

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

237



FROM: Waste Management Department

SUBMITTAL DATE:
January 22, 2007

SUBJECT: Second Amendment to the Second El Sobrante Landfill Agreement

RECOMMENDED MOTION: That the Board approve the Second Amendment to the Second El Sobrante Landfill Agreement and authorize the Chairman to execute the Amendment on behalf of the Board.

BACKGROUND: In 1998, the Board approved the expansion of the El Sobrante Landfill which provided for a significant increase in disposal capacity for the County and established a per-ton County rate for trash landfilled at El Sobrante by USA Waste (now Waste Management, Inc.). Under the current agreement with WMI, the rate paid by the County is increased by 90% of CPI each year until the original in-county capacity prior to the expansion, or 7.32 million tons, is exhausted. At that point in time, the new rate which the County would be required to pay is equal to the lowest priced import contract's disposal component (imports were allowed with the expansion). This "most-favored nation" (MFN) agreement clause was anticipated to occur nearer to the year 2010, but significant growth within the County, increased trash hauling by WMI from other County areas and waste delivery commitments to El Sobrante with other haulers caused that milestone to be reached on August 24, 2004. At that time, the County was paying WMI \$18.82/ton for the first 30,000 tons per month and \$17.72 per ton per month thereafter, creating a blended rate of \$18.12 per ton. (cont'd)

FORM APPROVED
COUNTY COUNSEL

JAN 22 2007

[Signature]
Hans W. Kernkamp, General Manager-Chief Engineer

BY *[Signature]*

FINANCIAL DATA	Current F.Y. Total Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	- 0 -	Budget Adjustment:	No
	Annual Net County Cost:	- 0 -	For Fiscal Year:	2006-07

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature

[Signature]

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the Second Amendment to the Second El Sobrante Landfill Agreement with Waste Management, Inc. is continued to Tuesday, March 13, 2007 with direction to staff to go out in the community with Waste Management, Inc. to hold two meetings with the Oversight Committee at strategically placed locations within the communities along the 15 Freeway, to basically bring the community up to date on the matter.

Ayes: Buster, Tavaglione, Stone, Wilson and Ashley
Nays: None
Absent: None
Date: January 30, 2007
xc: Waste Mgmt., COB

Nancy Romero
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref.: _____ District: 1 Agenda Number: _____

**ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD**

12 . 1

Dep't Recomm.: Policy Consent
Per Exec. Ofc.: Policy Consent

Departmental Concurrence

Under the existing agreement, only contracts which cause the delivery of waste to El Sobrante, and those which do not require substantial additional services other than transportation, transfer and/or deposit are eligible for consideration for MFN purposes. Beginning prior to August 2004, the Waste Management Department (Department) set out to identify all MFN eligible contracts, of which over 100 were identified. The disposal component of these contracts, after subtracting a uniform transportation component, ranged from \$8.24/ton to \$27.44/ton. While a small percentage of import contracts indeed appeared to be lower than the County rate of approximately \$18.00/ton, thereby causing on an interim basis a credit to the County, WMI indicated that those contracts would ultimately be deemed ineligible for MFN purposes by virtue of redirecting that contract's waste to another landfill, renegotiating the rate with the jurisdiction of origin or simply not renewing the contract when its term expires. While the exact amount of any credit due to the County has not been negotiated, even with the most favorable interpretation to the County, the credit will be exhausted in 2007.

The Department hired HFH Consultants, Inc. to analyze the following:

- WMI's ability to cost effectively direct tonnage away from El Sobrante to avoid lowering the in-County disposal rate under MFN, and
- Future market conditions at a regional (Riverside, Orange, Los Angeles and San Bernardino) level.

HFH concluded that, at least on an interim basis, WMI has sufficient landfill capacity elsewhere (Bradley, Lancaster, Simi Valley, and Palmdale) to redirect tonnage away from El Sobrante in order to nullify certain MFN eligible contracts favorable to the County. This conclusion was proven to be correct as, due to the redirection of waste, in addition to contract termination or renegotiation, the lowest rate import contract became the City of Ontario contract, of which the disposal component currently stands at \$23.58/ton. HFH also concluded that while current landfill capacity exceeds demand, major regional landfill closures in 2013 and 2014 will eliminate most or all of the available excess regional capacity. Based on this diminishing capacity, it is anticipated that on a regional basis market rates for disposal will continue to rise, which in turn would cause the in-County rate to rise accordingly under the MFN terms of the existing contract. A copy of the final report prepared by HFH is attached.

Due to the potential volatility and uncertainty of the in-County rate under MFN terms, in addition to the immediate significant increase in the County rate if MFN were invoked, WMI and the Department began discussions to consider alternatives to the MFN language including a contract amendment that includes a fixed rate for County disposal which would be independent of difficult to determine MFN market conditions and pose less financial risk to the County. Negotiations between the County and WMI have been ongoing for more than two years, culminating in the proposed contract amendment under consideration today.

Per the proposed amendment, WMI seeks County support of a permit revision that would authorize the landfill to accept up to 70,000 tons per week (currently a daily limit of 10,000 tons per day) and extend the permitted gate hours (waste acceptance) to 24 hours a day, Monday through Sunday (currently 20 hours a day, Monday through Sunday). The County would act as lead agency for any necessary environmental impact review; the costs of that effort will be borne by WMI. No additional truck trips beyond what is currently authorized in the solid waste facility permit for El Sobrante will be allowed.

In addition to the above proposed permit revision, the following bullet points generally describe the proposed second amendment:

- Beginning on the execution date of this amendment (Board approval):
 - ✓ The County will pay WMI \$18.15 per ton (increased by 90% of CPI annually) for each ton of County waste placed in El Sobrante.
 - ✓ County will not be required to pay WMI for waste placed at El Sobrante from a community cleanup for which the County waived the gate fee, not to exceed \$70,000 per year.
 - ✓ Utilizing Department Hazardous Waste Inspection staff, the County can audit WMI owned facilities that import waste to El Sobrante up to 4 times per year, which includes three days per quarter of actual load check activities.

- Beginning on the date of issuance of all necessary permits and approvals:
 - ✓ Modified MFN terms will go into effect which ensures that the County receives a ton for ton billing credit for those import contracts over 30,000 tons in any twelve month period for which the disposal component is lower than the existing County rate.
 - ✓ WMI commits to accept a minimum of 2000 tons of import and 400 tons of County waste between the hours of 9 PM and 5 AM.
 - ✓ The Department will receive a \$1.00/ton billing credit for each ton delivered between the hours of 9:00 PM and 5:00 AM.
 - ✓ County receives an additional 5,000,000 tons of capacity, for a total of 52,320,000 tons or 40% of the total landfill volume, whichever is greater.
 - ✓ Unless approved by the Administrative Review Committee (ARC), WMI shall not enter into import contracts that collectively obligate the disposal of more than 42,000 tons of Non-county waste in any week.
 - ✓ WMI shall accept up to 5,000 tons per day of County waste Monday through Friday and 3,000 tons on Saturday (28,000 total in any week).
 - ✓ WMI has agreed that priority shall be provided to Western Corridor jurisdictions should disposal capacity be needed at El Sobrante.
 - ✓ WMI shall deliver a minimum of 9,000 tons per month from the Moreno Valley Transfer Station to County owned landfills.

One other significant component of the second amendment stipulates that, should WMI not be successful in obtaining the proposed permit revision (24 hours a day, 70,000 tons per week), then this amendment is revoked and the original MFN terms and conditions of the existing agreement will be in full effect.



A Division of Sahabi Enterprises, Inc.

VIA FACSIMILE AND HAND DELIVERY

January 30, 2007

Honorable Riverside County Board of Supervisors
4080 Lemon Street
Riverside, California 92501

Re: El Sobrante Landfill Agreement Amendment – Agenda Item 12.1

Dear Honorable Board of Supervisors:

My company and its affiliates own and are developing approximately 1,000 acres of land located west and north west the El Sobrante Landfill. On behalf of ourselves and existing builders and homeowners at Dos Lagos, we have a very significant concern regarding the proposed landfill agreement changes.

One of the most fundamental concerns is that we have not had sufficient notice and time to review the details of the proposal. We were not given written notice of the proposed changes, and we only found out about this matter shortly before last week's public outreach meeting organized by the El Sobrante Citizens Oversight Committee meeting, at which our President, Ali Sahabi, raised some of the concerns outlined in this letter. Because of the lack of notice, we request at a minimum that the item be continued for at least four weeks to allow adequate review.

If the matter is not continued and you choose to act on the item at today's Board Meeting, then you should vote "No" and reject the amendment. Our first read of the document reveals an intent to allow for the first time twenty four hour operations. The associated noise, glare, and other impacts on our current and future residents within our developments will be highly adverse and detrimental.

Rather than having these impacts fully discussed and addressed in a supplemental EIR that would be reviewed by the public and applicable agencies, your staff appear to be proposing the approach of approving the changes first, and studying the potential consequences later. This violates the California Environmental Quality Act, Public Resources Code Section 21000, *et. seq.* ("CEQA"). CEQA requires fully analysis and

Letter to Board of Supervisors

January 30, 2007

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disclosure of environmental consequences before decisions and actions are taken by a public body such as your Board. Only by disclosing the full impact and considering alternatives and mitigation measures before an activity progresses beyond the realm of mere ideas and feasibility analysis can the decision-makers minimize environmental consequences wherever feasible. The procedure that your staff is recommending on this item, i.e., to approve the matter first subject to subsequent CEQA review, violates these requirements. For all the foregoing reasons, we respectfully request that this matter be continued or denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joshua C. Gottheim'. The signature is stylized with a large initial 'J' and a horizontal line extending to the right.

Joshua C. Gottheim

Senior Vice President & General Counsel

Cc: Ali Sahabi
El Sobrante Citizens Oversight Committee