

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

DEPT: Environmental Resources

BOARD AGENDA # *B-2

Urgent

Routine

AGENDA DATE February 11, 2014

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Authorization to Terminate the Memorandum of Understanding between the City of Turlock and Stanislaus County for Assembly Bill 939 Waste Reduction and Recycling Program Services effective August 12, 2014

STAFF RECOMMENDATIONS:

Terminate the "Memorandum of Understanding between the City of Turlock and Stanislaus County Use and Distribution of Funds Assembly Bill 939 Source Reduction and Recycling Account" and direct the Director of Environmental Resources to provide notice to the City of the termination effective August 12, 2014.

FISCAL IMPACT:

The Memorandum of Understanding (MOU) with the City of Turlock provides Assembly Bill 939 planning, reporting, public outreach, and related recycling and source reduction services. The revenue loss, as a result of terminating the MOU, is \$28,200 annually; an amount which has not changed since its inception in 1994. As a result of the discontinued services there is a corresponding reduction in staffing impacts and the costs to purchase goods such as educational materials and advertising. Workloads will be redistributed among existing staff with little impact to the Department of Environmental Resources' budget.

BOARD ACTION AS FOLLOWS:

No. 2014-55

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa,
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other: This Item was removed from the consent calendar for discussion and consideration.

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No. C-5-E-16

Authorization to Terminate the Memorandum of Understanding between the City of Turlock and Stanislaus County for Assembly Bill 939 Waste Reduction and Recycling Program Services effective August 12, 2014

DISCUSSION:

Stanislaus County's solid waste management system includes the Fink Road Landfill, the Household Hazardous Waste (HHW) Facility, and the waste-to-energy (WTE) facility, each playing a role in managing locally generated solid waste. These facilities are necessary to meet State mandates for adequate disposal capacity, solid waste management planning, and waste diversion as required by the California Integrated Waste Management Act of 1989, otherwise known as Assembly Bill (AB) 939. In order to support each of these components of the County's solid waste management system, participation in both the WTE facility and the Fink Road Landfill is critical because tipping fees not only fund these current operations, they also fund the ongoing closure and corrective action activities associated with the Geer Road Landfill.

AB 939 brought about significant new mandates for cities and counties, requiring that they reduce the amount of waste disposed by 25% no later than 1995 and by 50% no later than 2000, but also provided 10% credit for WTE transformation toward the 50% mandate. Cities and counties had to develop plans to identify how these disposal reduction mandates would be achieved, as well as implement them. In recognition of this unfunded mandate, the law allows jurisdictions to charge fees for solid waste planning and program implementation, as well as to fund the State required monitoring and reporting.

To meet these mandates, Stanislaus County and its nine incorporated cities agreed to establish a funding mechanism for implementation and operational costs of programs needed through a disposal fee surcharge on waste sent to the WTE facility. In this scenario, each jurisdiction would pay a proportional share of the cost of AB 939 programs based on the solid waste tonnage sent to the WTE facility. Collectively the cities agreed to have the County prepare the initial planning documents required by AB 939.

In October of 1990, the Board of Supervisors and the Modesto City Council, as partners in the WTE project, approved the disposal fee surcharge of a \$1.50 per ton for the AB 939 Program. In addition, a disposal fee surcharge of \$1.50 per ton was also approved for the HHW Program. Due to the increased operating costs of these programs the disposal fee surcharge was increased to \$3 per ton for each of these programs in August of 2007.

In 1994, the County entered into Memorandum of Understanding (MOU) agreements with each of the local cities to formalize the ongoing provision of AB 939 program services and the fee the County would be paid to provide those services. The MOU contract amounts are withheld from each city's disposal surcharge fees based on the tonnage sent to the WTE facility, and any revenue collected in excess of the city's MOU fee is refunded back to the city. This MOU fee has not been increased since its inception.

The tipping fee funding mechanism has provided a steady revenue stream for both the AB 939 and HHW programs for over 24 years. This revenue funded implementation and administration of the AB 939 programs that today includes:

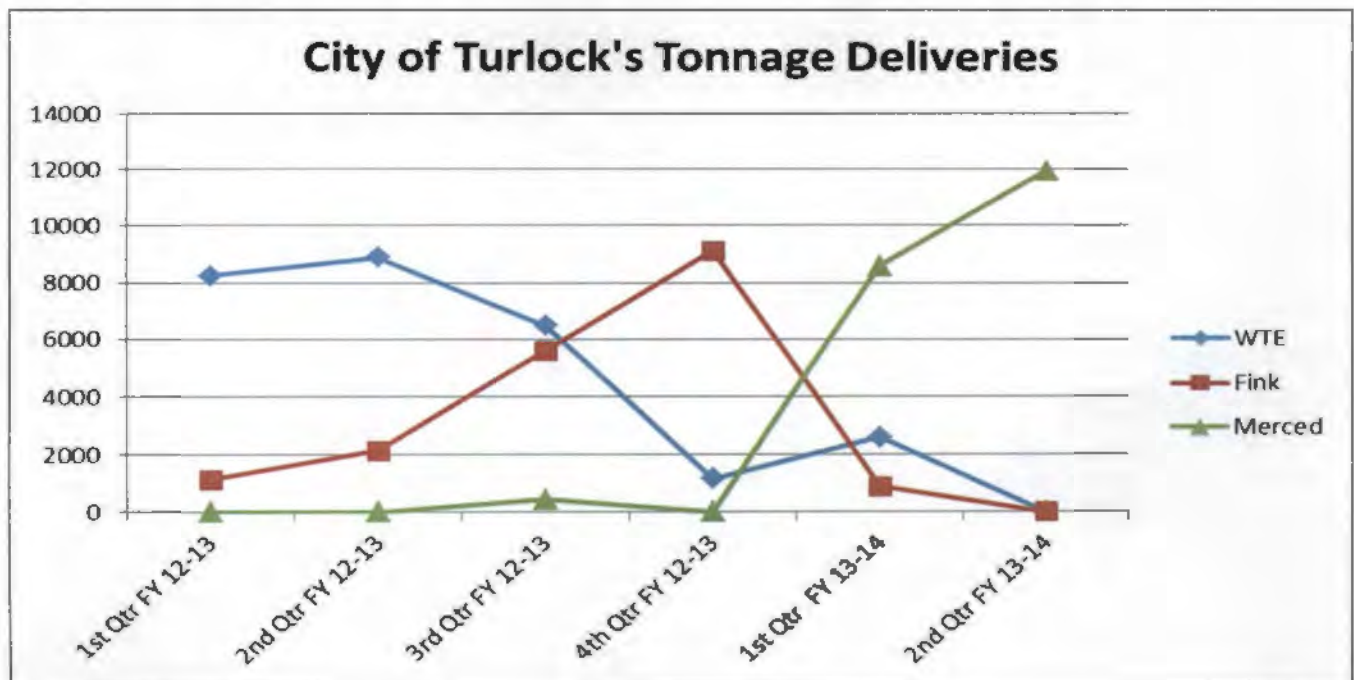
Authorization to Terminate the Memorandum of Understanding between the City of Turlock and Stanislaus County for Assembly Bill 939 Waste Reduction and Recycling Program Services effective August 12, 2014

- All required State reporting and tracking
- Public education/outreach
- Administration of the Recycling Market Development Zone
- Regional grants applications and administration in used oil recycling, tire recycling, tire enforcement
- Serving as staff to the Local Task Force on Solid Waste
- Monitoring proposed solid waste legislative and regulatory changes

The revenue also funds the HHW programs which include:

- Mobile collection events
- HHW facility collection of e-waste, used oil, oil filters, paints, pesticides, batteries, sharps, medications and other misc. household chemicals
- Public education/outreach
- Participating in prescription drug take-back programs
- Responding to and remediating illegal roadside dumping of hazardous materials
- Responding to and remediating waste drug lab sites

On July 9, 2013, the Turlock City Council unanimously approved sending 90% of the City's municipal solid waste (MSW) to Merced County beginning July 15th while they entered into a 120-day contract negotiation period. Since this time, Turlock's WTE deliveries have gone from a 66% reduction in the first quarter to no deliveries in the last quarter. Deliveries to the landfill have also virtually ceased entirely. This required the other partner cities, primarily the City of Modesto, to make up the difference in the tonnage decline. The City of Modesto has worked to bridge this gap in deliveries in the short term and hopefully will be able to into the foreseeable future to meet our monthly contractual deliveries to the WTE facility.



Authorization to Terminate the Memorandum of Understanding between the City of Turlock and Stanislaus County for Assembly Bill 939 Waste Reduction and Recycling Program Services effective August 12, 2014

The above graph depicts the City of Turlock's deliveries, by tonnage, to the WTE facility, Fink Road Landfill and Merced's Highway 59 Landfill. A spike in waste deliveries to Fink Landfill was seen when Turlock began diverting the majority of their waste from the WTE facility, where the tipping fee is lower, just prior to the exportation to Merced. Since this time, deliveries to both the Fink Road Landfill and the WTE facility have declined significantly. Specifically, the guaranteed minimum tonnage that must be delivered was not met in the month of November, yet per the WTE contract, the City of Modesto and Stanislaus County will be charged for this tonnage. In the case of the Fink Road Landfill, tonnages have declined to a critically low level.

The reduction in revenue from WTE tipping fees has a direct impact on the HHW facility operational costs as well as an impact on the AB 939-related programs. The reduction in revenue from landfill tipping fees also has a direct effect on the overall solid waste system because this revenue not only funds the ongoing costs associated with the closed landfill at Geer Road, but also the operational costs for the disposal of MSW and ash from the WTE facility, illegal roadside dumping clean-up, future cell development, and future closure and corrective action costs for the Fink Road Landfill.

In subsequent meetings and correspondence with the City of Turlock, staff emphasized the benefits of working together collectively to support our local solid waste management infrastructure as well as the programs and services the County provides from the WTE tipping fee surcharge revenue and the 10% diversion credit for sending MSW to the WTE facility. City staff indicated they no longer intended to send MSW to the WTE facility thereby terminating their contribution to the regional programs and services offered by Stanislaus County. The City believes that the savings from the disposal costs will be used to fund their own AB 939 and HHW programs.

Turlock's position in this regard is contrary to the intent and purpose of the City and County's 1994 MOU, as amended, to pool resources to efficiently meet the State's mandates. This has put an unanticipated strain on the entire solid waste system since all past planning included Turlock's participation in all segments of the system. When one of the segments of the solid waste system is changed it affects the balance in the entire system. The consequences of the decision by Turlock have negatively impacted the remaining jurisdictions who end up picking up the additional costs. Because of this on November 20, 2013, the City was notified of the County's intention to terminate the MOU (Attachment B). The termination of the MOU is effective six calendar months after Board of Supervisor approval, which is August 12, 2014. In addition to terminating the MOU, the Department will also terminate all HHW programs and services for the City of Turlock. In the future should the need arise for a new MOU with the City of Turlock, it will be renegotiated at that time.

Another area of concern created by Turlock's decision is how this affects their membership in the Stanislaus County Regional Solid Waste Planning Agency (Regional Agency). Staff and County Counsel are currently assessing how to proceed with this issue within the Regional Agency. The County received a late correspondence from the City of Turlock related to this item on Friday afternoon, which is attached to this report.

Authorization to Terminate the Memorandum of Understanding between the City of Turlock and Stanislaus County for Assembly Bill 939 Waste Reduction and Recycling Program Services effective August 12, 2014

POLICY ISSUE:

Approval of this item to terminate the MOU agreement with the City of Turlock is consistent with the Board's priority of the Efficient Delivery of Public Services. With the City of Turlock's decision to end its participation in the WTE project, their resources can no longer be pooled with that of the County and the remaining eight cities to operate in an efficient manner.

STAFFING IMPACTS:

The termination of the AB 939 MOU and HHW programs and services for the City of Turlock will not affect current staffing levels. Instead, the workload will be redistributed among existing staff and a vacant Extra Help Hazardous Materials Specialist III position will not be filled.

CONTACT PERSON:

Jami Aggers, Director of Environmental Resources

Telephone: 209-525-6770

ATTACHMENTS AVAILABLE
FROM CLERK

AMENDMENT NO. 1
to
MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF TURLOCK AND STANISLAUS COUNTY

WHEREAS, pursuant to Public Resources Code section 40976, the COUNTY OF STANISLAUS ("County") and the CITY OF TURLOCK ("City") entered into a Memorandum of Understanding dated August 26, 1994, regarding the use and distribution of funds from the AB-939, Source Reduction and Recycling Account (the "Account"), hereafter the "AB-939 MOU"; and

WHEREAS, Paragraph D of Section III of the AB-939 MOU provides that the County and the City recognize the long-term benefit of sharing information and pooling staff resources whenever possible to help all ten jurisdictions successfully meet the mandated goals specified by AB 939, including, but not limited to, the requirement to divert 50 percent of all solid waste by January 1, 2000 (Public Resources Code, § 41780 (a)(2)); and

WHEREAS, California Code of Regulations (CCR) Section 18813 (c) requires, among other things, that "A jurisdiction shall also determine the tons of solid waste disposed from January 1, 2000, to December 31, 2000. A jurisdiction shall use this disposal amount for the purposes of measuring achievement of the 50% goal;" and

WHEREAS, CCR Section 18794 (e) requires, among other things, that "Jurisdictions shall submit subsequent annual reports every August 1, thereafter, that address all of a jurisdiction's Planning Documents..." and

WHEREAS, the City and the County desire to amend the AB-939 MOU to provide for payment of the City's proportional share of the cost for services provided by the County pursuant to the Act, including but not limited to Disposal-Based Reporting and preparation of the Annual Report; and

NOW, THEREFORE, the County and the City hereby amend the AB-939 MOU as follows:

1. Paragraph D of Section III is amended to read as follows:

"D. The County and the City recognize the long term benefit of sharing information and pooling staff resources whenever possible to help all ten jurisdictions successfully meet the mandates of AB-939. To this end, the City agrees that for the remainder of the term of this MOU, the City shall annually allocate funds from its portion of the Account not to exceed the amount(s) set forth in Exhibit A, attached hereto and, by this reference, made a part hereof, which funds shall compensate the County for performing the services

described in Exhibit A. The services provided by the County and the amount allocated for each service, as listed in Exhibit A, may be modified from time-to-time upon the mutual written consent of the parties."

2. Exhibit A, attached hereto, is added to the AB-939 MOU.
3. Paragraph B of Section IV of the AB-939 MOU is amended to read as follows:

"This MOU will remain in effect until such time as the parties agree to terminate them, which can be done by 30 days written notice."

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the AB-939 MOU in duplicate on this 30th day of December, 1999.

COUNTY OF STANISLAUS

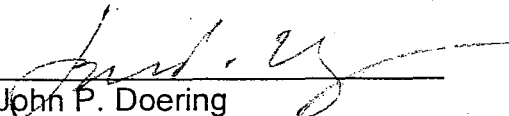
By


Gordon Dewers, Director
Department of Environmental Resources

"County"

APPROVED AS TO FORM:
MICHAEL H. KRAUSNICK
COUNTY COUNSEL

By


John P. Doering
Deputy County Counsel

CITY OF TURLOCK

By


Steven Kyte
City Manager

"City"

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY




EXHIBIT A

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF TURLOCK AND STANISLAUS COUNTY
RE USE AND DISTRIBUTION OF FUNDS
(AB-939 SOURCE REDUCTION AND RECYCLING ACCOUNT)

SCHEDULE OF SERVICES & COMPENSATION AMOUNTS

December, 1999

<u>AMOUNT OF</u> <u>ANNUAL ALLOCATION</u>	<u>DESCRIPTION OF SERVICE</u>
1. \$28,200.00	AB-939 Plan Implementation

MEMORANDUM OF UNDERSTANDING

Between the City of Turlock and Stanislaus County
Use and Distribution of Funds
AB 939 - Source Reduction & Recycling Account
(Index #401000)

I. PURPOSE AND SCOPE

This Memorandum of Understanding (MOU) is entered into between the County of Stanislaus, Department of Environmental Resources (hereinafter referred to as the "County") and the city of Turlock (hereinafter referred to as the "City") to ensure cooperation and coordination in the use and distribution of funds from the AB 939 - Source Reduction & Recycling Account (hereinafter known as the "Account"). The purpose of the MOU is to provide a specific set of operating guidelines designed to ensure that the limited funds in the Account are utilized in the most effective way to help achieve the waste reduction and diversion goals specified in AB 939 - The Integrated Waste Management Act of 1989.

II. BACKGROUND

- A. The Integrated Waste Management Act of 1989 requires each city and county in California to develop plans and implement programs to reduce the amount of solid waste that must be sent to disposal facilities. The City's documents, along with the planning documents from each of the other cities and the County, will be combined to complete the Countywide Integrated Waste Management Plan (CoIWMP).
- B. In 1990 the City agreed to support a surtax of \$1.50 per ton on the solid waste delivered to the Stanislaus Resource Recovery Facility. The revenue from the surtax was to be used to help pay for the preparation of all the required planning documents.
- C. The City, along with the eight other incorporated cities and the County, mutually agreed to have the County prepare the initial planning documents (Source Reduction and Recycling Elements - SRREs) for each of the jurisdictions. A budget of \$309,693 was developed and approved to pay for the County's costs in preparing the ten (10) SRREs.
- D. AB 2707 (LaFollette) mandated each city and county to create a second jurisdiction-specific document: The Household Hazardous Waste Element (HHWE). The County agreed to prepare the ten (10) HHWEs under the original agreement and budget.

- E. AB 3001 (Cortese) mandated each city and county to create a third jurisdiction-specific document: The Non-Disposal Facility Element (NDFE)
- F. The revenue from the surtax has been accruing in the Account since October 1990 and the unencumbered balance was \$1,372,131.55 as of June 30, 1994. Of this amount, the City of Turlock's remaining balance is \$182,493.50, as shown in Exhibit 1.

III. GENERAL PROVISIONS OF THIS MOU

- A. The County and the City mutually agree that both past and future revenue to the Account shall be apportioned to all ten (10) jurisdictions based on the tonnage that the jurisdiction delivered to the waste-to-energy facility. The estimate of the tonnage shall be revised at least once a year, and shall be based on the most current data available to the County.
- B. The County agrees to prepare the mandated NDFE's for nine of the ten jurisdictions in Stanislaus County at a total cost not to exceed \$27,529. The City agrees to allocate \$5,946 from their portion of the Account for the completion of these documents.
- C. For the CoIWMP to be complete, the county and the nine cities must prepare two other documents: The Countywide Siting Element and The Summary Plan. The County agrees to prepare these documents at a total cost not to exceed \$67,280. The City agrees to allocate \$8,948 from their portion of the Account for the completion of these documents.
- D. The County and the City recognize the long term benefit of sharing information and pooling staff resources whenever possible to help all ten jurisdictions successfully meet the mandated goals specified by AB 939. To that end, the City agrees to annually allocate no less than \$28,200 from their portion of the Account to the County through the term of this MOU. The amount of the annual allocation may be increased upon mutual consent of the City and the County.

- E. The County and the City agree to meet at least once a year to plan, discuss and mutually confirm how the funds allocated in section III, D will be utilized in the following twelve (12) months.
- F. If the City allocates funds from the Account per section III D, the County will provide an annual report documenting the cost of all services and materials provided to the City during the previous twelve (12) months.
- G. The City's portion of the Account, not allocated to the County, shall be disbursed to the City upon execution of this MOU and on a quarterly basis, as accrued, thereafter. Pursuant to PRC Section 41901, the City affirms that these funds shall be used only for those costs directly related to the preparation, adoption, and implementation of the City's AB 939 Plan and any amendments to the Act.
- H. The County and the City recognize that future legislation and regulations may require additional "countywide" and/or "regional" responses to State law. In those cases where both parties concur in writing that the "County" is required by the State to meet "countywide" or "regional" mandates, the City agrees to pay its proportional share of the effort. The City may use funds from their portion of the Account or from other funds, at their discretion, to pay those costs. If both parties do not concur, they shall request third party arbitration from appropriate staff and/or counsel at the California Integrated Waste Management Board. Where possible, the County will keep the City informed in advance of potential new State requirements, and the anticipated impact on the Account.

IV. TERM


- A. This MOU shall become effective upon signature by both parties.
- B. This MOU will remain in effect until January 1, 2000 and may be extended by mutual agreement.
- C. This MOU may be terminated by mutual agreement at any time by the parties hereto or upon the express written notice of one party to the other expressly stating termination of this agreement. For such notice of termination to be effective the terminating party must serve said notice on the nonterminating party at least six calendar months prior to the effective date of termination and the notice must set forth a specific date of termination. It is not necessary for the notice contemplated herein to specify any grounds for said termination and nothing in this paragraph shall preclude the termination of this agreement by mutual agreement on shorter notice.




STANISLAUS COUNTY

GORDON M. DEWERS, DIRECTOR
DEPARTMENT OF ENVIRONMENTAL
RESOURCES

8-26-94
DATE



CITY OF TURLOCK



CURT ANDRE, MAYOR
TITLE

10-20-94
DATE

A:TURLOCK.MOU

EXHIBIT 1

AB 939 SOURCE REDUCTION & RECYCLING ACCOUNT

Revenue:

FY 90/91	=	\$296,388.00
FY 91/92	=	428,621.59
FY 92/93	=	436,876.83
FY 93/94	=	519,938.13
<hr/>		
TOTAL	=	\$1,681,824.55

Expenditures:

Budgeted for the production of the SRREs and HHWEs

Total = \$309,693.00

Account Balance & Estimated Annual Revenue:

<u>Jurisdiction</u>	<u>Percentage</u>	<u>Balance</u>	<u>Annual Revenue</u>
Ceres	7.1	97,421.34	28,400
County	28.7	393,801.75	115,600
Hughson	0.8	10,977.05	3,200
Modesto	38.7	531,014.91	154,800
Newman	1.5	20,581.97	6,000
Oakdale	3.7	50,768.87	14,800
Patterson	2.7	37,047.55	10,800
Riverbank	2.4	32,931.16	9,600
Turlock	13.3	182,493.50	53,200
Waterford	1.1	15,093.45	4,400

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

A RESOLUTION BEFORE THE CITY)
COUNCIL OF THE CITY OF TURLOCK)
IN THE MATTER OF APPROVING THE)
USE OF AB 939 SPECIAL REVENUE)
FUND FOR THE IMPLEMENTATION OF)
SOLID WASTE MANAGEMENT }
PROGRAMS }

RESOLUTION NO. 93-213

WHEREAS, in September 1990, the City Council passed Resolution No. 90-241 in support of Stanislaus County establishing a fund to finance activities to assist the City of Turlock in complying with the Solid Waste Management Act of 1989,

WHEREAS, this fund (AB 939 Special Revenue Fund) has approximately \$100,000. The City of Turlock may request money from this fund provided the intended use of these monies is for solid waste activities.

WHEREAS, this money would be used to partially defray the salary costs of those of the City's Conservationist/Solid Waste Coordinator and implement solid waste programs.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Turlock does hereby authorize the City of Turlock to request allocations from the AB 939 Special Revenue Fund.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Turlock this 28th day of September, 1993, by the following roll call vote:

AYES: Councilmembers Ratto, Lazar, Palmberg, Hillberg and Mayor Andre
NOES: None
ABSTAIN: None
ABSENT: None

ATTEST:
LINDA K. LEITAKER, CMC, City Clerk,
City of Turlock, County of
Stanislaus, State of California

Rhonda Greenlee
By Rhonda Greenlee, Deputy City Clerk



Attachment B

CHIEF EXECUTIVE OFFICE

Stan Risen
Chief Executive Officer

Patricia Hill Thomas
Chief Operations Officer/
Assistant Executive Officer

Keith D. Boggs
Assistant Executive Officer

1010 10th Street, Suite 6800, Modesto, CA 95354
Post Office Box 3404, Modesto, CA 95353-3404

Phone: 209.525.6333 Fax 209.544.6226

November 20, 2013

Roy Wasden, City Manager
City of Turlock
156 S. Broadway, Suite 270
Turlock, CA 95380

RE: SOLID WASTE DISPOSAL
Response to City of Turlock October 17, 2013 Correspondence

Dear Mr. Wasden:

Thank you for your response to the County's September 27th letter regarding a Solid Waste Disposal Model presented to you and your city staff on August 26, 2013. To briefly reiterate, the County's August 26th "bring it home" disposal model recommended that all cities would bring all eligible Stanislaus County waste to the Waste-to-Energy (WTE) facility and the Fink Road Landfill.

Should all jurisdictions participate in the "bring it home" disposal model, the tonnage commitment from Turlock for the WTE facility would be 30,000 tons annually at the current disposal fee of \$39/ton, which includes the \$6/ton charge for recycling and Household Hazardous Waste programming. Additionally, included in this approach, the tipping fee at the Fink Road Landfill would be reduced from the current \$33/ton to \$22.40/ton thus matching the tipping fee being offered to the City of Turlock by Merced County. With full participation from each jurisdiction as shown in the Model, every entity would have overall annual savings.

Stanislaus County and the City of Modesto are under an existing contract with Covanta, and because of this we cannot charge a disposal rate below our contractual obligation at the WTE facility. The only ability the County has to modify local tipping fees is at the Fink Road Landfill, but it can do so only in the "bring it home" scenario, which was demonstrated in the Model. It is for this same reason that the County cannot accept the \$27.40/ton, which includes the \$5/ton premium payment that you offered.

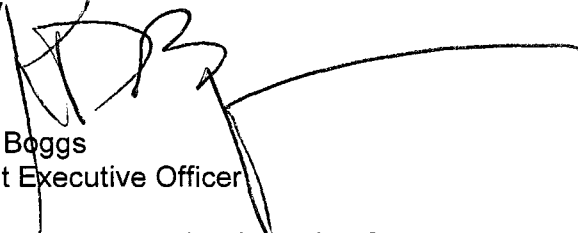
In regards to your concerns for your City's ratepayers, with participation in the "bring it home" disposal model, our analysis showed that there would be a significant overall annual savings to the City of Turlock, as well as with all of our partner cities. Therefore, your ratepayers would not see an increase in the current garbage rate structure, in fact with the annual savings the County presented the ratepayers could see a decrease in their basic garbage service rates; rates that have not been increased in over 10 years.

Roy Wasden
November 20, 2013
Page 2

In conclusion, the County brought forward a Model that projected reduced disposal costs for all partner cities. We remain committed to approaching local solid waste disposal, diversion and planning services through a countywide, regional approach by pooling resources to meet challenging State mandates; mandate that will only become more stringent over time.

If you are interested in participating in the "bring it home" disposal model please contact me no later than January 27, 2014 to confirm. As a result of the city's extremely reduced participation in the WTE facility, we will be recommending to our Board of Supervisors the termination of the Memorandum of Understanding for Assembly Bill 939 program services with the City of Turlock on February 4, 2014. It is our hope that the City would choose to continue to remain a part of this long-standing partnership as we work to provide disposal services and premium recycling credits to all of our partner cities.

Cordially,



Keith D. Boggs
Assistant Executive Officer

c: Stan Risen, Chief Executive Officer, Stanislaus County
Vito Chiesa, Chairman, Stanislaus County Board of Supervisors
Jami Aggers, Director, Department of Environmental Resources
File Copy



ROY WASDEN
CITY MANAGER
rwasden@turlock.ca.us

ADMINISTRATIVE SERVICES
CITY MANAGER'S OFFICE

156 S. BROADWAY, SUITE 270 | TURLOCK, CALIFORNIA 95380 | PHONE 209-668-5540 | FAX 209-668-5540

February 6, 2014

Stanislaus County
Chief Executive Office
Attn: Stan Risen
1010 10th Street, Suite 6800
Modesto, California 95354

Re: Stanislaus County Solid Waste Proposal

Dear Stan:

Thank you for the opportunity to comment on the Stanislaus County Board of Supervisors' Agenda Report regarding the County's proposal to terminate the Memorandum of Understanding between the City of Turlock and Stanislaus County regarding the use and distribution of funds from the AB-939 Source Reduction and Recycling Account. The MOU is the vehicle by which the County is reimbursed for services it provides to Turlock as part of the implementation of the Integrated Waste Management Act of 1989 (AB 939).

I think it is important that the Board of Supervisors is informed of the process for terminating the MOU as well as the County's duties and obligations between our two agencies on solid waste matters under other Agreements. We would like the Board to consider the following information which we believe is relevant to the Board's deliberations.

1. Please recognize that Amendment No. 1 to the MOU only amended Paragraph B of Section IV of the original MOU. Amendment No. 1 simply replaced a section that stated: "This MOU will remain in effect until January 1, 2000 and may be extended by mutual agreement." Paragraph C of Section IV of the original MOU remains in effect and it sets forth the procedure for terminating the agreement. In essence, the MOU can only be terminated under two scenarios: a) mutual consent or b) six months' written notice. I have attached the original MOU for your reference.
2. The Agenda report does not provide details regarding the terms and conditions of California Integrated Waste Management Board Resolution 2002-382 and the Joint Powers Agreement Stanislaus County Regional Solid Waste Planning Agency (JPA) dated June 19, 2001. Again, I have included these documents for your reference. The JPA established the Stanislaus County Regional Solid Waste Planning Agency. Please note that under Section 1.4 of the JPA, Stanislaus County is designated as the "Administering Agency for reporting and tracking solid waste diversion programs on behalf of the Member Agencies".

As we have previously stated, we will continue to honor our obligation to reimburse Stanislaus County for the services it provides to the Regional Agency on behalf of Turlock under the existing MOU/JPA. Indeed, we paid an invoice for \$9,492.82 in December 2013 to entirely fulfill our obligations under the MOU. We believe it is important for the Board to consider that the existing MOU provides the basis for which the County is reimbursed for the services it is required to provide to all member agencies, including Turlock, under the JPA. Without the MOU, the County will be providing services to the member agencies, including Turlock, without a MOU corresponding for reimbursement. We do not feel that this would be in the best interest of the County and its residents.

Turlock will continue its participation in the Stanislaus County Regional Solid Waste Planning Agency. Furthermore, we are willing to continue to fulfill our duties and responsibilities under Section 1.5, such as sharing our waste diversion credits to facilitate the Agency's compliance with the diversion requirements of AB 939. Again, this contradicts a statement in the Agenda report that by sending its solid waste to Merced County, Turlock would not "pool resources to efficiently meet the State's mandates."

The main thrust of the Agenda report is the assertion that without Turlock's tipping fees, the County will be unable to cover the costs of AB 939 related activities on behalf of the City of Turlock. This is factually incorrect. Turlock has fully funded the activities that the County provides Turlock under the MOU. Furthermore, in my September 4, 2013 letter I stated that I would be willing to recommend to the Mayor and City Council that Turlock pay a \$5.00 premium on the waste it brings to the Fink Road Landfill to be used to fund the Regional Agency, Household Hazardous Waste Program, and any other solid waste related programs. With a solid waste generation of approximately 45,000 tons, this would mean a revenue stream of \$225,000. These funds would be more than adequate to cover AB 939 and household hazardous waste expenses. Therefore, in contrast to the inference in the Agenda report, Turlock has no intention of negatively impacting other agencies and is willing to cover its fair share of costs. I believe that this suggestion should be considered by the Board.

I am also concerned that the Agenda report infers that there is some type of "flow control" provision in our MOU, requiring Turlock to bring its solid waste to the Fink Road Landfill or Covanta's Waste to Energy (WTE) Facility. This is clearly not the case. I have attached a spreadsheet provided by County staff on the destination of solid waste generated in Stanislaus County in the five-year period 2008-2012. As you can see, many communities chose to take their solid waste elsewhere. Some agencies exported nearly 80% of their solid waste. While the County has expressed a desire to enter into "flow control" agreements with the members of the Regional Agency, there are no flow control requirements in our current agreements.

Unfortunately, it appears that this whole situation has been created by the Contracting Communities entering into a "put-or-pay" contract with Covanta. The contract between Covanta and Stanislaus County / City of Modesto was conducted behind closed doors with no input from the Stanislaus Regional Solid Waste Planning Agency, of which the City of Turlock is a member. Simply stated, the City of Turlock had no input into the contract with Covanta and the cost and benefits of that Agreement.

Finally, and most importantly, I direct your attention to an attached Agenda for "Integrated Waste Management Meetings" dated December 2011 / January 2012. This agenda was used for a meeting

between staff representing Stanislaus County and the City of Turlock. On the final page, there is a list of "Agency Alternatives." The City of Turlock has elected to pursue the following alternatives, as outlined by County staff :

Alternative #2: Haul 10% of solid waste to the WTE facility and receive an invoice if MOU revenue not received, Contracting Communities make up the lost tonnage¹. In recognition of the fact that the tipping cost of the WTE includes a \$3/ton fee for Regional Agency operations costs, the City would pay the difference if the tipping at the WTE facility did not generate \$28,200 in revenue for the County pursuant to the existing MOU.

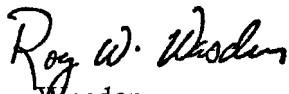
Alternative #3: Haul 100% of solid waste outside of the County, meet 50% diversion independently, and pay existing MOU amount directly to County. Under such a scenario, Turlock would still meet its minimum 50% diversion requirement and would be willing to pay the MOU amount directly to the County to provide AB 939 duties.

In conclusion, it seems clear that the County has rejected the City's various proposals and is intent on terminating the MOU; therefore, please note the following:

- Paragraph C of Section IV of the original MOU remains in effect and it sets forth the procedure for terminating the MOU.
- The City has offered to fully fund its fair share of costs related to the AB 939 program, including the household hazardous waste program.
- There are no flow control requirements in any of the City's agreements with Stanislaus County.
- Turlock Scavenger is amenable to continue the practice of disposing of some of the City's solid waste to the WTE facility.
- Turlock will continue their participation in the Regional Agency JPA and I remind you that the County, as Administering Agency, has various obligations under that Agreement.
- Without the MOU, the County will receive no reimbursement for the services it is contractually obligated to perform under the JPA for the Stanislaus County Solid Waste Planning Agency. Therefore, I encourage the County to maintain the MOU for reimbursement of services it is obligated to perform under the Regional Agency JPA.

If this agenda item proceeds, please share this letter with the Board. If this item proceeds to the Board, I will plan to attend the meeting to speak to this issue. At this time, however, I recommend that the item be delayed and we take some time to review the matter in more detail.

Very Truly Yours,



Roy Wasden
City Manager

¹ It appears that this has been achieved with the City of Modesto bridging the gap in solid waste deliveries.

Proposed Termination of the MOU for AB 939 Services between City of Turlock and Stanislaus County

Jami Aggers, Director

Department of Environmental Resources

February 11, 2014

Background

- The County's solid waste management system: the Fink Road Landfill, the waste-to-energy (WTE) facility, and the Household Hazardous Waste (HHW) Facility
- Necessary to meet State mandates for adequate disposal capacity, solid waste management planning and waste diversion

Background, Cont'd.

- To support each of these infrastructure components, participation in both the WTE facility and the Landfill is necessary
- Tipping fees not only fund these current operations & the State mandates, they also fund the ongoing closure and corrective action activities at Geer Road; the County's closed site

Background (Cont'd.)

- Calif. Integrated Waste Management Act of 1989, also known as AB 939, went into effect on Jan. 1, 1990
- Required cities and counties to reduce waste disposal by 25% by the year 1995 and 50% by the year 2000
- It also provided a 10% credit for WTE transformation toward the 50% mandate

Background (Cont'd.)

- Cities and counties had to develop plans to identify how these mandates would be achieved and how the plans were going to be implemented
- As an unfunded mandate, the law allows jurisdictions to charge fees for solid waste planning & implementation

Plan

- Stanislaus County and its nine cities agreed to establish a funding mechanism for implementation and operational costs through a disposal fee surcharge on waste sent to the WTE facility to achieve the AB 939 goals

Plan (Cont'd.)

- Each jurisdiction would pay a proportional share of the cost of the AB 939 plan preparation based on their solid waste tonnage deliveries
- In addition, collectively, the cities agreed to have the County prepare the initial planning documents required by AB 939

Implementation

- In October 1990, the Board of Supervisors and the Modesto City Council approved the disposal fee surcharge of \$1.50/ton for the AB 939 and \$1.50/ton for the HHW Programs
- In August 2007, the surcharge was increased to \$3/ton for each of these programs due to increasing operating costs

Implementation (Cont'd.)

- In 1994, the County and its cities entered into Memorandum of Understanding (MOU) agreements formalizing the ongoing provision of AB 939 services and the fee the County would be paid to provide services

Implementation (Cont'd.)

- The MOU contract amounts are withheld from each city's disposal surcharge fees based on the tonnages sent to the WTE facility and any revenue collected in excess of the city's MOU fee is refunded back
- The MOU fees have not been increased since its inception

Funding Mechanism

- The tipping fee surcharges have provided steady revenue stream for both the AB 939 and HHW programs for over 24 years and have also funded implementation and administration of the AB 939 programs and HHW that today includes:

Funding Mechanism – AB 939

- All required State reporting and tracking
- Public education/outreach
- Administration of the Recycling Market Development Zone
- Regional grant applications and administration in used oil recycling, tire recycling and tire enforcement

Funding Mechanism – AB 939 (Cont'd.)

- Serving as staff to the Local Task Force on Solid Waste
- Monitoring proposed solid waste legislative and regulatory changes

Funding Mechanism - HHW

- Mobile collection events
- HHW facility collection of e-waste, used oil, oil filters, paints, pesticides, batteries, sharps, medications and other miscellaneous household chemicals
- Public education/outreach

Funding Mechanism – HHW (Cont'd.)

- Participation in prescription drug take-back programs
- Responding to and remediating illegal roadside dumping of hazardous materials
- Responding to and remediating waste drug lab sites

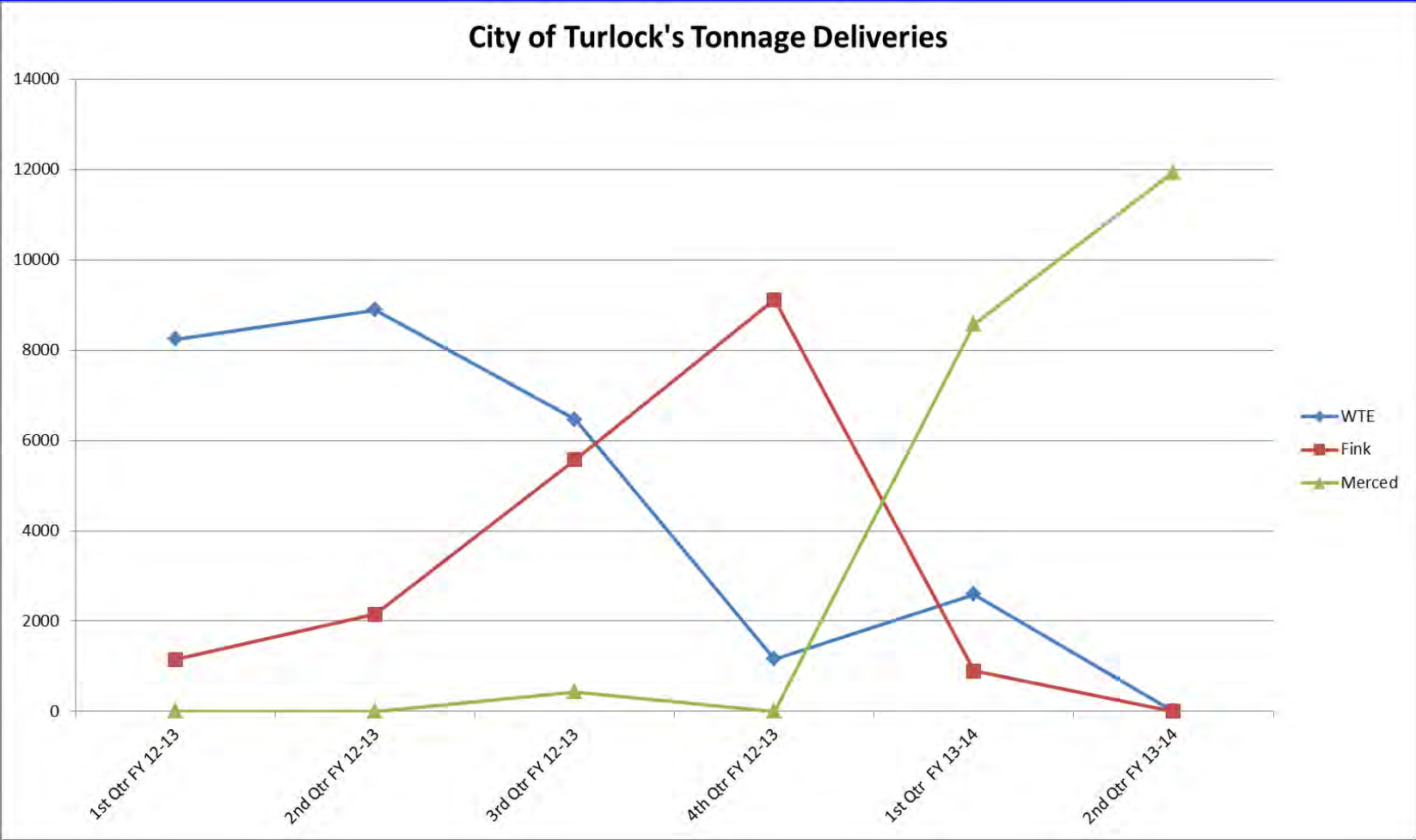
City of Turlock

- On July 9, 2013, the Turlock City Council unanimously approved sending 90% of the City's municipal solid waste (MSW) to Merced County beginning July 15th, while they entered into a 120-day contract negotiation period

City of Turlock (Cont'd.)

- Since then, Turlock's WTE deliveries have gone from a 66% reduction to zero in the most recent quarter
- Landfill deliveries have virtually ceased entirely

City of Turlock (Cont'd.)



Exportation of Waste

- Since the decline of deliveries at the WTE facility and Fink Road Landfill, the other partner cities, primarily Modesto, had to bridge the gap and hopefully will be able to into the foreseeable future to meet our monthly contractual deliveries to the WTE facility

Exportation of Waste (Cont'd.)

- Has caused a reduction in revenue from WTE tipping fees which directly impacts the operational costs of the HHW facility and AB939 related programs, and...

Exportation of Waste (Cont'd.)

- The overall solid waste system which includes the ongoing costs associated with the closed Geer Road Landfill, the operational costs for the disposal of MSW and ash from the WTE facility, illegal roadside dumping clean-up, future cell development and corrective action costs for the Fink Road Landfill

City of Turlock (Cont'd.)

- In meetings and correspondence between the County and city, staff emphasized the benefits of working together to support our local solid waste infrastructure as well as the programs and services the County provides from the WTE tipping fee surcharge, in addition to the 10% diversion credit

City of Turlock (Cont'd.)

- Staff shared a model it developed that offered a significantly reduced tipping fee at the LF, which would have provided substantial savings in exchange for a guaranteed minimum tonnage to the WTE facility & the LF
- Predicated on each local jurisdiction keeping their waste local

City of Turlock (Cont'd.)

- Turlock countered by agreeing to take waste to the WTE facility, but at a lower price
- Turlock's position is that this would not negatively impact others. It does because they have to make up the tonnage at the higher WTE tip fee

City of Turlock (Cont'd.)

- City staff indicated that they no longer planned to send MSW to the WTE facility and the Landfill and would either: a) pay the County directly for only the services they want; or b) will take their savings and do their own programs

City of Turlock (Cont'd.)

- Other issues the City has recently raised:
- a) that the County is trying to exercise Flow Control via the MOU;
- b) that the City was not invited to the negotiating table when the Covanta contract was restructured

Other Issues (Cont'd.)

- c) during Covanta negotiations, County briefed each City. An agenda and some materials were distributed which listed options for the cities:
 - 1. No change to their hauling practices
 - 2. Reducing deliveries to WTE &/or LF
 - 3. Paying for MOU services directly
 - 4. Possibly withdrawing from the JPA

Other Issues (Cont'd.)

- This was an agenda, not a binding agreement/proposal and much has changed since then:
 - 1. Geer Road LF cost implications
 - 2. Increased pressure from Forward LF
 - 3. Sustained economic slump and significantly reduced tonnages

Other Issues (Cont'd.)

- d) Lastly, that other local cities are taking waste out of county
- They are but weren't large enough to tip the scale
- In the model we prepared, would need to bring it back to benefit from a reduced tip fee and overall savings

Conclusion

- Turlock's position is contrary to the intent and purpose of the MOU, which was to pool resources to efficiently meet the State's mandates, but it was never the County's intent to provide services without also supporting the overall infrastructure

Conclusion (Cont'd.)

- This has placed an unanticipated strain on the entire solid waste system since all past planning included Turlock's participation in all segments of the SW system

Staff Recommendation

- Terminate the AB 939 MOU with the City of Turlock as well as the HHW programs and services, effective August 12, 2014
- This will provide the County the ability to adequately plan for the sustainability of the overall SW infrastructure system

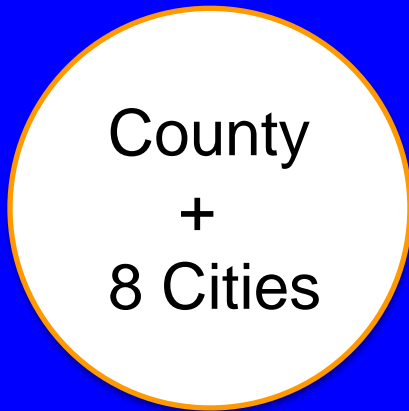
Area of Concern: JPA

- In 2002, the County and the 8 MOU cities formed a JPA
- The JPA serves two functions: 1) It allowed the 8 (now) “member” cities to share in the County’s excess diversion credit; and 2) It allowed streamlined reporting which saved everyone money

Area of Concern: JPA (Cont'd.)

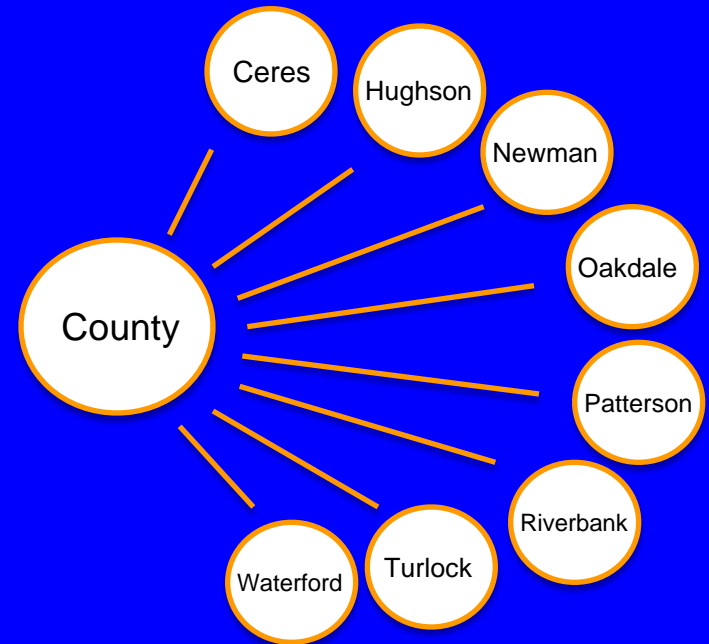
- What it's important to understand is that the JPA is distinct and separate from the MOUs
- All of the AB 939 services the County provides fall under the MOU and terminating Turlock's MOU has no impact on the remaining MOUs

Regional Agency
JPA
(Cities + County)



Single Point Reporting
Shared Recycling Credits
(County as reporting entity)

Recycling MOU
(individual agreements
between County and City)



County provided AB 939
Services for each city

Area of Concern: JPA (Cont'd.)

- Staff and County Counsel are assessing how to proceed regarding participation in the Regional Agency

Questions?

5 -Year Average Waste Disposal (2008 - 2012)

	WTE Avg Tonnage	Fink Road Avg Tonnage	Exported Tonnage	Total Waste (Avg Tonnage)
Contracting Communities	154,201.61	45,197.09	75,985.63	275,384.33
Turlock	31,469.66	17,388.23	309.40	49,167.29
Ceres	28,427.69	4,036.17	2,252.78	34,716.64
Oakdale	3,235.56	1,195.38	16,146.44	20,577.38
Patterson	7,696.16	10,220.05	1,144.27	19,060.48
Riverbank	2,745.63	835.27	11,498.50	15,079.40
Newman	5,072.47	3,340.22	142.76	8,555.45
Waterford	1,873.09	1,615.60	2,277.91	5,766.60
Hughson	1,714.84	1,599.46	1,750.08	5,064.38
TOTALS	236,436.71	85,427.47	111,507.77	433,371.95