



Agenda Date: 2/1/2017
Agenda Placement: 8C

Napa Sanitation District Board Agenda Letter

TO: Honorable Board of Directors

FROM: Timothy Healy - General Manager
NS-Administration

REPORT BY: Jeff Tucker, Director of Administrative Services/CFO - 707-258-6000

SUBJECT: Appeal for Relief on Application for Sewer Service Charges - 910 Enterprise Way (APN 046-531-030) in Napa - Mi Sueno Winery

RECOMMENDATION

Conduct an appeal hearing and make a determination whether to grant request for relief on application by waiving or reducing the sewer service charges for Mi Sueno Winery located at 910 Enterprise Way (APN 046-531-030).

EXECUTIVE SUMMARY

Mi Sueno Winery is a winery-related operation located at 910 Enterprise Way in Napa (APN 046-531-030). Mi Sueno is not permitted by NapaSan to discharge industrial waste, but has been discharging to NapaSan since the winery began in 2006.

Mi Sueno has requested relief on application under District Code 4.01.050 for sewer service charges. Mi Sueno has requested relief from Code 5.01.061 "Industrial User Waste Charges for Winery-Related Operations That Do Not Measure Flow and Strength" and relief from Code 5.01.075 "Delinquent Sewer Service and Other Charges."

Under Code 4.01.050 "Relief on Application," the applicant state the special circumstances that make the application of the Code applied to that premises unjust or inequitable.

Code 5.01.061

Mi Sueno claims in their application that the application of Code 5.01.061 is unjust because the building predates the current requirements for flow metering, there is a 30+ year history of discharging waste at similar or greater strength, and that the strength factor established in the Code is arbitrary.

District Code generally requires that all industrial users must install a flow meter and sampler. Monthly sewer

service charges for the facility is then based on the actual flow and the samples collected for BOD and TSS to determine the strength factor. However, for some small wineries, the cost of sampling weekly can exceed the cost of the actual sewer service. For this reason, the District established Code 5.01.061 to give small wineries the option of either 1) sampling and measuring flow or 2) paying a strength factor (SF) of 11.25 against metered water usage.

The 11.25 SF was established (Ordinance No. 99) based on several sources of information available at the time. There were a number of academic articles reviewed that researched the BOD, COD, TSS, pH and other constituents of winery wastewater. That literature indicated that the average Biochemical Oxygen Demand (BOD) for winery wastewater was 8,858 mg/L and the average Total Suspended Solids (TSS) was 760 mg/L. These numbers translate into a strength factor of 14.1. NapaSan was also provided sample wastewater from a "full service" winery operating in the Airport Industrial Area. These several samples, taken on average, were measured at 8,113 mg/L BOD and 748 mg/L TSS, for a strength factor of 13.0. In addition, there was also a combined winery and brewery operation in NapaSan's jurisdiction, which has slightly lower concentrations, at 5,678 mg/L BOD and 444 mg/L TSS, for a strength factor of 9.2. Based on these findings, the Board determined that a reasonable assumption for winery-related wastewater, adjusted downward to account for the possibility of some differences in the Napa area, was 7,000 mg/L BOD and 600 mg/L, for a calculated strength factor of 11.25.

Sewer service charges are based on the cost of conveying and treating the wastewater. The cost calculation takes into consideration the amount of flow and the strength of the wastewater. The age of the building the wastewater comes from is not a factor in determining the cost of treatment. The costs paid in prior years is also not a factor in determining the cost of treatment. Proposition 218 requires that fees charged to users be consistent within the classification of users, meaning that all of the District's winery-related operations rates for service should be calculated the same, and that the fees paid should be in proportion to the cost of treatment.

There are currently 8 winery-related operations that measure their strength and flow through regular sampling, and pay sewer service charges based on the samples and actual flow. There are 7 winery-related operations that pay sewer service charges at the 11.25 SF without sampling.

Code 5.01.075

Mi Sueno claims in their application that the application of Code 5.01.075 has been unjustly enforced because they requested a meeting and stated a desire to work with staff on resolution of the outstanding sewer service charges (SSC), and that the SSC for 2015 were added to property tax bill with no warning or communication from NapaSan.

Code 5.01.075 "Delinquent Sewer Service and Other Charges" allows NapaSan to place any and all delinquent charges on the property tax roll. This practice is authorized under California Health and Safety Code 5473 *et seq.*

Mi Sueno has been told on numerous occasions that sewer service charges needed to be paid monthly. In December 2014, NapaSan staff met with representatives of Mi Sueno to discuss the requirement to enter into an Industrial User permit and to pay SSC as an industrial customer. Mi Sueno was told they had the option of 1) sampling their waste to determine actual strength, or 2) use the 11.25 SF for billing purposes; however, the 11.25 SF was not a negotiable number. As Mi Sueno did not install a sampler and flow meter, monthly invoicing at 11.25 SF began in May 2015 and continued monthly through the year. No monthly invoices were paid.

In May 2016, representatives from Mi Sueno were informed again that they could measure their wastewater for flow and strength, or they could use the 11.25 SF, but that the strength factor was not a negotiable number. At this same meeting, representatives of Mi Sueno were informed that NapaSan has the authority to place unpaid SSC on the tax roll, and that it intended to do so if Mi Sueno did not pay its SSC.

Mi Sueno did not pay any invoices for SSC for any month in 2015 or 2016. In August 2016, the Board placed the

unpaid 2015 SSC on the property tax roll. Mi Sueno made its first installment property tax payment in December 2016.

A more detailed timeline is provided in the presentation that follows this staff report.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	All sewer service charge revenue is budgeted in the operating fund.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	It is at the discretion of the Board to grant the relief on application.
Is the general fund affected?	Yes
Future fiscal impact:	Based on whether and how relief is grant, there may be an impact on future sewer service charge payments by Mi Sueno.
Consequences if not approved:	If relief is not approved, NapaSan will collect sewer service charges as invoiced.
Additional Information:	None.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

None.

SUPPORTING DOCUMENTS

- A . Mi Sueno Appeal Letter
- B . Presentation Slides

Napa Sanitation District: Approve

Reviewed By: Timothy Healy