



# Mi Sueño Relief on Application for Sewer Service Charges

Napa Sanitation District  
Board of Directors Meeting  
February 1, 2017



# Basis of Appeal

4.01.050 Relief on Application

5.01.061 Industrial User Waste Charges for  
Winery-Related Operations That  
Do Not Measure Flow and Strength

5.01.075 Delinquent Sewer Service and  
Other Charges



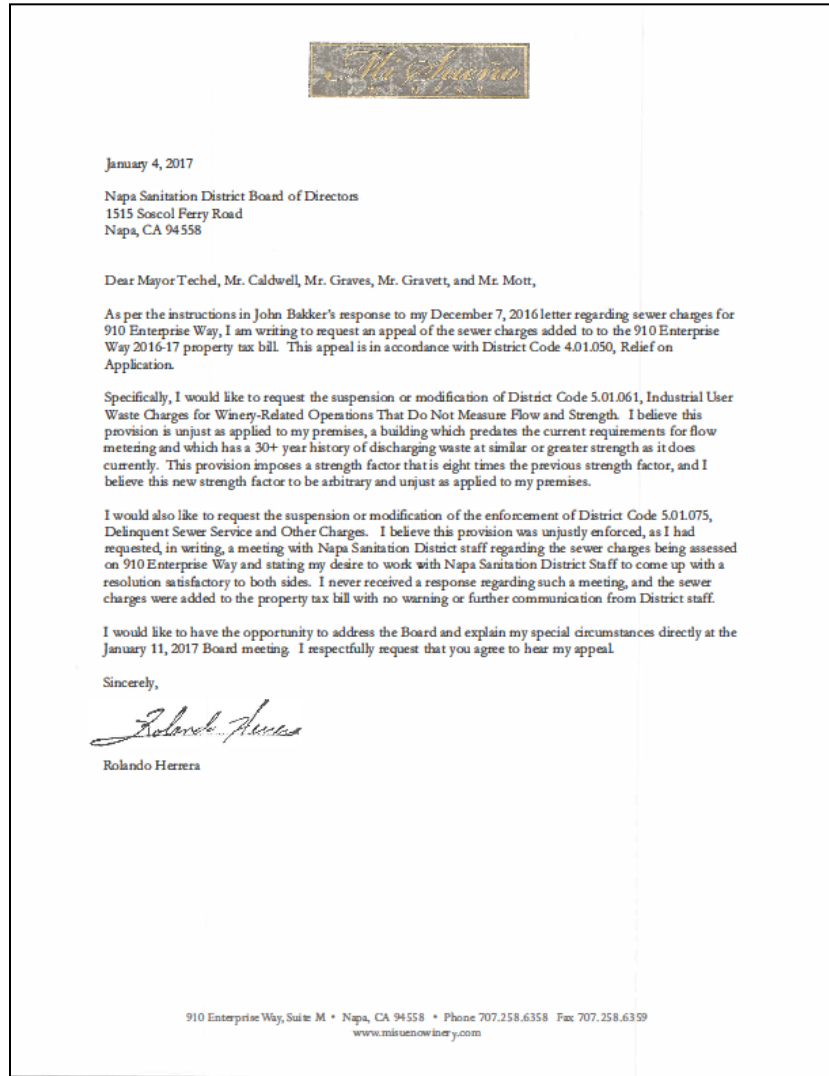
# Basis of Appeal

- 4.01.050 Relief on Application

When any person, by reason of special circumstances, is of the opinion that any provision of this Code **is unjust or inequitable as applied to his premises**, he may make written application to the Board, stating the special circumstances, citing the provision complained of, and requesting suspension or modification of that provision as applied to his premises.



# Appeal Claim



**Appeal letter is  
part of Board  
packet**

# Appeal Claim

5.01.061 is “unjust as applied to my premises”

- Building predates the current requirements for flow metering
- 30+ year history of discharging waste at similar or greater strength
- Strength factor is arbitrary

# Basis of Appeal

- 5.01.061 Industrial User Waste Charges for Winery-Related Operations That Do Not Measure Flow and Strength

Sewer service charges for Winery-Related Operations that have not yet installed, or receive a waiver from installing, flow meters and samplers to measure their facility's industrial wastewater flow and strength pursuant to District Code 4.04.170(D), shall be based on a **fixed strength factor of 11.25**, which is based upon an assumed BOD of 7,000 mg/L and TSS of 600 mg/L, multiplied by a flow factor based upon monthly flow data measured from the municipal potable water meter, after an adjustment to account for domestic waste.



# Applicability of Code

## Applicability of 5.01.061 to Mi Sueño facility

- Winery-Related Operation
- Not installed flow meters and samplers

# Applicability of 5.01.061

## Is Mi Sueño a Winery-Related Operation?

- **Winery-Related Operations (Industrial User Category)** – shall mean a facility that discharges to the sanitary sewer and is engaged in any of the following activities that are part of the winemaking process and where the end product exceeds 480 gallons of wine (or related beverage) per year: crushing of grape fruit to produce juice; fermentation of grape juice; cleaning of equipment related to crush, aging, and/or fermentation; storage of juice, fermenting juice or wine in stainless steel containers or barrels; filling, topping or sampling of wine in barrels; racking of wine in barrels; cleaning of barrels or tanks with water, steam and/or cleaning chemicals; bottling wine; or cleaning of equipment related to and associated with bottling; or related activities that result in non-domestic discharge to the sanitary sewer.





# Applicability of 5.01.061

Has Mi Sueño installed flow meter and sampler?

- No



# SSC for Wineries

## How are industrial customers billed?

- IU measures flow and strength using samplers and flow meters
  - Flow = 50%
  - Strength = 50% (BOD=25% / TSS=25%)
- Users billed based on actual flow and actual strength of wastewater



# SSC for Wineries

## How are industrial customers billed?

### Flow Factor

daily flow  $\div$  210 gal/day

### Strength Factor (convert to equivalent of household)

$0.5 + (BOD \div 175 \times 0.25) + (TSS \div 200 \times 0.25)$

### EDUs

Flow factor  $\times$  strength factor

### Monthly Sewer Service Charge

EDUs  $\times$  current rate per EDU



# SSC for Wineries

## How is sampling conducted?

- Once per week
- Random day
- Independent third party analysis
- Weekly samples averaged for monthly invoice

# SSC for Wineries

## Why was 5.01.061 created?

- Prior to code change, ALL industrial users had to install sampler and flow meter
- For small wineries, the cost of weekly sampling exceeded cost of sewer service
- SF 11.25 adopted as an alternative to sampling



# SSC for Wineries

## Winery customers have option under Code 5.01.061

1. Use flow meters and samplers to measure actual flow and strength
2. Use a fixed strength factor of 11.25

# SSC for Wineries

## How was 11.25 SF determined?

1. Academic literature – 14.1 SF
2. Samples from Napa Winery – 13.0 SF
3. Samples from Napa Winery/Brewery – 9.2 SF

NapaSan based SF on academic articles, with a downward adjustment to account for possible differences in Napa area.



# Applicability of 5.01.061

## Does the construction date of a building impact Sewer Service Charges (SSC)?

- SSC based on actual cost of treating current waste discharged to NapaSan
- Historical discharges have no bearing on current discharges (in discussion is 2015 and 2016 SSC)
- Mi Sueño does not deny or dispute that waste from a winery-related operation was discharged in 2015 and 2016



# Applicability of 5.01.061

## Why is a negotiated rate not acceptable?

- Prop. 218 requires that similarly situated customers pay the same rates for SSC
- 15 other winery-related operations using either 11.25 SF or measuring actual strength and flow
- Different rates for different users based on building age or other factors not related to strength and flow not allowed



# Applicability of 5.01.061

## Are all wineries in compliance with SSC requirements?

- 8 wineries permitted prior to 2013
- 9 winery-related operations – worked with 1-on-1 to issue Industrial User permits
  - 7 permitted and paying at 11.25 SF, applied to actual flow
  - 2 currently unpermitted (Mi Sueño and Gustavo)



# Appeal Claim

5.01.075 was unjustly enforced

- Requested a meeting and stated desire to work with staff on resolution
- SSC were added to property tax bill with no warning or communication from District

# Basis of Appeal

- 5.01.075 Delinquent Sewer Service and Other Charges

A. Enforcement. In the event any owner or user fails to pay when due any sewer service or other charges applicable to the premises, the District may enforce payment of such delinquent charges in any of the following manners:

3. Any and all delinquent charges may be placed on the tax roll, and collected in the same manner, by the same persons and at the same time as property taxes in accordance with the procedures set forth in California Health and Safety Code section 5473 *et seq.* and any amendments thereto.



# Communication of SSC Delinquency

Dec. 2014      Met with Mi Sueño to discuss need for Industrial User permit.

Sent draft permit in writing, including option of sampling or using 11.25 SF

Mi Sueño proposed 7.0 SF + 1-year of sampling

Sent letter explaining that 11.25 SF was not negotiable; choice of using 11.25 SF or sampling



# Communication of SSC Delinquency

- |               |  |
|---------------|--|
| Feb. 2015     | Ordinance 99 passed, establishing 11.25 SF for winery-related operations that do not meter and sample flow |
| April 2015    | Begin invoicing Mi Sueño for winery-related waste at 11.25 SF  |
| May-Dec. 2015 | Invoiced Mi Sueño monthly for winery-related waste. Late penalties included. No payment of SSC was made.   |



# Communication of SSC Delinquency

- |                   |   |
|-------------------|---|
| Jan.-Dec.<br>2016 | Invoiced Mi Sueño monthly for winery-related waste. Late penalties included. No payment of SSC was made.  |
| May 2016          | <p>Mtg – Rolando Herrera, Jill Techel, Alfredo Pedroza, Bill Dodd, others</p> <ul style="list-style-type: none"><li>• Informed that Mi Sueño could sample, but that 11.25 SF was not negotiable</li><li>• Informed that unpaid SSC could be placed on property tax roll</li></ul> |



# Communication of SSC Delinquency

- |          |   |
|----------|---|
| Aug 2016 | NapaSan Board placed unpaid 2015 SSC on tax roll  |
| Nov 2016 | Mtg - Rolando Herrera, Jill Techel, Alfredo Pedroza <ul style="list-style-type: none"><li>• Informed that SSC on tax roll could not be removed and need to be paid</li><li>• Informed that 11.25 SF was not negotiable, but that Mi Sueño could sample and be billed actual strength for future sewer usage</li></ul> |





# Communication of SSC Delinquency

Dec 2016

Proposal from Mi Sueño

- Remove SSC from property tax roll
- Install sampler – use 1 year of data to apply to prior 2 years and into future
- Make payments of \$2,500 per month (\$30,000/year) in 2017

Bakker Letter to Mi Sueño

- NapaSan could not remove SSC from December property tax payment

Mi Sueño made property tax payment



# Communication of SSC Delinquency

## Summary

- Invoiced monthly starting April 2015 – no payments made
- Told multiple times, as early as Dec 2014, to sample or 11.25 SF would apply
- Told directly in person in May 2016 that NapaSan would place unpaid property taxes on tax roll



# Note re: Capacity Charges

- Mi Sueño has retain legal counsel for addressing capacity charges.
- Capacity charge issue is being negotiated jointly with other property owners similarly situated
- Appeal does not include capacity charges – only about sewer service charges
- Two issues are not linked
- Age of building and prior building uses *might* be relevant in capacity charge discussions, but are not relevant in determining the cost associated with treating waste currently being discharged.



# Summary

- Mi Sueño is operating an industrial facility without an Industrial User permit.
- Mi Sueño consistently told to pay SSC, 11.25 SF or sampling were options, but that 11.25 SF was not negotiable.
- Mi Sueño did not pay any SSC in 2015 for its winery operation until it was placed on the property tax roll.
- Mi Sueño has not paid any SSC for its 2016 winery-related waste.

# What's been offered

- Mi Sueño may sample or can use 11.25 SF – but cannot negotiate a different SF.
- Any sampling would apply only on future sewer charges – will not retroactively apply sampling to past sewer discharges.
- Willing to work with Mi Sueño to pay outstanding balances over 12 month period, with interest.
- Any offer is contingent on Mi Sueño entering into an Industrial User Permit.



# Recommendation

1. Deny the Appeal
2. Instruct Mi Sueño to pay 2015 SSC on tax roll
3. Instruct Mi Sueño to pay 2016 SSC
4. Instruct Mi Sueño to enter into IU Permit



# Detailed Timeline



# Timeline

- |      |  |
|------|--|
| 1986 | 910 Enterprise Way Constructed                             |
| 2006 | Building purchased by Mi Sueño Winery / 910 Enterprise LLC |
| 2008 | March – NapaSan begins study of wineries in service area   |
| 2009 | Oct – Winery Study completed                               |





# Timeline

- 2011 NapaSan begins developing policy and programs to bring unpermitted wineries into compliance
- 2013 Efforts to create standard policy dropped by Board. Staff directed to address non-compliance on a case-by-case basis.



# Timeline

## 2014

- |        |  |
|--------|--|
| Mar 3  | Meeting with Mi Sueño representatives re: need for industrial user (IU) permit |
| Dec 17 | Meeting to discuss proposed IU permit for winery operators                     |
| Dec 18 | NapaSan sent written IU Permit: 88.14 EDU & 11.25 SF or sampling               |
| Dec 19 | Mi Sueño sent letter requesting 100 EDU & 7.0 SF or 1 year of sampling         |
| Dec 31 | John Bakker sent letter noting that the 11.25 SF was not negotiable            |

# Timeline

## 2015

- |        |   |
|--------|---|
| Jan 14 | 1 <sup>st</sup> Reading – Ordinance 99 to set SF at 11.25 for winery-related operations |
| Feb 11 | 2 <sup>nd</sup> Reading – Ordinance 99  |
| April  | Begin invoicing Mi Sueño at 11.25 SF  |
| Nov 6  | Mtg with Mi Sueño to discuss IU permit requirement, unpaid SSC and capacity charges     |

**No SSC were paid by Mi Sueño in 2015**



# Timeline

## 2015

Sept	Notice of Violation – pH (Federal limit violation)
Oct	Notice of Violation – pH (Federal limit violation)  Entered into Consent Order for pH: Mi Sueño agreed to install pH treatment
Dec	Notice of Violation – pH (Local limit violation)



# Timeline

## 2016

- |           |  |
|-----------|--|
| March 8   | Issued Cease & Desist (C&D) Order for failure to comply with Consent Order and implement pH system |
| Mar - Aug | Mi Sueño continued to discharge to NapaSan in violation of C&D Order                               |
| Aug 31    | C&D Order removed after pH system installed  |



# Timeline

## 2016

- May 4                      Mtg – Rolando Herrera, Jill Techel, Alfredo Pedroza, Bill Dodd, others
- Informed that Mi Sueño could sample, but that 11.25 SF was not negotiable
  - Informed that unpaid SSC could be placed on property tax roll
- May 10                    Resent all outstanding SSC invoices to Michelle Duckhorn, Mi Sueño Dir. of Ops

# Timeline

## 2016

- Aug 3      NapaSan Board placed unpaid 2015 SSC on tax roll
- Nov 28      Mtg - Rolando Herrera, Jill Techel, Alfredo Pedroza
- Informed that SSC on tax roll could not be removed and need to be paid
  - Informed that 11.25 SF was not negotiable, but that Mi Sueño could sample and be billed actual strength for future sewer usage

# Timeline

## 2016

- Dec 7      Proposal from Mi Sueño
- Remove SSC from property tax roll
  - Install sampler – use 1 year of data to apply to prior 2 years and into future
  - Make payments of \$2,500 per month (\$30,000/year) in 2017
- Dec 8      Email indicating intention to appeal SSC





# Timeline

## 2016

- Dec 9      Bakker Letter to Mi Sueño
- Appeal not considered (not on agenda)
  - Informed of appeal process under District Code
  - NapaSan could not remove SSC from December property tax payment
  - Willing to consider payment plan
- Dec 12      Mi Sueño made property tax payment



# Timeline

## 2017

Jan 4      Mi Sueño letter appealing sewer service charges / requests relief on application