

DEPARTMENT: Public Works/Solid Waste Division

BY: Dana Hertfelder

PHONE: 966-5356

RECOMMENDED ACTION AND JUSTIFICATION:

Approve 1) Issuing a 90 day notice to terminate the Fiske Sanitary Disposal Service (Fiske) Franchise Agreement and 2) Soliciting proposals for solid waste disposal service in the north side franchise area.

Fiske currently owes the Mariposa County Public Works Solid Waste Division \$16,940.20 without penalties or interest since October 2007. In addition, Fiske is in violation of their Franchise Agreement which requires Fiske to bring solid waste collected in their franchise area to the Mariposa County Landfill. Records indicate that Fiske has not brought waste to the Landfill for over one year.

Based on past data, Fiske collects on the average 50 tons of waste each month. This is approximately \$6,000 in lost revenue per month to the Public Works Solid Waste & Recycling Division, which is an enterprise fund. For the sixteen-month period from November 2007 through February 2008 this represents lost revenue of approximately \$96,000. So together with the \$16,940 owed previously Fiske Sanitary's total impact to the Solid Waste Division may be over \$110,000.

BACKGROUND AND HISTORY OF BOARD ACTIONS: On April 16, 2003, Mariposa County Public Works entered into a Solid Waste Franchise Agreement with Fiske. This agreement awarded Fiske the franchise area of north county (see Exhibit A).

Section 17 of the Franchise Agreement requires Fiske to bring all waste collected in their franchise area to the solid waste facility designated by Mariposa County. The designated facility is the Mariposa County Landfill. Fiske has not brought solid waste to the Mariposa County Landfill for over one year. Fiske has not paid Mariposa County Public Works since October 2007.

Fiske currently owes the Mariposa County Public Works Solid Waste Division \$16,940.20 without penalties or interest. Pursuant to Section 6 of the Franchise Agreement, Mariposa County sent a letter to Fiske dated June 23, 2008, requesting copies of solid waste disposal receipts to determine where the waste collected in the franchise area was being disposed of. To date no response has been received.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION: Should the requested actions not be approved, the Mariposa County Public Works Solid Waste Division will continue to lose approximately \$6,000 of revenue each month.

Due to the lost revenue cost savings options could include:

- Close the Mariposa County Landfill, Compost, and Recycling Facility to the public on Mondays.
- Open the Mariposa County Landfill, Compost, and Recycling Facility to Franchise haulers on a reduced schedule on Mondays.
- Lay off extra help employees
- Furlough permanent employees approximately 2 days each month.

This would result in an economic hardship to employees and decrease the level of service for garbage and recycling opportunities to the residents of Mariposa County. This could also impact the hours that the sort line and compost facility are able to operate which might result in increases in other costs such as daily cover, and increase the rate at which the landfill modules reach capacity.

If the County continues to see a decrease in revenue, one or all of the measures outlined above may be required.

Financial Impact? (x) Yes () No Current FY Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded

Annual Recurring Cost: \$

Amount in Budget: \$ _____

List Attachments, number pages consecutively

Additional Funding Needed: \$ _____

1. Exhibit A to Franchise Agreement

Source: _____

2. February 26, 2009 letter to Fiske

Internal Transfer _____

3. June 23, 2008 letter to Fiske

Unanticipated Revenue _____ 4/5's vote

Transfer Between Funds _____ 4/5's vote

Contingency _____ 4/5's vote

() General () Other

CLERK'S USE ONLY:

Res. No.: 09-109 Ord. No. _____

Vote - Ayes: 5 Noes: _____

Absent: _____

AW Approved

AW Minute Order Attached () No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____

Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: _____
Deputy

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended

No Opinion

Comments:

CAO: *[Signature]*



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BRAD ABORN, CHAIR
JANET BIBBY, VICE CHAIR
LYLE TURPIN
KEVIN CANN
JIM ALLEN

DISTRICT I
DISTRICT III
DISTRICT II
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: DANA HERTFELDER, Public Works Director
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*
SUBJECT: Approve Issuing a Ninety Day Notice to Terminate the Fiske Sanitary Disposal Service Franchise Agreement and Solicit Proposals for Garbage Service in the North Side Franchise Area

RESOLUTION 09-109

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on March 10, 2009

ACTION AND VOTE:

Dana Hertfelder, Public Works Director;

Approve Issuing a Ninety Day Notice to Terminate the Fiske Sanitary Disposal Service Franchise Agreement and Solicit Proposals for Garbage Service in the North Side Franchise Area

BOARD ACTION: Discussion was held with Dana Hertfelder relative to the request. Supervisor Turpin requested that "North County" be used versus "Northside" and he suggested that the structure of the agreement be reviewed for the future. Carl Casey/Public Works Administrator provided input.

Input from the public was provided by the following:

Ruth Catalan stated that as a taxpayer she is upset with this situation and the amount of money that Fiske owes the County and the time it has taken to get to this point.

Ruth Shane suggested that a list be maintained of contractors who have had contracts closed for cause; and that they not be allowed to enter into another contract with the County for a period of time.

Further discussion was held relative to the matter and enforcement. Carl Casey responded to the input and advised of the actions the department has taken on this matter. Steve Dahlem, County Counsel, referred to the requested action; and he noted that the collection issue is not on the agenda.

(M)Cann, (S)Turpin, Res. 09-109 was adopted approving the ninety day notice to terminate and the solicitation of proposals as recommended/Ayes: Unanimous.

Cc: Steve Dahlem, County Counsel
Chris Ebie, Auditor
File

EXHIBIT A

**DESCRIPTION OF GEOGRAPHIC BOUNDARY
OF SOLID WASTE COLLECTION FRANCHISE
FOR
MARIPOSA COUNTY, CALIFORNIA**

All of the lands situate within the boundaries of Mariposa County, a political subdivision of the State of California, described as follows:

Lands generally lying within the northern portion of Mariposa County, more particularly described as follows: Beginning at a point coincidental with the physical centerline of Merced Falls Road, a public road, and the boundary line common to Mariposa County and Merced County, said point of beginning being within Section 33, T.4S., R.15E., M.D.M.; thence from said point of beginning northerly along the physical centerline of Merced Falls Road to said road's intersection with the physical centerline of Barrett Cove Road, a public road, said intersection lying within Section 27, T.3S., R.15E.; thence easterly along the physical centerline of Barrett Cove Road to said road's intersection with the eastern line of said Section 27; thence north along the east lines of Section 27, Section 22, Section 15, Section 10, and Section 3, T.3S., R.15E. to the intersection of the east line of said Section 3 with the physical centerline of State Highway 132, a public highway; thence easterly along the physical centerline of State Highway 132 to said highway's intersection with the east line of Section 4, T.3S., R.16E.; thence south along the east lines of Section 4 and Section 9 to the southeast corner of said Section 9, T.3S., R.16E.; thence east along the north lines of Section 15, Section 14 and Section 13 to the northeast corner of said Section 13, T.3S., R.16E.; thence south along the east township line of Range 16 East, M.D.M. to the north township line of Township 4 South; thence east along the north township line of Township 4 South to the east township line of range 17 East; thence north along the east township line of Range 17 East to the north township line of Township 3 South; thence east along the north township line of Township 3 South to the east township line of Range 18 East; thence north along the east township line of Range 18 East to the boundary line common to Mariposa County and Tuolumne County; thence westerly along said common County boundary line to the most westerly point of Mariposa County, said point being common to Tuolumne County, Merced County and Stanislaus County; thence southerly along the County boundary line common to Mariposa County and Merced County to the Point of Beginning.

COUNTY of MARIPOSA



Dana S. Hertfelder
Director

4639 Ben Hur Road
Mariposa, CA 95338
Phone: (209) 966-5356
Fax: (209) 966-2828

DEPARTMENT OF PUBLIC WORKS

Divisions of:

Administration	Airport
Cemeteries	County Surveyor
Design & Construction	Engineering
Facilities	Parks & Rec.
Roads	Solid Waste
Transportation	Fleet Maintenance

June 23, 2008

Mr. Michael Fiske
Fiske Sanitary Disposal Service
P.O. Box 213
Coulterville, CA 95311

RE: Solid waste disposal and final demand for payment of account
US Mail, Certified Return Receipt

Dear Mr. Fiske:

It has come to my attention that Fiske Sanitary Disposal Service is not using the Mariposa County landfill to dispose of solid waste collected in the Franchise Area. This is a direct violation of Section 17, Article A of the Franchise Agreement (attached) between Mariposa County and Fiske Sanitary Disposal Service that reads in part:

“Collector shall use only those facilities designated by County (Designated Disposal Facility) from time to time as a disposal site for all solid waste collected in the Franchise Area. Unless further notified in writing, Collector shall use the Mariposa County Landfill.”

You are hereby directed to immediately comply with this section of the Franchise Agreement and use the Mariposa County landfill to dispose of all solid waste collected in the Franchise Area. Your failure to do so has resulted in the loss of significant revenue to the County of Mariposa Solid Waste division. We are also requesting that you provide information on where Fiske Sanitary Disposal has been disposing of the solid waste collected in the Franchise Area and the quantity of material disposed of (as evidenced by weight tags or other documentation). Further refusal to comply with Section 17 of the Franchise Agreement may result in termination of the Franchise Agreement.

This letter also serves as notice of final demand for payment of the current outstanding balance of your commercial account with Mariposa County which is \$16,940.20. Copies of the outstanding unpaid invoices (which were previously mailed to you including weight tags) are attached for reference. These invoices cover the months of July through October 2007. If full payment of \$16,940.20 is not received by the County within 30 days of your receipt of this letter, we will turn this matter over to County Counsel for further action.

Please contact Carl Casey or myself at the Public Works office if you have any questions regarding this matter.

Sincerely,

Dana Hertfelder, Public Works Director

cc: Board of Supervisors
Rick Benson, County Administrative Officer
Thomas P. Guarino, County Counsel
Michelle Miller, Solid Waste & Recycling Manager

ATTACHMENT #2

3

SECTION 16: AB 939.

A. Collector acknowledges that it is familiar with the requirements imposed by the California Integrated Waste Management Act of 1989, California Public Resources Code §§ 40000 et. seq. as amended from time to time (commonly referred to as "AB 939"), and Collector agrees hereby to cooperate fully with County in meeting said requirements. County and Collector shall commit their best efforts toward complying with same.

B. During the term of this Agreement, Collector shall submit to County monthly, and more often if required by law, information reasonably required by County to meet its reporting obligations imposed by AB 939, and the regulations implementing AB 939, in a manner approved by County. Collector agrees to render all reasonable cooperation and assistance to County in meeting the requirements of County's Source Reduction and Recycling Element and Non-Disposal Facility Element, and the Household Hazardous Waste Element.

SECTION 17: USE OF MARIPOSA COUNTY LANDFILL.

A. Collector shall use only those facilities designated by County (Designated Disposal Facility) from time to time as a disposal site for all solid waste collected in the Franchise Area. Unless further notified in writing, Collector shall use the Mariposa County Landfill. County agrees that the Designated Disposal Facility shall be open every day of the year.

B. Collector warrants that all solid waste which it delivers for disposal and seeks reimbursement through the rate as provided in Sections 12 and 13 shall be solid waste collected in the Franchise Area in performing services hereunder and delivered for disposal to the Designated Disposal Facility and that breach of this warranty constitutes a Collector Event of Default under Section 22.

C. Collector acknowledges that the County's remedy of damages for a breach of Section 17 by Collector may be inadequate and, consequently, the County shall be entitled to all available equitable remedies, including termination of this Agreement, specific performance, and injunctive relief, for the following reasons:

1. failure of Collector to transport and deliver all solid waste collected in the Franchise Area to the Designated Disposal Facility (a "Delivery Default") may subject County to consequent increased costs of transferring, transporting or disposing of such solid waste, which costs could result in increasing the rates of County's citizens and ratepayers;

2. a Delivery Default may subject County to increased risk of liability for environmental damage at the non-designated disposal site due to release or threatened release of hazardous or toxic substances, petroleum products and other materials, including water or ground water contamination therefrom; replacement or restoration of natural resources arising therefrom; and repair, cleanup or detoxification of the non-approved disposal facility and any removal, remedial, response, closure or other plan with respect thereto, whether under section 108(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. section 9607(e) or California Health and Safety Code section 25364 or otherwise;

3. a Delivery Default may subject County to loss of disposal fee revenue at County-owned disposal facilities, thereby jeopardizing the fiscally sound and environmentally safe operation of such disposal facilities and system; and

4. Delivery Default is not in the best economic, health and safety interest of the County's residents and ratepayers.

D. For each ton of solid waste collected in the Franchise Area collected by Collector that Collector delivers to a facility or site other than the Designated Disposal Facility ("Diverted Tons"), as demonstrated by weigh bills at such other facility or site or other evidence satisfactory to the County, including reports of any monitoring party ("Diversion Documentation"), the Collector shall pay the County within thirty (30) days following receipt of any invoice therefor from the County, compensatory damages equal to:

1. the tipping fee then in effect at any Designated Disposal Facility owned by the County for each Diverted Ton, and

2. the incrementally greater cost, if any, for transportation, transfer or disposal to or at such other facility or site;

3. the County's Direct Cost of providing one (1) or more persons who monitor Collector's compliance with such delivery requirements, including following Collector's vehicles on service routes;

4. damages or other payment obligations the County consequently directly or indirectly incurs under this Agreement.

E. Collector further acknowledges that the County has established and will establish rates for solid waste collection services based on the approved Disposal Facility and that if Collector does not transport to and dispose of solid waste collected in the Franchise Area at the Designated Disposal Facility, the County and its residents and ratepayers may suffer damages in addition to those compensatory damages described above and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the Collector and the County agree that in addition to compensatory damages, the following liquidated damages represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereof, including the relationship of the sums to the range of harm that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. Collector and the County each specifically warrant and represent that it has received independent legal advice from its attorneys or the opportunity to seek such advice and obtain an explanation of this liquidated damage provision at the time it was entered.

Within thirty (30) days from delivery of written notice to Collector of the County of a Delivery Default, Collector shall pay as liquidated damages and not as a penalty the sum of One Hundred Dollars (\$100.00) for each day that the Collector fails to deliver all solid waste it collected in the Franchise Area under the terms hereof.

COUNTY of MARIPOSA



4639 Ben Hur Road
Mariposa, CA 95338
Phone: (209) 966-5356
Fax: (209) 966-2828

DEPARTMENT OF PUBLIC WORKS

Divisions of:

Administration	Airport
Cemeteries	County Surveyor
Design & Construction	Engineering
Facilities	Parks & Rec.
Roads	Solid Waste
Transportation	Fleet Maintenance

Dana S. Hertfelder
Director

February 26, 2009

Mr. Michael Fiske
Fiske Sanitary Disposal Service
P.O. Box 213
Coulterville, CA 95311

Via US Mail, Certified Return Receipt

Dear Mr. Fiske:

It has come to my attention that Fiske Sanitary Disposal raised its rates by roughly 10% effective January 1, 2009 (see attached invoices). Under the Franchise Agreement the only rate increase that Fiske Sanitary is authorized to charge at this time is the 3.6% increase in fees that would be a pass-through for the tipping fee increase at the Mariposa County Landfill that was effective March 1, 2008. Carl Casey, Public Works Administrator, sent you a letter on March 10, 2008 with a schedule of fees attached showing new rates including the 3.6% increase (copy attached).

Raising your rates by 10% is a violation of Section 12, Articles C and E of the Franchise Agreement that read as follows:

"C. Applications for rate increases shall not be considered by the Board of Supervisors more often than once in any one twelve (12) month period with the exception of Section 13, below. Any proposals by the Collector for a rate increase shall be received by County on or before May 1 of each year."

"E. Collector shall have no authority to impose upon ratepayers any charges over and above the rates as described in this Section 12, except as provided in Section 13."

Your last request for a rate increase was in February 2008 so no other rate increase request could be considered before February 2009. You are hereby directed to immediately reduce your rates to the level authorized in the above referenced letter of March 10, 2008. No other increase has been approved by the Board of Supervisors.

You are also still in violation of Section 17, Article A of the Franchise Agreement which requires you to dispose of solid waste collected in the franchise area at the Mariposa County Landfill. Your failure to do so is resulting in substantial loss of revenue to the Mariposa County Solid Waste Division, which is unacceptable. We are again directing you to comply with the Franchise Agreement and bring the solid waste to the Mariposa County Landfill.

Fiske Sanitary bills Public Works once a month for solid waste collection at the Coulterville County Park and Road Yard. Beginning with the February 2009 invoice, these invoices will be deducted from the \$16,940.20 Fiske Sanitary owes Mariposa County.

Sincerely,

A handwritten signature in black ink that reads "Dana S. Hertfelder".

Dana Hertfelder
Public Works Director

cc: Board of Supervisors
Jeffrey G. Green, Interim County Counsel
Rick Benson, CAO
Michelle Miller, Solid Waste & Recycling Manager

ATTACHMENT # 3

10

FISKE SANITARY DISPOSAL SERVICE

(209) 878-0152
 PO BOX 213
 COULTERVILLE, CA 95311

0245
Invoice

Date	Invoice #
12/1/2008	2142

Bill To
MARIPOSA PUBLIC WORKS COULTERVILLE 4639 BEN HUR RD MARIPOSA CA 95338

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt		12/1/2008			

Quantity	Item Code	Description	Price Each	Amount
1	2/YD/MT	December Service Coulterville County Yard <i>Roads</i>	67.90	67.90
1	2/YD/BIWK	December Service Coulterville Park <i>001-0128-473-0460</i>	81.88	81.88
<i>001-0128-473-0460 → 81.88</i> <i>300-0301-581-0460 → 67.90</i>				

RECEIVED

DEC 1 8 2008

PUBLIC WORKS
 ACCOUNTS PAYABLE

WANDA S. WERTFELDER
 DIRECTOR
 PUBLIC WORKS

	Total	\$149.78
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FISKE SANITARY DISPOSAL SERVICE

Invoice

(209) 878-0152
 PO BOX 213
 COULTERVILLE, CA 95311

Date	Invoice #
1/1/2009	2505

Bill To
MARIPOSA PUBLIC WORKS COULTERVILLE Hwy 49 Coulterville Co. Park & Yard 4639 BEN HUR RD MARIPOSA CA 95338

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt		1/1/2009			

Quantity	Item Code	Description	Price Each	Amount
1	2/YDS/MT	January Service Coulterville County Yard <i>Roads</i>	75.00	75.00
1	2/YDS/BIWK	January Service Coulterville Park - <i>001-0128-473-0460</i> <i>160</i>	90.00	90.00
<i>300-0301-581-0460 → 75.00</i> <i>001-0128-473-0460 → 90.00</i> <i>(@128-160)</i>				
DANA S. HERTFELDER DIRECTOR PUBLIC WORKS				
RECEIVED JAN 14 2009 PUBLIC WORKS ACCOUNTS PAYABLE				

Total				\$165.00
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Dana S. Hertfelder
Director

4639 Ben Hur Road
Mariposa, CA 95338
Phone: (209) 966-5356
Fax: (209) 966-2828

March 10, 2008

**DEPARTMENT OF PUBLIC
WORKS**

Divisions of:

Administration	Airport
Cemeteries	County Surveyor
Design & Construction	Engineering
Facilities	Parks & Rec.
Roads	Solid Waste
Transportation	Fleet Maintenance

Mr. Michael Fiske
Fiske Sanitary Disposal Service
P.O. Box 213
Coulterville, CA 95311

Dear Mr. Fiske:

On February 26, 2008 the Mariposa County Board of Supervisors approved an increase in the landfill tipping fee from \$104.00 to \$121.00 per ton. Section 12, Article D of the Franchise Agreement for Fiske Sanitary Disposal states that your rates for service can automatically be increased to cover the cost of any tipping fee increase.

The tipping fee increase was 16.3%. Attached is a worksheet showing the calculation to determine how much your charges would need to be increased to cover this additional cost, which turned out to be 3.6%. Also attached is a schedule of your current rates and what the new rates are incorporating the 3.6% increase. Fiske Sanitary Disposal is authorized to start charging these new rates for any service provided on or after March 1, 2008.

Please contact me if you have any questions.

Sincerely,

Carl Casey
Public Works Administrator

**FISKE SANITARY DISPOSAL
TIPPING FEE PASS THROUGH CALCULATION**

2007 REVENUE	REVENUE PER MONTH	PROJECTED REVENUE JAN-FEB 2008	APPROVED RATE INCREASE	PROJECTED REVENUE MAR-DEC 2008	PROJECTED REVENUE 2008
\$152,207	\$12,684	\$25,368	13.5%	\$143,962	\$169,330

2007 TIPPING FEES	APPROVED RATE INCREASE	PROJECTED ANNUAL TIPPING FEES	INCREASED TIPPING FEE COST	CALCULATED FISKE RATE INCREASE
\$37,453	16.3%	\$43,558	\$6,105	3.6% 6,105/169,330

Effective Date: March 1, 2008

Fiske Sanitary Disposal Service
Approved Rates to Cover Tipping Fee Increase

March 1, 2008

Service	Monthly Rate	3.6% Increase
1/CN/BIWK	\$12.31	\$12.75
1/CN/MTH	\$6.03	\$6.25
1/CN/WK	\$24.56	\$25.44
1/YD/2YD/WK	\$173.28	\$179.52
1/YD/BIMTH	\$35.05	\$36.31
1/YD/BIWK	\$54.62	\$56.59
1/YD/MTH	\$54.62	\$56.59
1/YD/WK	\$65.53	\$67.89
10/2/YDS/1/YD/WK	\$669.41	\$693.51
2/2YDS/WK	\$212.87	\$220.53
2/2YDS/WK	\$102.72	\$106.42
2/CNS/BIWK	\$24.56	\$25.44
2/CN/MTH	\$12.31	\$12.75
2/CNS/WK	\$32.76	\$33.96
2/YD/BIWK	\$81.88	\$84.83
2/YD/MISC	\$109.18	\$113.11
2/YD/MTH	\$67.90	\$70.34
2/YD/WK	\$106.45	\$110.28
2/YD/WK/A	\$79.00	\$81.84
3/CNS/MTH	\$16.65	\$17.25
3/CNS/WK	\$45.04	\$46.66
3/YDS/WK	\$150.10	\$155.50
4/2YDS/WK	\$300.21	\$311.02
4/CNS/BIWK	\$32.78	\$33.96
5/CNS/MTH	\$32.78	\$33.96