

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources *KMW* BOARD AGENDA # *B-11
Urgent Routine X AGENDA DATE June 19, 2001
CEO Concurs with Recommendation YES X NO 4/5 Vote Required YES NO X
(Information Attached)

SUBJECT: APPROVAL TO FORM THE STANISLAUS COUNTY REGIONAL SOLID WASTE PLANNING AGENCY TOGETHER WITH THE CITIES OF CERES, HUGHSON, NEWMAN, OAKDALE, PATTERSON, RIVERBANK, TURLOCK AND WATERFORD

- STAFF RECOMMENDATIONS:
1. APPROVE THE FORMATION OF THE STANISLAUS COUNTY REGIONAL SOLID WASTE PLANNING AGENCY, A PARTNERSHIP WITH THE CITIES OF CERES, HUGHSON, NEWMAN, OAKDALE, PATTERSON, RIVERBANK, TURLOCK AND WATERFORD; AND
 2. AUTHORIZE THE DIRECTOR OF ENVIRONMENTAL RESOURCES TO REPRESENT AND TO ACT ON BEHALF OF THE COUNTY IN MATTERS RELATED TO THE REGIONAL SOLID WASTE PLANNING AGENCY; AND
 3. AUTHORIZE THE CHAIR OF THE BOARD TO SIGN THE JOINT POWERS AGREEMENT FORMING THE STANISLAUS COUNTY REGIONAL SOLID WASTE PLANNING AGENCY.

FISCAL IMPACT:

If the Board approves the formation of this regional agency, local jurisdictions and their residents will save thousands of dollars in the coming years by reducing costs for solid waste planning and program implementation.

BOARD ACTION

No. 2001-473

On motion of Supervisor Blom , Seconded by Supervisor Mayfield
and approved by the following vote,
Ayes: Supervisors: Mayfield, Blom, Simon, Caruso, and Chair Paul
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None

- 1) X Approved as recommended
2) Denied
3) Approved as amended
MOTION:

C-1-A-3
C-2-A-32
C-3-22
C-4-A-1
C-5-E-1
C-7-A-18
C-8-31
C-9-18

Christine Ferraro
By: Deputy

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

APPROVAL TO FORM THE STANISLAUS COUNTY REGIONAL SOLID WASTE
PLANNING AGENCY TOGETHER WITH THE CITIES OF CERES, HUGHSON, NEWMAN,
OAKDALE, PATTERSON, RIVERBANK, TURLOCK AND WATERFORD

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DISCUSSION: In 1989, Assembly Bill 939 (Sher) was signed into law. It set in motion many new requirements in solid waste management including a mandate to reduce waste disposal 25% by 1995 and 50% by the year 2000. Further, it required the development of extensive planning documents which outlined how these waste reduction goals would be met.

To accomplish these tasks in a cost-effective manner, Stanislaus County and the cities of Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock and Waterford chose to form cooperative partnerships. Ultimately, these partnerships were formalized in 1994 through Memoranda of Understanding (MOU). Recently, these MOU were extended to continue these partnerships through the coming years. Staff of the Department of Environmental Resources was utilized to oversee the compliance of these jurisdictions with the new planning and implementation requirements.

Assembly Bill 939 also includes a provision which allows jurisdictions to expand cooperative efforts such as those described above by forming a "region" for solid waste planning purposes. Specifically, Public Resources Code Sections 40970 and 40976 state the following, respectively: 1) "It is the intent of this Legislature . . . to authorize cities and counties to form regional agencies to . . . reduce the cost of reporting and tracking of disposal and diversion programs . . ." and, 2) "A city, county or regional agency may enter into a memorandum of understanding with another city, county . . . to manage solid waste for the purpose of preparing and implementing . . . a waste management plan." Regions can be formed with as few as two jurisdictions or may include multiple jurisdictions.

Forming a region allows participating jurisdictions to do the following: 1) "share" recycling (diversion) credit; and 2) prepare single planning documents for the entire region, rather than needing individual plans for each city and county. Locally, the unincorporated area has sufficient "excess" diversion credit (above 50%) to cover the needs of its MOU cities.

Specifically, in 1999, the unincorporated area had a diversion rate of 57%. Averaging this 57% over the proposed region calculates to a diversion rate of 53%. The reason for this average is the unincorporated area would be the largest jurisdiction in the region and most of the participating cities have current diversion rates that range from the low teens to a high of

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37%. This means that no additional diversion programs would be required to satisfy the 50% goal for these jurisdictions, although additional programs could be implemented if desired.

Regarding planning documents, Stanislaus County jurisdictions could be required to prepare plan revisions beginning later this year. The formation of a regional agency would greatly streamline this process.

Because the jurisdictions of Stanislaus County felt challenged by meeting the many mandates of the then new AB 939 legislation without having to focus on yet another task, they did not pursue forming a region during the initial planning phase between 1990-1994. Approximately a year ago, however, County staff re-evaluated the regional option and felt that its benefits warranted a closer look. On that basis, staff began meeting with city representatives who agreed that the formation of a regional agency would greatly enhance the existing partnerships and opportunities for cost savings. These discussions were followed by a presentation to each city council where unanimous approval was obtained for the concept of forming a regional agency.

With County Counsel's assistance, a draft Joint Powers Agreement (Agreement) was then developed for the formation of a regional agency, and circulated to each MOU city for consideration. To date, each city council has approved the formation of a regional agency together with the County. A copy of the Agreement is included as Attachment "A".

The Agreement designates the Department of Environmental Resources as Administering Agency and requires that the agency meet at least annually. Member agencies have the option to withdraw at any time, although new member agencies could not be added without a majority consent. It should be noted that staff evaluated the inclusion of the City of Modesto in the region and had discussions with city staff regarding this. However, the City decided they could meet the diversion mandates through the implementation of programs outlined in their Source Reduction and Recycling Element.

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Staff recommends that the Board approve the formation of the Stanislaus County Regional Solid Waste Planning Agency and authorize the Chair of the Board to sign the Agreement.

POLICY

ISSUE:

The Board should decide if it should approve the formation of the Stanislaus County Regional Solid Waste Planning Agency. Partnerships of this nature promote several of the Board's guiding priorities including multi-jurisdictional cooperation and efficient government operations.

STAFFING

IMPACT:

None.

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**JOINT POWERS AGREEMENT
(Stanislaus County Regional Solid Waste Planning Agency)**

This JOINT POWERS AGREEMENT (the "Agreement") is made and entered into by and between the County of Stanislaus and the Cities of Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock, and Waterford on June 19, 2001.

RECITALS

WHEREAS, Article 1 (commencing with section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code authorizes two or more public agencies, by a joint powers agreement entered into respectively by them and authorized by their legislative or governing bodies, to exercise jointly any power or powers common to the contracting parties; and

WHEREAS, under the California Integrated Waste Management Act of 1989 (the "Act"; Pub. Resources Code, § 40000 et seq.), each of the parties is authorized to and responsible for solid waste disposal and planning within their respective jurisdictions, including implementation of programs for the diversion of solid waste from disposal facilities; and

WHEREAS, by Memorandum of Understanding dated 1994, and amended in 1999 (the "MOU"), the County and each of the cities hereto agreed to coordinate solid waste planning and reporting within the County; and

WHEREAS, Article 3 (commencing with § 40970) of Chapter 1 of Part 2 of Division 30 of the Public Resources Code authorizes the County and the cities to form a regional agency to streamline and coordinate future solid waste management and planning and to comply with the Act;

NOW, THEREFORE, it is agreed as follows:

SECTION 1 -- FORMATION

1.1 Statement of Purpose. The member agencies have joined together to establish the Stanislaus County Regional Solid Waste Planning Agency for the purpose to reduce the cost of solid waste planning, implementing, reporting and tracking of disposal and diversion programs and to aggregate disposal amounts for determination of diversion ratios by the Member Agencies.

1.2 Separate Entity. Upon the effective date of this Agreement, the parties hereto hereby establish a newly constituted Stanislaus County Regional Solid Waste Planning Agency (the "Regional Agency"), as a public entity separate and distinct from

its member entities, as the agent to exercise the common powers provided for in this Agreement and to administer or otherwise execute this Agreement.

1.3 Member Agencies. The Regional Agency shall be composed of the County of Stanislaus and the Cities of Ceres, Hughson, Newman, Oakdale, Patterson, Riverbank, Turlock, and Waterford (the "Member Agencies"). Additional jurisdictions or public agencies may join this Agreement and become a Member Agency provided a majority of the existing Member Agencies approve the addition by simple majority vote of the Member Agencies.

1.4 Administering Agency. In addition to its role as a Member Agency of the regional agency, the County of Stanislaus is designated as the Administering Agency for reporting and tracking solid waste diversion programs on behalf of the Member Agencies. The County shall designate its Department of Environmental Resources as the appropriate department to fulfill administrative functions as the Administering Agency.

1.5 Duties and Responsibilities. The member agencies of the regional agency shall (1) implement the specific diversion programs selected for implementation in their respective source reduction and recycling elements or in the regional source reduction and recycling element in the event the regional agency adopts a regional source reduction and recycling element, and (2) share solid waste diversion percentages to meet the waste reduction mandates set forth in Article 1 (commencing with §41780) of Chapter 6 of Part 2 of Division 30 of the Public Resources Code.

1.6 Power. The parties hereto pursuant to this agreement shall have all the powers which may be jointly exercised pursuant to said Title 1 and Division 7 above stated, subject to the express conditions, limitations and procedures herein in this agreement provided, including, but not limited to (a) do all other acts reasonable and necessary to carry out the purposes of this Agreement; (b) sue and be sued, in its own name only, but not in the name or stead of any party; and (c) file, within 30 days of the effective date of this Agreement, a Notice of the Agreement with the office of the California Secretary of State, pursuant to section 6503.5 of the Government Code.

1.7 Withdrawal of Member Agency. A Member Agency may, at any time, withdraw from the Regional Agency, by giving notice to the Regional Agency and all other Member Agencies by resolution of intent to withdraw adopted by the governing board of the withdrawing party. Notice of withdrawal must be given at least 30 days prior to August 1 of each year. Upon the effective date of such withdrawal such member shall cease to be bound by this Agreement. Any Member Agency which has withdrawn may resume its membership upon thirty (30) days' written notice to the then members, which notice may be waived by a majority vote of the Association.

1.8 Additional Members. In addition to the Member Agencies identified in this Agreement, any public entity within Stanislaus County that has jurisdiction and authority regarding solid waste planning, which may hereafter desire to participate in the

activities of Regional Agency, may do so by executing this Agreement with the prior approval or ratification of the named parties to this Agreement and shall thereafter be a party to this Agreement and be bound by all terms and conditions of this Agreement as of the date it executes this Agreement.

SECTION 2 -- POLICY BOARD

2.1 Policy Board. The Regional Agency shall be governed by a Policy Board consisting of the City Managers/Administrators or designated staff member and the Stanislaus County Director of Environmental Resources or designee, which persons shall be appointed by the Member Agencies. A decision of the Policy Board shall be binding on the Member Agencies on waste management issues related to waste reduction mandates, including selection, implementation and modification of diversion programs.

2.2 Voting. Decisions on the above matters shall require an affirmative vote of a simple majority of at least five (5) of the voting Member Agencies. Each representative of a Member Agency, or his or her alternate in the absence of the representative, shall be entitled to cast a single vote. The Policy Board representative or alternate must be present to vote. The secretary or chair of the Regional Agency shall call for a roll call vote and record all actions.

2.3 Meeting Time and Place. The Regional Agency shall establish a time and place for regular Policy Board meetings, which shall occur at least annually to review the current standing of the Regional Agency with respect to meeting the waste reduction mandates of the Act. All meetings shall be conducted in accordance with the Ralph M. Brown Act (Gov. Code, § 54950 et seq.).

SECTION 3 -- ACCOUNTABILITY AND REPORTS

3.1 Treasurer. Pursuant to Government Code section 6505.6, in lieu of designation of a treasurer and auditor as set forth in section 6505.5, the Member Agencies shall appoint one of its Member Agencies to serve as the treasurer and auditor for the Regional Agency in compliance with the duties and responsibilities of the offices as set forth in subdivisions (a) to (d), inclusive, of section 6505.5. If the Regional Agency receives funds or money from any source, then the treasurer and auditor shall cause an independent audit to be made by a certified public accountant, or a public accountant, in compliance with section 6505.

SECTION 4 -- TERMINATION AND DISSOLUTION

4.1 No Specific Term. This Agreement shall continue in force without specific term.

4.2 Termination. The Member Agencies, may terminate this Agreement at any time upon mutual consent of all the parties.

4.3 Obligation Upon Termination. If any Member Agency ceases to be bound by the terms of this Agreement, either by withdrawal from the Regional Agency under Section 1.8 herein or by termination of this Agreement under Section 4.2, then each Member Agency shall be solely responsible for implementing those applicable provisions of the Public Resources Code related to solid waste management, including without limitation sections 40900 through 41460, inclusive.

4.4 Surplus Property. Pursuant to Government Code section 6511, upon termination of this Agreement, any surplus property shall be returned, pro rata, to the Federal, State, or local agency or the party to this Agreement that provided the property. This Agreement shall not terminate until all property has been distributed in accordance with this provision.

4.5 Distribution of Assets. Pursuant to Government Code section 6512, upon termination of this Agreement, any surplus money on hand shall be returned, pro rata, to the Federal, State, or local agency or the party to this Agreement that provided the funds.

SECTION 5 -- MISCELLANEOUS PROVISIONS

5.1 Severability. Should any part, term, portion, or provision of this Agreement be finally decided to be in conflict with any law of United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the Agreement which the member agencies intended to enter into in the first instance.

5.2 Effective Date. This Agreement shall become effective upon approval of this Agreement by resolution of two or more of governing bodies for the Member Agencies, and shall no binding force and effect on any Member Agency unless and until approved by its governing body.

5.3 Amendments. After this Agreement becomes effective, it may be amended upon approval by the Policy Board.

5.4 Allocation of Liability.

(a) Indemnity. No party to this Agreement, nor any of its officers or employees, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by any other party under or in connection with any work delegated to that party under this Agreement. The parties further agree, pursuant to Government Code section 895.4, that each party shall fully indemnify and hold harmless the other party and its agents, officers, employees and contractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection

with any work delegated to or action taken or omitted to be taken by such party under this Agreement.

(b) Allocation of Civil Penalties. Except as otherwise provided herein, each Member Agency of the Regional Agency shall be liable for any civil penalties which may be imposed by the California Integrated Waste Management Board as determined by the Regional Agency. If the Regional Agency does not agree upon an equitable allocation of such penalties, then the allocation will be made in proportion with population figures for each Member Agency as set forth in the applicable and most recent report of the California Department of Finance. For penalty assessments based on an alleged failure of the Regional Agency to meet diversion goals, the penalty shall be apportioned among only those Member Agencies that fall below applicable diversion goals based upon the population for such entity and upon the deviation from the diversion goal as set forth in the following formula:

- (1) Mandated diversion goal, minus actual diversion by a Member Agency, multiplied by that entity's population, equals that entity's Penalty Factor; and
- (2) Member Agency Penalty Factor, divided by the sum of all Penalty Factors for all Member Agencies subject to the penalty, multiplied by the total penalty assessed against the Regional Agency, equals that entity's Proportional Penalty.

5.5 Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and said counterparts shall constitute one in the same instrument which may be sufficiently evidenced by one counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first hereinabove written.

JOINT POWERS AGREEMENT
(Stanislaus County Regional Solid Waste Planning Agency)

Member Agency Approval


COUNTY OF STANISLAUS

By: 
Pat Paul, Chair
Board of Supervisors


ATTEST: CHRISTINE FERRARO TALLMAN
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

By: 
Deputy Clerk

APPROVED AS TO CONTENT:
Department of Environmental Resources


By: 
Kevin M. Williams
Director

APPROVED AS TO FORM:
Michael H. Krausnick
County Counsel

By: 
John P. Doering
Deputy County Counsel

JOINT POWERS AGREEMENT
(Stanislaus County Regional Solid Waste Planning Agency)

Member Agency Approval

By 
LOUIE ARROLLO, Mayor
City of Ceres

**JOINT POWERS AGREEMENT
(Stanislaus County Regional Solid Waste Planning Agency)**

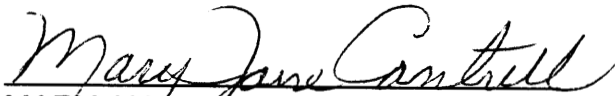
Member Agency Approval

CITY OF HUGHSON

By: 

THOMAS E. CROWDER
Mayor

ATTEST:



MARY JANE CANTRELL, CMC
City Clerk of the City of Hughson

JOINT POWERS AGREEMENT
(Stanislaus County Regional Solid Waste Planning Agency)

Member Agency Approval

City of Newman
M. Cleve Morris
City Manager

M. Cleve Morris

7/20/00
Date

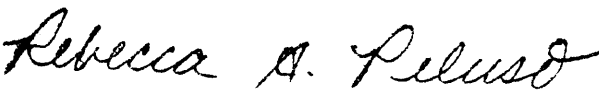
**JOINT POWERS AGREEMENT
(Stanislaus County Regional Solid Waste Planning Agency)**

Member Agency Approval

CITY OF OAKDALE

By: 
PAT KUHN
Mayor

ATTEST:

By: 
REBECCA A. PELUSO
City Clerk

APPROVED AS TO FORM:


By: 
THOMAS N. HALLINAN
City Attorney

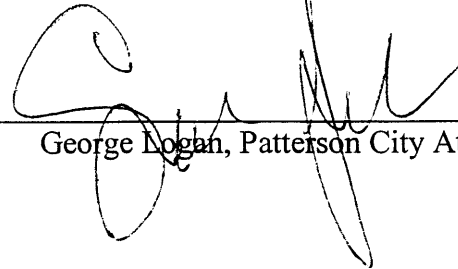
JOINT POWERS AGREEMENT
(Stanislaus County Regional Solid Waste Planning Agency)

Member Agency Approval

CITY OF PATTERSON

APPROVED AS TO FORM

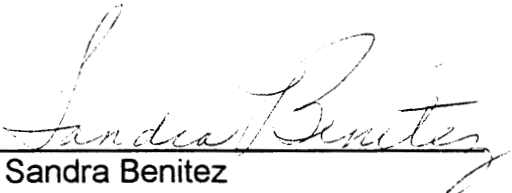
BY: 
Richard E. Dodds, Mayor

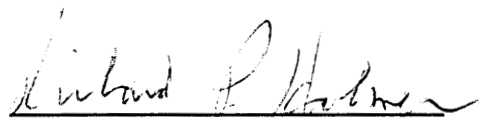
BY: 
George Logan, Patterson City Attorney

JOINT POWERS AGREEMENT
(Stanislaus County Regional Solid Waste Planning Agency)

Member Agency Approval

City of Riverbank

By: 
Sandra Benitez
Mayor

Attest: 
Richard P. Holmer
City Clerk

Approved as to Content:

By: 
Thomas N. Hallinan
City Attorney

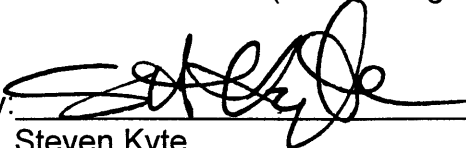
**JOINT POWERS AGREEMENT
(Stanislaus County Regional Solid Waste Planning Agency)**

Member Agency Approval

COUNTY OF STANISLAUS

CITY OF TURLOCK (Member Agency)

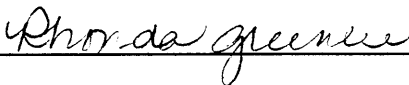
By: _____
PAUL W. CARUSO, Chairman
Board of Supervisors

By:  _____
Steven Kyte
City Manager

ATTEST: REAGAN M. WILSON
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

ATTEST:
CITY CLERK

By: _____
Deputy Clerk

 _____

APPROVED AS TO CONTENT:
Department of Environmental Resources

By: _____
Kevin M. Williams
Interim Director

APPROVED AS TO FORM:
Michael H. Krausnick
County Counsel

APPROVED AS TO FORM:

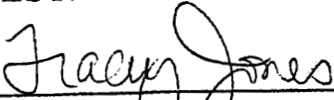
By: _____
John P. Doering
Deputy County Counsel

 _____
CITY ATTORNEY

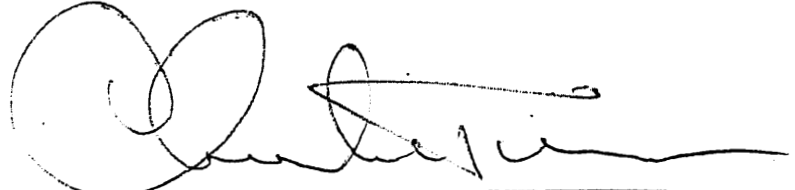
**JOINT POWERS AGREEMENT
(Stanislaus County Regional Solid Waste Planning Agency)**

Member Agency Approval

ATTEST:

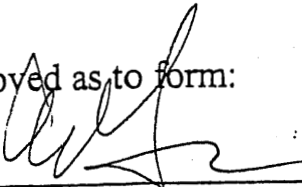


Tracy Jones, City Clerk



Charles Turner, Mayor

Approved as to form:



William Gnass, City Attorney