

DATE: November 7, 2008

TO: Members, Local Agency Formation Commission

FROM: Peter Banning, Executive Officer

SUBJECT: SASM, Regional Water Quality Control Board & LAFCO Policy

At the Commission's September 11, 2008 meeting, staff reported to the Commission on the Regional Water Quality Control Board's (RWQCB) process following sewage spills from the Sewerage Agency of Southern Marin (SASM) treatment plant earlier this year. The RWQCB has proposed a fine of \$1.6 million. SASM is in the process of proposing a more lenient fine and the application of a portion of the fine to "supplemental environmental projects" (SEPs) to which the cost of the fine might be applied to mitigate conditions that allowed the spill to occur.

Staff requested the Commission's guidance on whether (and how) to reiterate LAFCO's policy interests and research results from consolidation studies in 2004 and 2005 to the RWQCB and the affected agencies. In the process of reviewing and approving SEPs, the RWQCB might be able to provide strong incentives for functional or political consolidation that the SASM member agencies have been unwilling to pursue since LAFCO studies were completed.

After discussion, the Commission directed staff to draft a letter for the signature of the Chair for distribution to the RWQCB, SASM member agencies and others summarizing LAFCO's role and mandate, adopted policies, 2005 research findings on consolidation cost savings and to request that the Regional Board consider allocating a portion of the \$1.6 million fine to the short-term costs of functional and political consolidation. The letter was sent to the RWQCB, SASM's member agencies and others on September 23, 2008. A copy of the letter is attached to this report.

Since the letter's distribution, the Commission has received replies from the Almonte Sanitary District and the Tamalpais Community Services District which are also attached. On October 30, 2008, staff attended a meeting in Assemblyman Huffman's office. The purpose of the meeting was to update the Assemblyman on the process of the RWQCB and to discuss legislation that might affect the Regional Board, SASM agencies and the application of fines to supplemental environmental projects. The meeting did not produce any specific planned action or other outcome.

SASM and its member agencies are currently attempting to reach agreement with the staff of the RWQCB on reducing the proposed \$1.6 million fine and for approval of supplemental environmental projects. SASM has submitted an extensive defense of its

facilities and operations in an effort to reduce or eliminate the proposed fines. SASM's comment letter of October 23, 2008 also proposes supplemental environmental projects beginning with a sewer lateral loan program. The proposed SEP would be based on a successful revolving loan program recently implemented by Tamalpais Community Services District. Comments to the Regional Board, including SASM's defense and SEP proposals can be viewed at http://www.swrcb.ca.gov/sanfranciscobay/board_info/agendas/2008/october/SASM/SASM_wExhibits_Oct2408.pdf

The Regional Board has postponed its public hearing to December 10, 2008. Any proposed settlement emerging from its discussions with SASM prior to December 10th will be open for public comment for 30 days and would probably delay that hearing. If no settlement is proposed, the hearing will be held to consider public testimony and finalize action by the Regional Board.

Recommendation

Staff believes that the pursuit of the Commission's policy objectives at this juncture should focus on active participation in the process underway at RWQCB and that such participation should be aimed at reviving and expanding actions growing out of the Commission's studies in 2005. The Commission's actions in 2005 recognized the need for evolutionary change to southern Marin sewer agencies and emphasized the efficiencies available from *functional* consolidation as a preparation for eventual political consolidation. SASM and its member agencies then initiated but quickly discontinued a series of cooperative actions to achieve those efficiencies.

Staff recommends that the Commission take the following actions to continue to assert its policies based on LAFCO's research findings, adopted policies and spheres of influence:

1. Appoint a subcommittee to guide staff in participating in the RWQCB hearing process, including further correspondence commenting on any proposed settlement and/or participation in any hearings held by the Regional Board (see 2. below). The more general purpose of the sub-committee would be to continue to advocate to SASM and its member agencies that they enhance the effort they began in 2005 to become a commitment to objectively pursue both functional and political reorganization for the benefit of their sewer service customers.
2. Continue to advocate to the RWQCB that the SEP process include provision for the costs of preparing for organizational change. These costs could include the costs of further study and planning for long-term functional consolidation of SASM agencies, management analysis of the SASM joint exercise of powers agreement, feasibility analysis of centralized collection system maintenance through SASM and analysis of other organizational alternatives for SASM member agencies. The Commission and its appointed sub-committee should consider advocating control

of this program by SASM with participation by LAFCO and Regional Board personnel in its oversight.

Respectfully submitted,



Peter V. Banning
Executive Officer