and the construction of the Los Angeles appellate court, as well.

The *Salinas* court also ignored a number of appellate cases holding that the "broad construction" language of the uncodified Section 5 of Prop. 218 is not a substitute for determining the actual intent of the framers of the measure. Instead, the court relies heavily on that section for both its conclusion that Salinas' fee is property-related and a conclusion the Salinas' fee is not exempt from the voter approval requirement of Proposition 218's Article 13D, section 6(c) as a "water" fee or a "sewer" fee.

The City of Salinas argued that, even if its fee were property related and subject to Prop. 218 in general, it was exempt from the voter approval requirement of Article 13D, Section 6(c) because that section expressly exempts "sewer" and "water" fees. The appellate court rejected the City's efforts to rely on dictionary definitions of the term "sewer," which Prop. 218 does not define. It also rejected the taxpayer groups' reliance on an advisory Attorney General's opinion which reasoned that, because Prop. 218 distinguishes flood control from sewer services in its provisions governing assessments on property (a revenue source technically distinct from "taxes" and "property related fees"), the word "sewer" ought to be read to exclude storm sewers in the fee provisions of Prop. 218, too. Instead, the court relied on what it deemed "[t]he popular, nontechnical sense of sewer service, particularly when placed next to 'water' and 'refuse collection' services, suggests the service familiar to most households and businesses, the sanitary sewerage system." The court found the term "sewer services" ambiguous and resorted to the "broad construction" language of Section 5 to resolve the point adversely to the City. While the AG's analysis might have provided a more persuasive basis for a ruling adverse to Salinas on this point, the court's analysis appears to be a naked conclusion, unsupported by persuasive analysis.

The court similarly rejected the City's reliance on the definition of "water services" adopted by two-thirds of each house of the Legislature and signed into law by then-Governor Pete Wilson, in the Proposition 218 Omnibus Implementation Act adopted immediately after the approval of Proposition 218, with support from both local government and taxpayer advocates. The court stated only that: "[t]he average voter would envision 'water service' as the supply of water for personal, household, and commercial use, not a system or program that monitors storm water for pollutants, carries it away, and discharges it into the nearby creeks, river, and ocean." Again, this is not persuasive analysis, but a mere conclusion

Options for Local Government. In light of this case, what are local governments' options for funding NPDES compliance? These include:

- (1) Wait to see if the case becomes final in its current form, as Salinas may seek rehearing, depublication or review, and other interested groups may seek depublication, which would remove the case from the law books and eliminate it as precedent for future cases.
- (2) Pursue a storm water fee drafted just a bit more tightly than Salinas' to make it clear that the fee is imposed on those who use storm water systems and not those who own improved property.
- (3) Comply with the voter approval requirements of Prop. 218 (i.e., obtain the approval of a majority of property owners), which to the author's knowledge only one City has ever tried; that effort was unsuccessful.
- (4) Fund NPDES compliance with other revenues. These might include a voter-approved special tax, a property-owner approved assessment, or other fee revenues.

Conclusion. This area of the law is developing rapidly. The California Supreme Court recently granted review of a case involving a Prop. 218 challenge to a water connection charge imposed by the Shasta Community Services District. A petition for review by that Court is also pending in a case involving in lieu franchise fees collected from utility rate-payers in the City of Roseville. These cases will likely be resolved in 2002 and 2003. As always, we'll keep you posted!