

Department of Water Resources

California Water News

A daily compilation of significant news articles and comment

November 10, 2004

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**STATE AGENCIES / ENVIRONMENTAL JUSTICE ISSUE
Shoreline project oversight shifted to toxics panel
State EPA takes responsibility away from water board
San Francisco Chronicle - 11/10/04
By Kelly St. John, staff writer**

RICHMOND - A state agency that focuses on protecting human health will oversee plans to build housing on a toxic site on the Richmond shoreline, officials said Tuesday, a move that followed a spirited legislative hearing.

Critics had complained that environmental regulators were lax in their oversight of the site near Point Isabel Regional Park where a developer wants to erect a high-rise housing complex.

A public hearing about the project, held Saturday, drew about 200 people, including many who questioned whether the public would be protected if contaminated dust was stirred up during cleanup of the property.

In response, the state Environmental Protection Agency will put the state's Department of Toxic Substances Control in charge of the project instead of the Regional Water Quality Control Board, which lacks proper expertise in human health, Assemblywoman Loni Hancock said Tuesday.

"I'm just relieved and delighted that they are making this change and that they made it so quickly," said Hancock, D-Berkeley, who organized the hearing after fielding complaints that the water board had not done enough to protect the public.

"We're very pleased," said Peter Weiner, an attorney representing a group of opponents called Bay Area Residents for Responsible Development. "We have been trying to achieve this result for months."

The water board will have jurisdiction over a \$5 million cleanup of a marsh adjacent to the site under an order issued to the land's previous owner, Zeneca Inc.

Russell Pitto, president of Simeon, the Marin developer who is teaming with Cherokee Investment Partners to develop a housing complex called Campus Bay, reacted positively to the news Tuesday.

"The hope is that out of this will come a model process for future brownfield developments in California," Pitto said, noting that when he bought the land, he was unaware of "pre-existing issues" between Zeneca and its neighbors.

The cleanup has generated controversy in Richmond, especially among people who live and work nearby and who feared that regulators were not protecting them from toxic dust.

Contra Costa County's public health officer, Dr. Wendell Brunner, had written to the state EPA asking it to transfer oversight of the cleanup to the toxic substances department because they have more experience with complicated toxic sites.

The land and adjacent marsh have a toxic history. For a century they were the site of a chemical factory that produced sulfuric acid, fertilizers, herbicides and

pesticides. It was so polluted in 1998 that state regulators labeled it as a hot spot -- one of the 10 most polluted sites in the Bay Area.

In 2002, Zeneca spent \$20 million to clean up land adjacent to the marsh, bringing it up to industrial standards before selling it to Pitto. Critics say the water board did not safely monitor Zeneca during that cleanup.#

<http://sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/11/10/BAGRJ9P2O81.DTL>

LOCAL DISTRICTS

Editorial: Public information kept public

Prop. 59 gives state citizens civil right to records, meetings

Vacaville Reporter (Solano County) - 11/9/04

Three cheers for the passage of Proposition 59, which guarantees a more open government for its citizens.

The measure, billed as the "sunshine constitutional amendment," won with a whopping 83 percent of the vote. The only opposition printed in this year's Voter Information Guide came from an attorney who argued that Proposition 59 didn't go far enough.

The measure, a long time in coming, will strengthen existing laws, such as the Ralph M. Brown Act and the California Public Records Act, making access to government records and meetings a civil right for all California citizens.

It will shift the burden of proof on disputed records to the government. The public will no longer have to argue for access. Instead, government and court officials now have to justify why records should be kept secret.

The measure will apply to the governor's office, state courts, city councils, school boards, boards of supervisors, and water and park districts. It will not affect documents and meetings that are already classified, such as those regarding personnel, pending legislation or real estate transactions.

The California First Amendment Coalition wasted no time seeing the measure put to good use. The polls had barely closed when CFAC filed a formal request with the governor for his calendar of meetings and appointments for the past year.

It must be noted that Gov. Arnold Schwarzenegger endorsed Proposition 59, and should therefore have no problem with releasing such documents.

After all, his calendar will reflect how his time is spent, which issues merit the most attention, and which groups and special interests have his ear.

Gubernatorial calendars have been off limits under the Public Records Act since 1991 when, according to CFAC Executive Director Peter Scheer, "the California Supreme Court, in a misguided foray into judicial activism, held that then-Gov. Deukmejian was within his rights in denying a Los Angeles Times' request for his calendars."

Since then, state and local agencies have used the "deliberative process exemption" defined by that ruling to withhold records that are confidential only because they are potentially embarrassing, noted Mr. Scheer.

"Examples include cell phone bills of City Council members, even when the bills are paid by taxpayers," Mr. Scheer wrote.

We agree with CFAC that 1991 ruling was not in the public's best interest, and Proposition 59 certainly rights that wrong and more. The passage of Proposition 59 is a dramatic move in the right direction toward ensuring that public information is available to the public.#

<http://www.thereporter.com/Stories/0,1413,295%257E30191%257E2523465,00.html?search=filter>

LOCAL DISTRICTS

Attorney General: Rubio can only serve one board

San Gabriel Valley Tribune - 11/9/04

By Karen Rubin, staff writer

Blanca Estella Rubio, a board member for both a school board and a water district, said Tuesday she will not give up her water board seat despite a state ruling that holding both positions is a conflict of interest.

On Monday, the Office of the Attorney General ruled that Rubio's Baldwin Park School District and the Valley County Water District were "incompatible public offices.'

The "quo warranto" action ruled Rubio can retain the last office she was elected to, which is her Baldwin Park Unified School District seat.

But Rubio says she intends to fight.

"Unless a judge tells me to leave, I'm staying put," she said.

The ruling grants school district board member Anthony Bejarano permission to sue Rubio because of the conflict, according to a five-page opinion issued Monday by the Office of the Attorney General.

The case will be turned over to a Los Angeles Superior Court judge who will rule on its merits. A ruling could be issued as soon as January.

"Hopefully politicians will get the message that they should not hold two offices with overlapping duties," said Deputy Attorney General Gregory Gonot.

At 35, Rubio was elected to the school board in November and has served for seven years on the Valley County Water District. She has one year left on her term with the water district and does not plan to run again. She is a first-grade teacher with the Fontana Unified School District.

Bejarano filed a lawsuit Sept. 13 with the state's Department of Justice in Sacramento. State attorneys reviewed the written pleadings brought by both parties and issued an opinion granting Bejarano permission to sue Rubio.

This procedure is followed to halt unfounded attacks against public officials. The opinion also found:

A conflict existed because the school district relied on the water district for its water. A person sitting on both boards would have divided loyalties in acting in both capacities;

Recently, the water board and school district settled on the costs from upgrades to the water supply lines serving the schools. While serving on both boards, Rubio has a "clash of loyalties" in deciding upon the allocation of such costs.

Rubio said she recuses herself from such discussions.

From 2001 to 2004 the school district spent about \$579,664 for water supplied by Valley County Water District. Rubio's seat on both boards causes a legal and financial quagmire, the opinion states.

Albert Robles, Rubio's attorney, declined to comment. He argued in the opinion that granting Bejarano permission to sue would not serve the public because she only has one year to serve, and does not plan to run again for that office.

But state attorneys ruled a year was long enough for potential conflict of interest issues to arise. Robles says Bejarano's motives are political, according to the opinion.

Daniel J. Bramzon, Bejarano's attorney, says the ruling makes it clear what Rubio must go.

"She should step down immediately,' Bramzon said. "Ms. Rubio is serving on two boards. The Attorney General favors her immediate removal. It's a clear-cut case.' #

<http://www.sgvtribune.com/Stories/0,1413,205%257E12220%257E2524713,00.html#>

The Water News will not be distributed on Veterans Day Thursday

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