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**M E M O R A N D U M
December 14, 2004**

To: Steven Stiles, Senior Civil Engineer
Sanitation District No. 1

From: Robert Shulman, County Counsel

**Re: Fact Sheet for LOP Wastewater Treatment Plant Project
Nevada County Sanitation District No. 1, Zone No. 2 ["District"]**

You asked me to report on various issues for inclusion in the Fact Sheet you are preparing. The issues were posed in an email from Pat Ward Senior Board Analyst as follows:

Legal responsibilities of the District, users, and the County, for Sanitation District operational activities, financial transactions/debt financing obligations, and State and Federal regulatory actions, specifically compliance with the Clean Water Act and non-compliance with wastewater discharge permit requirements.

I will put the issues in a question and answer format.

1. What are the legal responsibilities of the District, users, and County for the operational activities of the District?

The California Health and Safety Code contains the "county sanitation district act" commencing at section 4700 [hereafter, all citations are to the H&S Code]. If a district is in unincorporated territory, the governing board is the board of supervisors. Therefore, the Nevada County Board of Supervisors serves as the board of directors of the Sanitation District No. 1 [hereafter, "the District"]. The agenda always distinguishes District business from County business. The County has no authority whatsoever over the District.

The District is a separate legal entity that can sue or be sued in its own name (section 4738). It has a separate legal existence from the County. As a "special district of the state", it has, through the enabling authority in the Health and Safety Code, exclusive but limited (or special) governmental powers within a defined territory. Most relevant here is that the District is empowered to provide for a sewerage system, including collection, treatment, and disposal (section 4741).

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2. What are the respective responsibilities for financial transactions and debt financing obligations?

All the costs of operation of the District are covered by the District. Each zone of the district covers its costs attributable to the operations within the zone. Users of the Zone 2 sewerage system are the property owners within the Zone, and they pay for the benefits through rates and assessments.

In performing fiscal services, the County Auditor-Controller is guided by state law, governmental generally accepted accounting principles (G-GAAP), and the State Controller's Manual. These rules assist in keeping separate the funds of the District and County. They assist in separating the funds of each zone in the District. Due to the legal and fiscal separation, the County cannot subsidize the District with County funds.

As regards the incurring of debt (borrowing and promising to repay), the District is the legal entity that issues the debt instrument (for instance, a bond). Usually, the obligation to repay is secured either by an assessment against each parcel of land (according to benefit received), or by a pledge of the Zone's future rate revenue. If the system users are unwilling to approve an assessment, or an increase in service rates, that is necessary for debt repayment, then the debt issuance will not be marketable to any lender or investor.

3. What are the respective responsibilities for payment of state-imposed penalties for non-compliance with the Clean Water Act?

The Clean Water Act requires dischargers of wastewater to comply with Waste Discharge Requirements (WDRs). Treated wastewater must be clean enough to comply with the WDRs. The state Regional Water Quality Control Board can take enforcement actions that include penalties against the operator of the treatment plant that is not in compliance. It would be the responsibility of the District to pay any penalties imposed because of non-compliance by the Zone 2 treatment plant. But the funds to pay the penalties are restricted to the funds available to Zone 2. Other zones, and the County itself, would not be liable.

4. What happens if Zone 2 user rejection of assessments and higher rates causes non-compliance and penalties?

Assessments and rates are dependent on user approval under Proposition 218, a constitutional amendment that augmented Proposition 13. If Zone 2 users rejected assessments and higher rates, causing non-compliance and penalties, then solely Zone 2 would be liable. If Zone 2 could not meet its financial responsibilities, the Zone could tumble into insolvency. Non-payment of penalties could lead to a facility shutdown, either by action of the District, or by state action through a cease and desist order.