

**SPECIAL MEETING OF THE BOARD OF DIRECTORS  
WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA  
4040 PARAMOUNT BOULEVARD, LAKEWOOD, CALIFORNIA 90712**

**8:00 A.M., THURSDAY, SEPTEMBER 30, 2010**

**AGENDA**

Each item on the agenda, no matter how described, shall be deemed to include any appropriate motion, whether to adopt a minute motion, resolution, payment of any bill, approval of any matter or action, or any other action. Items listed as "For Information" or "For Discussion" may also be the subject of an "action" taken by the Board or a Committee at the same meeting.

- 1. DETERMINATION OF A QUORUM**
- 2. PLEDGE OF ALLEGIANCE**
- 3. INVOCATION**
- 4. PUBLIC COMMENT:** During communications from the public, if you wish to address the Board of Directors during this Special Meeting, under Government Code Section 54954.3(a), you may only address the Board concerning those items described in the Notice and Call of this Special Meeting.
- 5. EXECUTION OF LETTER AGREEMENT WITH UPPER SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT (USGVMWD) AND LOS ANGELES COUNTY SANITATION DISTRICTS (LACSD) FOR THE GROUNDWATER RELIABILITY IMPROVEMENT PROGRAM (GRIP)**  
*WRD GRIP Ad Hoc Committee Recommendation:* A recommendation will be provided at the Board Meeting.
- 6. AWARD OF CONTRACT TO THE ROGERS GROUP TO PERFORM PUBLIC OUTREACH SERVICES FOR THE GROUNDWATER RELIABILITY IMPROVEMENT PROGRAM (GRIP)**  
*GRIP Joint Ad Hoc Committee Recommendation:* Enter into an Agreement with The Rogers Group, subject to approval of form by District Counsel, to perform a public outreach effort for the Groundwater Reliability Improvement Program (GRIP), for \$1,800,000 plus a \$200,000 contingency for a total authorized amount not to exceed \$2,000,000 for a two-year term. This cost is to be shared among the GRIP Partnership agencies, with WRD's contribution not to exceed \$667,000.

**7. PROPOSITION 26 – REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER’S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.**

*Staff Recommendation:* For discussion and possible action.

**8. CLOSED SESSION**

- A. Conference with Legal Counsel – Pending Litigation  
Pursuant to Government Code §54956.9  
Name of Case: City of Cerritos, City of Downey and City of Signal Hill v. Water Replenishment District of Southern California  
Case No.: Los Angeles County Superior Court BS128136

**9. ADJOURNMENT**

Agenda posted by Abigail C. Andom, Deputy Secretary, September 28, 2010. In compliance with ADA requirements, this document can be made available in alternative formats upon request.

In compliance with the Americans with Disabilities Act (ADA), if special assistance is needed to participate in the Board meeting, please contact Deputy Secretary Abigail Andom at (562) 921-5521 for assistance to enable the District to make reasonable accommodations.

All public records relating to an agenda item on this agenda are available for public inspection at the time the record is distributed to all, or a majority of all, members of the Board. Such records shall be available at the District office located at 4040 Paramount Boulevard, Lakewood, California 90712.

Agendas and minutes are available at the District's website, [www.wrd.org](http://www.wrd.org).



**MEMORANDUM**

**ITEM NO. 5**

*Prepared by: Jim McDavid*

*Reviewed by: Ted Johnson*

*Approved by: Robb Whitaker*

**DATE: SEPTEMBER 30, 2010**

**TO: BOARD OF DIRECTORS**

**FROM: ROBB WHITAKER, GENERAL MANAGER**

**SUBJECT: EXECUTION OF LETTER AGREEMENT WITH UPPER SAN GABRIEL MUNICIPAL WATER DISTRICT(USGVMWD) AND LOS ANGELES COUNTY SANITATION DISTRICTS (LACSD) FOR THE GROUNDWATER RELIABILITY IMPROVEMENT PROGRAM (GRIP)**

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**SUMMARY**

The Groundwater Reliability Improvement Program (GRIP) partnership, made up of the WRD, the Upper San Gabriel Valley Municipal Water District (USGVMWD), the San Gabriel Valley Municipal Water District (SGVMWD), and the Los Angeles County Sanitation Districts (LACSD), continues to move forward with developing a project that would replace unreliable imported replenishment water with a locally sustainable supply.

A Cost Sharing Agreement (CSA) between the four agencies has been developed to allow work to proceed on a public outreach effort for the GRIP and to retain a consultant to perform a study of possible alternatives (Alternatives Analysis) for the proposed advanced water treatment plant in preparation for CEQA/NEPA environmental studies. As previously reported, the CSA stipulates that the Upper San Gabriel Valley Municipal Water District, the Los Angeles County Sanitation Districts, and the WRD will share equally in the cost for these two efforts. The San Gabriel Valley Municipal Water District will be responsible for twenty percent of the cost share of the Upper San Gabriel Valley Municipal Water District.

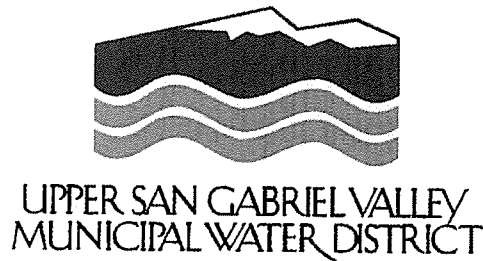
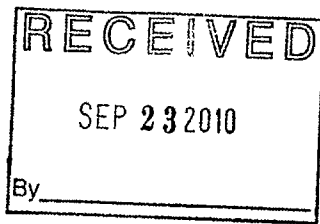
It has come to the attention of the WRD and the LACSD that the SGVMWD may withdraw from the Joint Powers Agreement being formulated by GRIP partnership agencies. In light of this development, WRD contacted the USGVMWD seeking an agreement that USGVMWD will continue to share the cost of the public outreach effort equally with WRD and LACSD without a twenty percent contribution of their share from SGVMWD in the event that SGVMWD withdraws from the GRIP partnership. WRD general counsel provided a draft letter agreement to USGVMWD confirming USGVMWD's commitment to fund one-third expenditures outlined in the CSA in the event SGVMWD does not continue to participate in GRIP. On September 21, 2010, the Board of the USGVMWD authorized the interim General Manager to initiate a letter of agreement stating that USGVMWD will continue to share the cost of the public outreach effort equally with WRD and LACSD without a twenty percent contribution of their share from SGVMWD in the event that SGVMWD withdraws from the GRIP partnership.

**FISCAL IMPACT**

Execution of the letter agreement has no additional fiscal impact and reaffirms the reimbursement by the partner agencies in accordance with the CSA. The WRD financial obligation will remain the same as stipulated in the CSA authorized at the August 20, 2010 Board meeting.

**WRD GRIP AD HOC COMMITTEE RECOMMENDATION**

A recommendation will be provided at the Board Meeting.



September 22, 2010

Robb Whitaker  
General Manager  
Water Replenishment District  
of Southern California  
4040 Paramount Boulevard  
Lakewood, CA 90712

Steve Maguin  
Chief Engineer & General Manager  
County Sanitation District No. 2  
of Los Angeles County  
Post Office Box 4998  
Whittier, CA 90607-4998

**Re: GRIP Cost Sharing Agreement**

Dear Mr. Whitaker and Mr. Maguin:

As you are aware, on January 4, 2010, the Upper San Gabriel Valley Municipal Water District ("USGVMWD") the San Gabriel Valley Municipal Water District ("SGVMWD") the Water Replenishment District of Southern California ("WRD") and County Sanitation District No. 2 of Los Angeles County ("LACSD") entered into a cost sharing agreement ("Agreement") to conduct public outreach and to perform an analysis of water supply alternatives for the Groundwater Reliability Improvement Program ("GRIP").

Pursuant to paragraph 3, and Sections I(b) and II(b) of the Agreement the parties agreed that the costs associated with the public outreach and the water supply analysis would be shared equally between USGVMWD, WRD and LACSD, with SGVMWD contributing 20 percent of USGVMWD's share.

This letter serves to notify WRD and LACSD that USGVMWD hereby agrees to contribute the 20 percent contribution previously allocated to SGVMWD under the Agreement if SGVMWD does not participate in GRIP. It is USGVMWD's understanding that this increased contribution by USGVMWD will cause the remaining three parties, USGVMWD, WRD and LACSD to equally share the cost of the public outreach and water supply analysis for GRIP.

Unless USGVMWD receives disagreement from WRD or LACSD, USGVMWD will consider the terms of this correspondence to take effect immediately. In accordance with Section III9b) of the Agreement, I request that the LACSD and WRD acknowledge this revision to the Agreement by signing below.

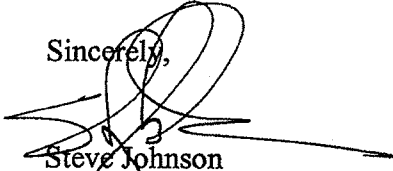
11310 VALLEY BOULEVARD • EL MONTE, CALIFORNIA 91731  
PHONE: (626) 443-2297 • FAX: (626) 443-0617  
[www.usgvmwd.org](http://www.usgvmwd.org)

DIRECTORS: ALFONSO 'AL' CONTRERAS, PRESIDENT • CHARLES M. TREVIÑO, VICE-PRESIDENT • ED CHAVEZ, SECRETARY/TREASURER • DR. TONY FELLOW • R. WILLIAM 'BILL' ROBINSON

Robb Whitaker, General Manager  
Steve Maguin Chief Engineer & General Manager  
September 22, 2010  
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Should you have any questions regarding this matter please do not hesitate to contact me.

Sincerely,



Steve Johnson  
Interim General Manager

The undersigned hereby acknowledge and agree to the terms set forth in this correspondence.

Date:

Date:

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Robb Whitaker  
General Manager  
Water Replenishment District  
of Southern California

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Steve Maguin  
Chief Engineer & General Manager  
County Sanitation District No. 2  
of Los Angeles County

cc: Shane Chapman, USGVMWD  
Clarke Moseley, Legal Counsel  
Stetson Engineers Inc.  
Darin Kasamoto, SGVMWD



**MEMORANDUM**

**ITEM NO. 6**

*Prepared by: Jim McDavid*

*Reviewed by: Ted Johnson*

*Approved by: Robb Whitaker*

**DATE: SEPTEMBER 30, 2010**

**TO: BOARD OF DIRECTORS**

**FROM: ROBB WHITAKER, GENERAL MANAGER**

**SUBJECT: AWARD OF CONTRACT TO THE ROGERS GROUP TO PERFORM PUBLIC OUTREACH SERVICES FOR THE GROUNDWATER RELIABILITY IMPROVEMENT PROGRAM (GRIP)**

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**SUMMARY**

The Groundwater Reliability Improvement Program (GRIP) partnership, made up of the WRD, the Upper San Gabriel Valley Municipal Water District (USGVMWD), the San Gabriel Valley Municipal Water District (SGVMWD), and the Los Angeles County Sanitation Districts (LACSD), continues to move forward with developing a project that would replace unreliable imported replenishment water with a locally sustainable supply. An initial part of this effort involves informing and educating civic leaders, elected officials, environmental organizations, and members of the general public to the benefits of using recycled water to establish a reliable, local supply of water for groundwater replenishment.

The GRIP Partnership released a Request for Proposals in October 2009 to five pre-qualified public outreach consultants. Four proposals were received and evaluated by the Partnership and selected staff from the partner agencies. Each of the four firms was interviewed on November 17, 2009. Based on the results of the evaluation of the proposals, interviews, and subsequent negotiations with the top ranked firm, a recommendation was made to the Joint Ad-Hoc Committee on January 4, 2010 to award a contract to The Rogers Group for an amount not to exceed \$1,800,000. The Joint Ad-Hoc Committee asked that the evaluation process be modified to include the Committee members with subsequent interviews being held on January 12, 2010. The four firms were then asked to submit supplemental proposals for further evaluation by the Committee. On March 8, 2010, the Committee members and Partner agency staff submitted revised evaluation scores and the Committee voted to recommend selection of The Rogers Group to perform the public outreach effort for the GRIP project. The name of the selected consulting firm, The Rogers Group, along with the cost for this public outreach effort have been incorporated into the latest version of the Cost Sharing Agreement (CSA) which has been approved LACSD, WRD, and USGVMWD. A contract with The Rogers Group to perform this work has been drafted and reviewed by District Counsel for WRD Board consideration of approval.

**FISCAL IMPACT**

The budget for the public outreach is \$1,800,000 plus a \$200,000 contingency over a two-year term. In accordance with the terms of the Cost Sharing Agreement, WRD is responsible for one-third of this amount, or \$667,000.

**GRIP JOINT AD HOC COMMITTEE RECOMMENDATION**

Enter into an Agreement with The Rogers Group, subject to approval of form by District Counsel, to perform a public outreach effort for the Groundwater Reliability Improvement Program (GRIP), for \$1,800,000 plus a \$200,000 contingency for a total authorized amount not to exceed \$2,000,000 for a two-year term. This cost is to be shared among the GRIP Partnership agencies, with WRD's contribution not to exceed \$667,000.



## PROFESSIONAL SERVICES AGREEMENT THE ROGERS GROUP

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This Professional Services Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of April, 2010, by and between the Water Replenishment District of Southern California (“District”) and The Rogers Group (“Consultant”) (collectively the “Parties” or individually as “Party”) for the furnishing of certain professional services upon the following terms and conditions.

1. Scope of Services. Consultant shall perform the scope of services described in Exhibit A hereto (“Services”). Tasks other than those specifically described in Exhibit A shall not be performed without a prior written amendment to this Agreement.
  - 1.1 Standard of Care. In performing the scope of services under this Agreement, Consultant shall exercise the standard of care and expertise prevailing in California for the performance of such services.
2. Term. The term of this Agreement shall commence on April \_\_\_, 2010 and shall end on April \_\_\_, 2012 (the “Expiration Date”). Six months after the commencement of this Agreement, and every six months thereafter, or at any other time the District sees fit, District staff shall evaluate the quality of the Services that have been provided by the Consultant, the cost of such Services relative to the benefits, and the need for any continuation of the Services. The results of such evaluation shall be provided to the appropriate District Committee, which shall provide a report to the District’s Board of Directors (“Board”). At that time the Board may make a determination of whether to continue or terminate this Agreement. Nothing in this Section shall preclude the District from employing the termination provisions set forth in Section 2.1. At least sixty days prior to the Expiration Date, the Board shall have the option to extend the Agreement for an additional one year period (“Extension Period”). The Board shall have the option to make an additional one year extension upon expiration of the first Extension Period. Any decision by the Board to extend the term of this Agreement shall be delivered to Consultant in writing no less than thirty (30) days prior to the expiration of the Agreement or any subsequent Extension Period. Consultant shall express its intent to renew this Agreement by providing the District written notice no later than fifteen (15) days prior to the Expiration Date of this Agreement and/or the expiration of each Extension Period.

- 2.1 Termination by District
- 2.1.1 Termination for Convenience. The District may terminate this Agreement for its convenience at any time upon five (5) days written notice to Consultant. Consultant's compensation in the event of such a termination shall be exclusively limited to payment for all authorized services performed and for all authorized expenses incurred up to the effective date of such termination. Consultant understands and agrees that it shall not be entitled to any additional compensation or reimbursement whatsoever in the event of such termination.
- 2.1.2 Consultant's Obligations Upon Termination. Following any termination of this Agreement by the District or Consultant, the Consultant shall promptly return all District property, and shall likewise provide to District all finished and unfinished data, studies, maps, reports, and other deliverables and work-product prepared by Consultant pursuant to this Agreement.
3. Consultant's Compensation. District will compensate Consultant for services performed and for expenses incurred pursuant to this Agreement as follows:
- 3.1 Fee. Consultant shall be paid in accordance with the Consultant Rate Schedule attached to this Agreement as Exhibit B which may not be changed except with District's written approval.
- 3.2 Invoices. Consultant shall submit monthly invoices to District for services performed and expenses incurred during the preceding month. Consultant's invoices shall separately identify all personnel for whose services payment is sought and the services performed. As a condition precedent to payment, District may require Consultant to furnish supporting information and documentation for all charges for which payment is sought. District shall have the right to withhold from payments to Consultant reasonably disputed amounts including, without limitation, amounts for services not performed in accordance with this Agreement and costs, expenses or damages incurred by District as a result of Consultant's breach of this Agreement or Consultant's negligence.
- 3.3 Progress Reports. Consultant shall submit to the District monthly progress reports detailing the work accomplished during the reporting month.
4. Consultant's Obligation to Provide Notice of Changes. Consultant shall provide written notice to the District no later than twenty (20) days after the occurrence of any event (including any direction by the District) which Consultant believes requires a change in its compensation or the time for performance of its obligations under this Agreement. Said notice shall describe the event and the basis for any change in compensation or time for performance requested by Consultant. The Parties shall thereafter meet and confer to determine whether such a change is appropriate. However, no such change to this

Agreement may be made except by written amendment to this Agreement executed by the Parties. Consultant's failure to provide the notice required under this Paragraph shall constitute a waiver of its right to seek a change in its compensation or the time for performance of its obligations under this Agreement.

5. Ownership and Use of Documents. All proprietary information developed by Consultant in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material or software programs, shall be the sole and exclusive property of the District. Consultant agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from this Agreement. Consultant further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, this Agreement shall be made to the District, and that Consultant shall do all things necessary and proper to perfect and maintain District's ownership of such proprietary information. All documents, reports, surveys, renderings, photographs, data and other materials furnished by the District to Consultant shall remain the property of the District.
6. Publication of Project Information. Consultant shall notify and obtain written approval from the District before presenting verbal or written information to outside individuals or entities about the services or project for which Consultant was retained.
7. Patents and Copyrights. The Consultant shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to, equipment, devices, processes, and software programs used or incorporated in the work performed under this Agreement. Consultant shall defend, indemnify hold the District, its officers, directors agents, employees, representatives and assigns harmless from any and all claims, demands, suits at law, and actions of every nature for or on account of the use of any patented or copyrighted materials.
8. Consultant's Status. Consultant is an independent contractor and neither Consultant nor any employee of Consultant is or will be treated as an employee of the District under this Agreement. District controls the result to be accomplished under this Agreement, but not the means by which Consultant achieves such results.
  - 8.1 Payments made to Consultant pursuant to this Agreement shall be the sole and complete compensation to which Consultant is entitled. Consultant is solely responsible for any taxes levied by local, state or federal authorities on such sums. Consultant shall defend and indemnify the District for any taxes, fines, penalties and attorneys' fees assessed or threatened to be assessed against District for failure to properly withhold taxes as a result of any determination that Consultant, or any of Consultant's employees, is an employee rather than an independent contractor of District.

- 8.2 District will not make any contribution to any retirement plan or Social Security on behalf of Consultant or any of Consultant's employees. Consultant shall defend and indemnify the District for any contribution, fines, penalties and attorneys' fees assessed or threatened to be assessed against District for failure to contribute to any retirement plan or Social Security as a result of any determination that Consultant, or any of Consultant's employees, is an employee rather than an independent contractor of District.
- 8.3 District will not make any payments to Consultant, or Consultant's employees, which rely upon employee status, including, but not limited to, FLSA and other overtime and minimum wage requirements, prevailing wage laws, worker's compensation benefits, FMLA, CFRA, Paid Leave, and unemployment benefits. Consultant shall defend and indemnify the District for any payment, fines, penalties and attorneys' fees assessed or threatened to be assessed against District for failure to make any such payment or otherwise provide the benefits of such laws as a result of any determination that Consultant, or any of Consultant's employees, is an employee rather than an independent contractor of District.
- 8.4 Consultant shall comply with the Political Reform Act of 1974, as amended including, but not limited to, disclosure of all conflicts of interest and other financial disclosure requirements required thereunder.
9. Instructions to Consultant. In the performance of the services set forth in this Agreement, Consultant shall report to and receive instructions from the following person on behalf of the District: Elsa Lopez, Manager of External Affairs.
10. Subconsultant Services. Any subconsultants to be used by Consultant in the performance of the scope of services shall be identified in Exhibit A hereto. Consultant shall obtain the District's prior written approval before retaining a subconsultant to perform any portion of the scope of services of this Agreement. Notwithstanding Consultant's use of any subconsultants, Consultant shall be responsible to the District for the performance of its subconsultants as it would be if Consultant had performed those services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the District and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall defend and indemnify the District for any payment, fines or penalties assessed or threatened to be assessed against District as a result of any claim brought by any subconsultant of Consultant for any matter arising from, or related to, the services performed by subconsultant under this Agreement.
11. Compliance With Laws and Regulations; Licensing. Consultant shall perform its services under this Agreement in compliance with all applicable provisions of Federal, State and local laws, statutes, codes, rules, regulations, ordinances and professional standards ("Applicable Laws"). By entering into this Agreement, Consultant represents and warrants that it possesses and will keep current all license and registrations required

by Applicable Laws to enter into this Agreement and to perform the scope of services hereunder.

11.1 Business License. Consultant shall not commence any work under this Agreement until proof of a valid business license has been provided to the District.

12. Insurance. Consultant, at its sole cost and expense, shall obtain, keep in force, and maintain the following policies of insurance at all times while this Agreement is in effect, and shall not commence any work under this Agreement until proof of such insurance has been provided to the District. The coverages provided by such insurance shall not be construed as limitations of liability.

12.1 Required Policies.

12.1.1 Commercial General Liability Insurance (contractual, products, and completed operations coverages included) with a combined single limit of no less than \$1,000,000 and a general aggregate limit of no less than \$1,000,000.

12.1.2 Business or Comprehensive Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles, with a combined single limit of no less than \$1,000,000 per accident.

12.1.3 Professional Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 in the aggregate.

12.1.4 Employers' Liability Insurance with limits of \$1,000,000 per claim and \$1,000,000 in the aggregate.

12.1.5 Workers' Compensation Insurance as required under the Workers' Compensation Insurance and Safety Act of the State of California.

12.2 Required Terms.

12.2.1 All policies except workers' compensation shall name as additional insureds the Water Replenishment District of Southern California, its directors, officers, employees, agents and representatives.

12.2.2 All policies shall be written on an occurrence basis. If a policy may only be obtained on a claims made basis, the policy shall be maintained continuously for a period of no less than three (3) years after the date of final completion of the scope of services under this Agreement.

12.2.3 All policies shall provide that coverage cannot be cancelled without twenty (20) days prior written notice to the District.

12.2.4 All insurance required under this Agreement shall be considered primary to any insurance maintained by the District. All policies shall include waivers of subrogation in favor of the District and its insurers.

12.2.5 All policies required under this Agreement shall be issued by companies authorized to transact insurance business in the State of California acceptable to the District and having a Best rating of A- or better.

13. Indemnification. Consultant shall indemnify, defend and hold harmless the District and its directors, officers, employees, agents and representatives (collectively "District"), from and against any and all claims, liabilities, costs, damages, suits, proceedings, injuries (including injuries to real and personal property, and injuries to persons, including death) incurred by District ("Losses"), as a result of Consultant's breach of any provision of this Agreement, Consultant's failure to comply with applicable laws, Consultant's negligent acts or omissions, or Consultant's willful misconduct. However, Consultant's obligation to defend shall arise regardless of any claim or assertion that the District caused or contributed to the Losses. Nothing in this paragraph shall constitute a waiver or limitation of any legal rights which the District may have including, without limitation, the right to implied indemnity.
14. Arbitration and Attorneys' Fees. Any dispute arising from or relating to this Agreement shall be submitted to final and binding arbitration before an arbitrator who is a member of the National Academy of Arbitrators. The parties will obtain a list of five names of potential arbitrators from the National Academy of Arbitrators, or the American Arbitration Association, and will take turns striking the names of arbitrators until one arbitrator remains, who shall preside over the arbitration. The arbitrator will have no power to rewrite any of the terms of this Agreement. The parties shall split the cost of the arbitrator's fee and any court reporter required by the arbitrator or if both parties agree to having the proceedings taken down by a court reporter. The prevailing Party in any action arising from or relating to this Agreement shall be entitled to recover its reasonable attorneys fees, expert witness fees and arbitration fees and costs in addition to any other relief and recovery ordered by the arbitrator or other tribunal hearing any matter related to this Agreement.
15. Conflict of Interest. No official of the District who is authorized in such capacity and on behalf of the District to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving this Agreement, or any contract or subcontract relating to work to be performed pursuant to this Agreement, shall become directly or indirectly personally interested in this Agreement or in any part thereof. Consultant shall not accept employment or contract during the term of this Agreement with any firm or individual for the provision of services if such employment or contract would conflict directly with the Services provided to the District under this Agreement.
16. Equal Opportunity. During the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, marital status or national origin.

- 17. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the District, Consultant, and their respective successors and assigns provided, however, that no assignment of the duties or benefits under this Agreement shall be made without the written consent of the Consultant and the District.
- 18. Choice of Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The Parties agree that the exclusive venue for any action or proceeding arising from or relating to this Agreement shall be in the County of Los Angeles, State of California.
- 19. Notices. All notices provided by this agreement shall be in writing and shall be sent by first-class mail and facsimile transmission as follows:

If to the District:

Water Replenishment District of  
Southern California  
4040 Paramount Blvd.  
Lakewood, CA 90712  
Phone: (562) 921-5521  
Fax: (562) 921-6101

If to Consultant:

The Rogers Group  
1875 Century Park East  
Los Angeles, CA 90067  
Phone: (310) 552-6922  
Fax: (310) 552-9052

- 20. Amendments. This Agreement may be modified only by a writing signed by the Parties hereto.
- 21. Integration; Construction. This Agreement sets forth the final, complete and exclusive expression of the Parties' agreement with respect to the subject matter hereof, and supersedes any and all other agreements, representations, and promises, whether made orally or in writing. The Parties represent and warrant that they are not entering into this Agreement based upon any representation or understanding that is not expressly set forth in this Agreement. This Agreement shall be construed as the product of a joint effort between the Parties and shall not be construed against either Party as its drafter.
- 22. Effective Date. This Agreement is effective as of the date first set forth above.
- 23. Authority. Each person signing this Agreement represents that he or she has the authority to do so on behalf of the Party for whom he or she is signing.

IN WITNESS WHEREOF, the Parties have caused this AGREEMENT to be executed the day and year first above written.

**WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA**

\_\_\_\_\_  
*Signature*  
**Sergio Calderon**  
\_\_\_\_\_  
*Print Name*  
**President, Board of Directors**  
\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Signature*  
\_\_\_\_\_  
*Print Name*  
**Secretary, Board of Directors**  
\_\_\_\_\_  
*Title*

**THE ROGERS GROUP ("CONSULTANT")**

\_\_\_\_\_  
*Signature*  
\_\_\_\_\_  
*Print Name*  
\_\_\_\_\_  
*Title*

**Approved As To Form  
MEYERS, NAVE, RIBACK,  
SILVER & WILSON**

\_\_\_\_\_  
James M. Casso  
Attorney for the Water Replenishment  
District of Southern California

**EXHIBIT A**  
**SCOPE OF WORK**

Consultant shall engage in public outreach activities for the Groundwater Reliability Improvement Program. All work performed under the terms of this Agreement shall be completed to the satisfaction of the District. The scope of work for the services covered by this Agreement shall include the following:

- Consultant's response to District's Request for Proposals, attached hereto as Exhibit A1.
- Consultant's Revised Budget for GRIP PR Outreach Activities and Team Configuration dated December 8, 2009, attached hereto as Exhibit A2.
- The terms and conditions detailed below.

The tasks to be performed shall include the following:

1. Develop and implement a survey or polling strategy in the GRIP service area for the purpose of identifying public sentiment, message points, and key focus groups within the various communities to be used to form the basis for the outreach plan.
2. Assist in developing a list of key issues for outreach related to the program as well as information about the Partnership member's operations as a whole, including existing water reclamation activities and how these impact the need for the program, public perception of water reuse, urban runoff problems facing the Los Angeles area, and future growth in flows.
3. Assist in identifying stakeholder groups within the community including key leaders, organizations, interested citizens, community groups, environmental groups, and action committees.
4. Develop and maintain mailing lists, both electronic and postal, for dissemination of information throughout the program.
5. Help to develop strategies for public outreach and outreach themes that will be used to reach stakeholders within the community.
6. Work with the Partnership's staff to design and implement a comprehensive public outreach program to include PowerPoint presentations, community workshops, presentations to community and environmental interest groups, newsletters, videos, telephone hot-line, and development and maintenance of an internet website. Production of multilingual information materials will be an important part of the program.
7. Coordinate outreach activities with target audiences and organizations such as Neighborhood Councils, Homeowner groups, and other relevant community groups.

8. Develop a comprehensive yearly public outreach and education plan for each of the two contract years as well as the two possible one-year contract extensions.
9. Help to develop and implement a media relations program to include press releases, media kits, media advocacy, media tours, editorial boards, and press conferences. This shall include production of television and/or radio spots, paid advertising in local newspapers, coordination with local cable television stations and direct mail pieces.
10. Develop a comprehensive yearly media plan for each of the two contract years as well as the two possible one-year contract extensions.
11. Develop and maintain a master calendar for the comprehensive program. This calendar shall include a smaller 90-day "running" plan to address the immediate and short term goals of the program.
12. Aid in soliciting public comments as a means for developing and evaluating alternatives for the proposed program.
13. Coordinate with Partnership staff to participate in pre-scoping and scoping meetings, workshops, information meetings, and public hearings as recommended or required by CEQA and NEPA.
14. Develop evaluation/benchmarking methods to measure effectiveness of the outreach program.
15. The project team for the public outreach activities shall include Consultant's following personnel: Marion MacKenzie Pyle, Shelly Holmes, and Maureen Erbeznik (Please include the remaining team member names provided during the interview process).

**EXHIBIT B**  
**CONSULTANT RATE SCHEDULE**

- 1.0 Consultant shall be compensated for actual services performed per the unit prices quoted in the Version B of the Cost Proposal in Consultant's Revised Budget for GRIP PR Outreach Activities and Team Configuration, Dated December 8, 2009, attached hereto as Exhibit A2.
- 2.0 A budgetary amount of One Million Seven Hundred Fifty Nine Thousand One Hundred Twenty-Five Dollars (\$1,759,125.00) (which amount applies to Consultant's fee and reimbursable expenses) is established for this Agreement. Notwithstanding any other provision of this Agreement, the District shall not be obligated to pay Consultant any amount in excess of said budgetary amount absent prior written approval from the District. Likewise, Consultant shall not be obligated to perform services or incur expenses in excess of the budgetary amount absent prior written approval from the District.

1393843.3



## MEMORANDUM

### ITEM NO. 7

Prepared by: Adeline Yoong

Reviewed by: Robb Whitaker

Approved by: Robb Whitaker

**DATE: SEPTEMBER 30, 2010**

**TO: BOARD OF DIRECTORS**

**FROM: ROBB WHITAKER, GENERAL MANAGER**

**SUBJECT: PROPOSITION 26 – REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER’S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.**

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### SUMMARY

WRD was approached by the League of Cities to consider taking a position on Proposition 26. At the request of WRD Board President Sergio Calderon, staff has prepared an overview of Proposition 26 and its potential impacts on WRD.

Proposition 26 is one of nine statewide ballot measures that is on the November 2, 2010 ballot. There are two ways a measure can be placed on the ballot: (1) The Legislature has the ability to place constitutional amendments, bond measures, and proposed changes in law on the ballot; and (2) Any California voter can put an initiative or a referendum on the ballot by following the initiative process. Proposition 26 is an amendment to a state's constitution that comes about through the initiative process, the latter of the referenced process.

- **Background** (*from the Legislative Analyst's Office analysis on Prop. 26, 7/15/10*)  
State and local governments impose a variety of taxes, fees, and charges on individuals and businesses. Taxes – such as income, sales, and property taxes – are typically used to pay for general public services such as education, prisons, health, and social services. Fees and charges typically pay for a particular service or program benefitting individuals or businesses.

There are three broad categories of fees and charges:

1. **User fees** – such as state park entrance fees and garbage fees, where the user pays for the cost of a specific service or program.
2. **Regulatory fees** – such as fees on restaurants to pay for health inspections and fees on the purchase of beverage containers to support recycling programs. Regulatory fees pay for programs that place requirements on the activities of businesses or people to achieve particular public goals or help offset the public or environmental impact of certain activities.

3. Property charges – such as charges imposed on property developers to improve roads leading to new subdivisions and assessments that pay for improvements and services that benefit the property owner.

State law has different approval requirements regarding taxes, fees, and property charges. State or local governments usually can create or increase a fee or charge with a majority vote of the governing body (the Legislature, city council, county board of supervisors, etcetera). In contrast, increasing tax revenues usually requires approval by two-thirds of each house of the state Legislature (for state proposals) or a vote of the people (for local proposals).

- Ballot Summary  
Proposition 26 would broaden the definition of what constitutes a tax to include many payments currently considered to be fees or charges, and would require two-thirds voter approval for a special tax, and majority voter approval for a general tax.
- Impact to WRD  
Staff will provide a verbal impact.
- Support  
Supporters argue that Proposition 26 will close a loophole and stop politicians from raising hidden taxes on products and services used every day by simply by calling them “fees” instead of “taxes.”
  - California Chamber of Commerce
  - California Taxpayers’ Association
  - Small Business Action Committee
  - California Manufacturers and Technology Association
  - California Black Chamber of Commerce
  - California Business Properties Association
  - California Hispanic Chambers of Commerce
  - Howard Jarvis Taxpayers Association
  - National Federation of Independent Business
- Opposition  
Opponents contend that Proposition 26 threatens local control in government finance, as it would restrict the ability of the state and local governments to adopt fees and raise revenue. Expensive litigation and costly elections are expected as local governments are forced to demonstrate that a fee is not a tax. Opponents also cite the Legislative Analyst Office’s conclusion that passage of Proposition 26 could add an additional billion dollar deficit to the state budget. Environmental and health organizations charge that this is another corporate loophole that will give “corporate polluters a free pass by sticking [taxpayers] with their bill” “for the environmental, health and safety hazards they cause.”
  - California Special Districts Association
  - League of California Cities
  - California League of Conservation Voters
  - California Tax Reform Association
  - Santa Clara Board of Supervisors
  - City of El Cerrito
  - California Professional Firefighters
  - California Nurses Association
  - Sierra Club
  - Health Access California
  - Natural Resources Defense Council
  - Planning and Conservation League

- Greenlining Institute
- Communities for a Better Environment
- Forests Forever
- Clean Water Action
- Californians Against Waste
- California Coast Keeper Alliance
- Endangered Habitats League
- *Los Angeles Daily News* (9/26/10) – “Prop. 26...bad policy dressed up as reform”
- *San Diego Union Tribune* (9/22/10) – “Pragmatism dictates rejecting Prop. 26. ...with a \$19 billion budget deficit, now is not the time for voters to stand on principle and pass a proposition that is likely to cut billions in revenue.”
- *Sacramento Bee* (9/27/10) – “No on Proposition 26... partisan power plays”
- *San Francisco Chronicle* (9/20/10) – “Californians should reject Prop. 26”
- Environmental Defense Fund
- Transform
- Bay Localize and Defenders of Wildlife
- Los Angeles County Democratic Party
- California Democratic Party

**FISCAL IMPACT**

*(From the Legislative Analyst Office analysis)*

The measure would make it more difficult for state and local governments to pass new laws that raise revenues. This change would affect many environmental, health, and other regulatory fees, as well as some business assessments and other levies. New laws to create or extend these types of fees and charges would be subject to the higher approval requirements for taxes.

The fiscal effect of this change would depend on future actions by the Legislature, local governing boards, and local voters. If the increased voting requirements resulted in some proposals not being approved, government revenues would be lower than otherwise would have occurred. This, in turn, likely would result in comparable decreases in state spending.

Given the range of fees and charges that would be subject to the higher approval threshold for taxes, the fiscal effect of this change could be major. Over time, the LAO estimates that it could reduce government revenues and spending statewide by up to billions of dollars annually compared with what otherwise would have occurred.

**STAFF RECOMMENDATION**

For discussion and possible action.

**ATTACHMENTS**

- Text of proposed law
- Ballot title, summary and analysis in the California Voter Guide
- Arguments and rebuttals in the California Voter Guide
- Legislative Analyst Office analysis

November 23, 2009

09 - 0093

**VIA PERSONAL DELIVERY**

The Honorable Edmund G. Brown, Jr.  
Attorney General  
1300 I Street  
Sacramento, CA 95814

**RECEIVED**

NOV 23 2009

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Attention: Krystal Paris, Initiative Coordinator

Re: Request for Title and Summary- Initiative Constitutional Amendment

Dear Mr. Brown:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request that a title and summary be prepared for the attached initiative constitutional amendment. Enclosed is a check for \$200.00. My residence address is attached.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Steve Lucas (telephone: 415/389-6800).

Thank you for your assistance.

Sincerely,

Allan Zaremborg, Proponent

Enclosure: Proposed Initiative

**SECTION 1 - FINDINGS AND DECLARATIONS OF PURPOSE.**

The People of the State of California find and declare that:

(a) Since the people overwhelmingly approved Proposition 13 in 1978, the Constitution of the State of California has required that increases in state taxes be adopted by not less than two-thirds of the members elected to each house of the Legislature.

(b) Since the enactment of Proposition 218 in 1996, the Constitution of the State of California has required that increases in local taxes be approved by the voters.

(c) Despite these limitations, California taxes have continued to escalate. Rates for state personal income taxes, state and local sales and use taxes, and a myriad of state and local business taxes are at all-time highs. Californians are taxed at one of the highest levels of any state in the nation.

(d) Recently, the Legislature added another \$12 billion in new taxes to be paid by drivers, shoppers, and anyone who earns an income.

(e) This escalation in taxation does not account for the recent phenomenon whereby the Legislature and local governments have disguised new taxes as "fees" in order to extract even more revenue from California taxpayers without having to abide by these constitutional voting requirements. Fees couched as "regulatory" but which exceed the reasonable costs of actual regulation or are simply imposed to raise revenue for a new program and are not part of any licensing or permitting program are actually taxes and should be subject to the limitations applicable to the imposition of taxes.

(f) In order to ensure the effectiveness of these constitutional limitations, this measure also defines a "tax" for state and local purposes so that neither the Legislature nor local governments can circumvent these restrictions on increasing taxes by simply defining new or expanded taxes as "fees."

**SECTION 2 - SECTION 3 OF ARTICLE XIII A OF THE CALIFORNIA CONSTITUTION IS AMENDED TO READ:**

SEC. 3. *(a) From and after the effective date of this article, any changes in state taxes enacted for the purpose of increasing revenues collected pursuant thereto Any change in state statute which results in any taxpayer paying a higher tax whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.*

*(b) As used in this section, "tax" means any levy, charge, or exaction of any kind imposed by the State, except the following:*

*(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.*

*(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of providing the service or product to the payor.*

*(3) A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.*

*(4) A charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.*

*(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or the State, as a result of a violation of law.*

*(c) Any tax adopted after January 1, 2010, but prior to the effective date of this Act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this Act unless the tax is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.*

*(d) The State bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.*

**SECTION 3 - SECTION 1 OF ARTICLE XIII C OF THE CALIFORNIA CONSTITUTION IS AMENDED TO READ:**

SECTION 1. Definitions. As used in this article:

(a) "General tax" means any tax imposed for general governmental purposes.

(b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) "Special district" means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with

limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

(e) *As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following:*

*(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.*

*(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.*

*(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.*

*(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.*

*(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.*

*(6) A charge imposed as a condition of property development.*

*(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.*

*The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.*

#### **SECTION 4 - CONFLICTING MEASURES.**

In the event that this measure and another measure or measures relating to the legislative or local votes required to enact taxes or fees shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the

provisions of the other measure or measures relating to the legislative or local votes required to enact taxes or fees shall be null and void.

**SECTION 5 - SEVERABILITY.**

If any provision of this Act, or any part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

PROPOSITION  
**26**

**REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.**

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

**REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.**

- Requires that certain state fees be approved by two-thirds vote of Legislature and certain local fees be approved by two-thirds of voters.
- Increases legislative vote requirement to two-thirds for certain tax measures, including those that do not result in a net increase in revenue, currently subject to majority vote.

**Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:**

- Decreased state and local government revenues and spending due to the higher approval requirements for new revenues. The amount of the decrease would depend on future decisions by governing bodies and voters, but over time could total up to billions of dollars annually.
- **Additional state fiscal effects from repealing recent fee and tax laws: (1) increased transportation program spending and increased General Fund costs of \$1 billion annually, and (2) unknown potential decrease in state revenues.**

**ANALYSIS BY THE LEGISLATIVE ANALYST**

**BACKGROUND**

State and local governments impose a variety of taxes, fees, and charges on individuals and businesses. Taxes—such as income, sales, and property taxes—are typically used to pay for general public services such as education, prisons, health, and social services. Fees and charges, by comparison, typically pay for a particular service or program benefitting individuals or businesses. There are three broad categories of fees and charges:

- User fees—such as state park entrance fees and garbage fees, where the user pays for the cost of a specific service or program.

- Regulatory fees—such as fees on restaurants to pay for health inspections and fees on the purchase of beverage containers to support recycling programs. Regulatory fees pay for programs that place requirements on the activities of businesses or people to achieve particular public goals or help offset the public or environmental impact of certain activities.
- Property charges—such as charges imposed on property developers to improve roads leading to new subdivisions and assessments that pay for improvements and services that benefit the property owner.

Figure 1 Approval Requirements: State and Local Taxes, Fees, and Charges		
	State	Local
<b>Tax</b>	Two-thirds of each house of the Legislature for measures increasing state revenues.	<ul style="list-style-type: none"> <li>• Two-thirds of local voters if the local government specifies how the funds will be used.</li> <li>• Majority of local voters if the local government does not specify how the funds will be used.</li> </ul>
<b>Fee</b>	Majority of each house of the Legislature.	Generally, a majority of the governing body.
<b>Property Charges</b>	Majority of each house of the Legislature.	Generally, a majority of the governing body. Some also require approval by a majority of property owners or two-thirds of local voters.

**PROP 26** REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

State law has different approval requirements regarding taxes, fees, and property charges. As Figure 1 shows, state or local governments usually can create or increase a fee or charge with a majority vote of the governing body (the Legislature, city council, county board of supervisors, etc.). In contrast, increasing tax revenues usually requires approval by two-thirds of each house of the state Legislature (for state proposals) or a vote of the people (for local proposals).

**Disagreements Regarding Regulatory Fees.** Over the years, there has been disagreement regarding the difference between regulatory fees and taxes, particularly when the money is raised to pay for a program of broad public benefit. In 1991, for example, the state began imposing a regulatory fee on businesses that made products containing lead. The state uses this money to screen children at risk for lead poisoning, follow up on their treatment, and identify sources of lead contamination responsible for the poisoning. In court, the Sinclair Paint Company argued that this regulatory fee was a tax

because: (1) the program provides a broad public benefit, not a benefit to the regulated business, and (2) the companies that pay the fee have no duties regarding the lead poisoning program other than payment of the fee.

In 1997, the California Supreme Court ruled that this charge on businesses was a regulatory fee, not a tax. The court said government may impose regulatory fees on companies that make contaminating products in order to help correct adverse health effects related to those products. Consequently, regulatory fees of this type can be created or increased by (1) a majority vote of each house of the Legislature or (2) a majority vote of a local governing body.

**PROPOSAL**

This measure expands the definition of a tax and a tax increase so that more proposals would require approval by two-thirds of the Legislature or by local voters. Figure 2 summarizes its main provisions.

Figure 2

**Major Provisions of Proposition 26**

- ✓ **Expands the Scope of What Is a State or Local Tax**
  - Classifies as taxes some fees and charges that government currently may impose with a majority vote.
  - As a result, more state revenue proposals would require approval by two-thirds of each house of the Legislature and more local revenue proposals would require local voter approval.
- ✓ **Raises the Approval Requirement for Some State Revenue Proposals**
  - Requires a two-thirds vote of each house of the Legislature to approve laws that increase taxes on any taxpayer, even if the law's overall fiscal effect does not increase state revenues.
- ✓ **Repeals Recently Passed, Conflicting State Laws**
  - Repeals recent state laws that conflict with this measure, unless they are approved again by two-thirds of each house of the Legislature. Repeal becomes effective in November 2011.

**Definition of a State or Local Tax**

*Expands Definition.* This measure broadens the definition of a state or local tax to include many payments currently considered to be fees or charges. As a result, the measure would have the effect of increasing the number of revenue proposals subject to the higher approval requirements summarized in Figure 1. Generally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns. Figure 3 provides examples of some regulatory fees that could be considered taxes, in part or in whole, under the measure. This is because these fees pay for many services that benefit the public broadly, rather than providing services directly to the fee payer. The state currently uses these types of regulatory fees to pay for most of its environmental programs.

Certain other fees and charges also could be considered to be taxes under the measure. For example, some business assessments could be considered to be taxes because government uses the assessment revenues to improve shopping districts

(such as providing parking, street lighting, increased security, and marketing), rather than providing a direct and distinct service to the business owner.

*Some Fees and Charges Are Not Affected.* The change in the definition of taxes would not affect most user fees, property development charges, and property assessments. This is because these fees and charges generally comply with Proposition 26's requirements already, or are exempt from its provisions. In addition, most other fees or charges in existence at the time of the November 2, 2010 election would not be affected unless:

- The state or local government later increases or extends the fees or charges. (In this case, the state or local government would have to comply with the approval requirements of Proposition 26.)
- The fees or charges were created or increased by a state law—passed between January 1, 2010 and November 2, 2010—that conflicts with Proposition 26 (discussed further below).

**Approval Requirement for State Tax Measures**

*Current Requirement.* The State Constitution currently specifies that laws enacted “for the purpose

**Figure 3  
Regulatory Fees That Benefit the Public Broadly**

**Oil Recycling Fee**

The state imposes a regulatory fee on oil manufacturers and uses the funds for:

- Public information and education programs.
- Payments to local used oil collection programs.
- Payment of recycling incentives.
- Research and demonstration projects.
- Inspections and enforcement of used-oil recycling facilities.

**Hazardous Materials Fee**

The state imposes a regulatory fee on businesses that treat, dispose of, or recycle hazardous waste and uses the funds for:

- Clean up of toxic waste sites.
- Promotion of pollution prevention.
- Evaluation of waste source reduction plans.
- Certification of new environmental technologies.

**Fees on Alcohol Retailers**

Some cities impose a fee on alcohol retailers and use the funds for:

- Code and law enforcement.
- Merchant education to reduce public nuisance problems associated with alcohol (such as violations of alcohol laws, violence, loitering, drug dealing, public drinking, and graffiti).

of increasing revenues” must be approved by two-thirds of each house of the Legislature. Under current practice, a law that increases the amount of taxes charged to some taxpayers but offers an equal (or larger) reduction in taxes for other taxpayers has been viewed as not increasing revenues. As such, it can be approved by a majority vote of the Legislature.

**New Approval Requirement.** The measure specifies that state laws that result in *any* taxpayer paying a higher tax must be approved by two-thirds of each house of the Legislature.

### State Laws in Conflict With Proposition 26

**Repeal Requirement.** Any state law adopted between January 1, 2010 and November 2, 2010 that conflicts with Proposition 26 would be repealed one year after the proposition is approved. This repeal would not take place, however, if two-thirds of each house of the Legislature passed the law again.

**Recent Fuel Tax Law Changes.** In the spring of 2010, the state increased fuel taxes paid by gasoline suppliers, but decreased other fuel taxes paid by gasoline retailers. Overall, these changes do not raise more state tax revenues, but they give the state greater spending flexibility over their use.

Using this flexibility, the state shifted about \$1 billion of annual transportation bond costs from the state’s General Fund to its fuel tax funds. (The General Fund is the state’s main funding source for schools, universities, prisons, health, and social services programs.) This action decreases the amount of money available for transportation programs, but helps the state balance its General Fund budget. Because the Legislature approved this tax change with a majority vote in each house, this law would be repealed in November 2011—unless the Legislature approved the tax again with a two-thirds vote in each house.

**Other Laws.** At the time this analysis was prepared (early in the summer of 2010), the Legislature and Governor were considering many new laws and funding changes to address the state’s major budget difficulties. In addition, parts of this measure would be subject to future interpretation by the courts. As a result, we cannot determine the full range of state laws that could be affected or repealed by the measure.

### FISCAL EFFECTS

**Approval Requirement Changes.** By expanding the scope of what is considered a tax, the measure would make it more difficult for state and local governments to pass new laws that raise revenues. This change would affect many environmental, health, and other regulatory fees (similar to the ones in Figure 3), as well as some business assessments and other levies. New laws to create—or extend—these types of fees and charges would be subject to the higher approval requirements for taxes.

The fiscal effect of this change would depend on future actions by the Legislature, local governing boards, and local voters. If the increased voting requirements resulted in some proposals not being approved, government revenues would be lower than otherwise would have occurred. This, in turn, likely would result in comparable decreases in state spending.

Given the range of fees and charges that would be subject to the higher approval threshold for taxes, the fiscal effect of this change could be major. Over time, we estimate that it could reduce government revenues and spending statewide by up to billions of dollars annually compared with what otherwise would have occurred.

**Repeal of Conflicting Laws.** Repealing conflicting state laws could have a variety of fiscal effects. For example, repealing the recent fuel tax laws would increase state General Fund costs by about \$1 billion annually for about two decades and increase funds available for transportation programs by the same amount.

Because this measure could repeal laws passed *after* this analysis was prepared and some of the measure’s provisions would be subject to future interpretation by the courts, we cannot estimate the full fiscal effect of this repeal provision. Given the nature of the proposals the state was considering in 2010, however, it is likely that repealing any adopted proposals would decrease state revenues (or in some cases increase state General Fund costs). Under this proposition, these fiscal effects could be avoided if the Legislature approves the laws again with a two-thirds vote of each house.

PROPOSITION  
**26**

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ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

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because: (1) the program provides a broad public benefit, not a benefit to the regulated business, and (2) the companies that pay the fee have no duties regarding the lead poisoning program other than payment of the fee.

In 1997, the California Supreme Court ruled that this charge on businesses was a regulatory fee, not a tax. The court said government may impose regulatory fees on companies that make contaminating products in order to help correct adverse health effects related to those products. Consequently, regulatory fees of this type can be created or increased by (1) a majority vote of each house of the Legislature or (2) a majority vote of a local governing body.

**PROPOSAL**

This measure expands the definition of a tax and a tax increase so that more proposals would require approval by two-thirds of the Legislature or by local voters. Figure 2 summarizes its main provisions.

Figure 2

**Major Provisions of Proposition 26**

- ✓ **Expands the Scope of What Is a State or Local Tax**
  - Classifies as taxes some fees and charges that government currently may impose with a majority vote.
  - As a result, more state revenue proposals would require approval by two-thirds of each house of the Legislature and more local revenue proposals would require local voter approval.
- ✓ **Raises the Approval Requirement for Some State Revenue Proposals**
  - Requires a two-thirds vote of each house of the Legislature to approve laws that increase taxes on any taxpayer, even if the law's overall fiscal effect does not increase state revenues.
- ✓ **Repeals Recently Passed, Conflicting State Laws**
  - Repeals recent state laws that conflict with this measure, unless they are approved again by two-thirds of each house of the Legislature. Repeal becomes effective in November 2011.

**Definition of a State or Local Tax**

*Expands Definition.* This measure broadens the definition of a state or local tax to include many payments currently considered to be fees or charges. As a result, the measure would have the effect of increasing the number of revenue proposals subject to the higher approval requirements summarized in Figure 1. Generally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns. Figure 3 provides examples of some regulatory fees that could be considered taxes, in part or in whole, under the measure. This is because these fees pay for many services that benefit the public broadly, rather than providing services directly to the fee payer. The state currently uses these types of regulatory fees to pay for most of its environmental programs.

Certain other fees and charges also could be considered to be taxes under the measure. For example, some business assessments could be considered to be taxes because government uses the assessment revenues to improve shopping districts

(such as providing parking, street lighting, increased security, and marketing), rather than providing a direct and distinct service to the business owner.

*Some Fees and Charges Are Not Affected.* The change in the definition of taxes would not affect most user fees, property development charges, and property assessments. This is because these fees and charges generally comply with Proposition 26's requirements already, or are exempt from its provisions. In addition, most other fees or charges in existence at the time of the November 2, 2010 election would not be affected unless:

- The state or local government later increases or extends the fees or charges. (In this case, the state or local government would have to comply with the approval requirements of Proposition 26.)
- The fees or charges were created or increased by a state law—passed between January 1, 2010 and November 2, 2010—that conflicts with Proposition 26 (discussed further below).

**Approval Requirement for State Tax Measures**

*Current Requirement.* The State Constitution currently specifies that laws enacted “for the purpose

**Figure 3  
Regulatory Fees That Benefit the Public Broadly**

**Oil Recycling Fee**

The state imposes a regulatory fee on oil manufacturers and uses the funds for:

- Public information and education programs.
- Payments to local used oil collection programs.
- Payment of recycling incentives.
- Research and demonstration projects.
- Inspections and enforcement of used-oil recycling facilities.

**Hazardous Materials Fee**

The state imposes a regulatory fee on businesses that treat, dispose of, or recycle hazardous waste and uses the funds for:

- Clean up of toxic waste sites.
- Promotion of pollution prevention.
- Evaluation of waste source reduction plans.
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**Fees on Alcohol Retailers**

Some cities impose a fee on alcohol retailers and use the funds for:

- Code and law enforcement.
- Merchant education to reduce public nuisance problems associated with alcohol (such as violations of alcohol laws, violence, loitering, drug dealing, public drinking, and graffiti).

**PROP 26** REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

of increasing revenues” must be approved by two-thirds of each house of the Legislature. Under current practice, a law that increases the amount of taxes charged to some taxpayers but offers an equal (or larger) reduction in taxes for other taxpayers has been viewed as not increasing revenues. As such, it can be approved by a majority vote of the Legislature.

**New Approval Requirement.** The measure specifies that state laws that result in *any* taxpayer paying a higher tax must be approved by two-thirds of each house of the Legislature.

### State Laws in Conflict With Proposition 26

**Repeal Requirement.** Any state law adopted between January 1, 2010 and November 2, 2010 that conflicts with Proposition 26 would be repealed one year after the proposition is approved. This repeal would not take place, however, if two-thirds of each house of the Legislature passed the law again.

**Recent Fuel Tax Law Changes.** In the spring of 2010, the state increased fuel taxes paid by gasoline suppliers, but decreased other fuel taxes paid by gasoline retailers. Overall, these changes do not raise more state tax revenues, but they give the state greater spending flexibility over their use.

Using this flexibility, the state shifted about \$1 billion of annual transportation bond costs from the state’s General Fund to its fuel tax funds. (The General Fund is the state’s main funding source for schools, universities, prisons, health, and social services programs.) This action decreases the amount of money available for transportation programs, but helps the state balance its General Fund budget. Because the Legislature approved this tax change with a majority vote in each house, this law would be repealed in November 2011—unless the Legislature approved the tax again with a two-thirds vote in each house.

**Other Laws.** At the time this analysis was prepared (early in the summer of 2010), the Legislature and Governor were considering many new laws and funding changes to address the state’s major budget difficulties. In addition, parts of this measure would be subject to future interpretation by the courts. As a result, we cannot determine the full range of state laws that could be affected or repealed by the measure.

### FISCAL EFFECTS

**Approval Requirement Changes.** By expanding the scope of what is considered a tax, the measure would make it more difficult for state and local governments to pass new laws that raise revenues. This change would affect many environmental, health, and other regulatory fees (similar to the ones in Figure 3), as well as some business assessments and other levies. New laws to create—or extend—these types of fees and charges would be subject to the higher approval requirements for taxes.

The fiscal effect of this change would depend on future actions by the Legislature, local governing boards, and local voters. If the increased voting requirements resulted in some proposals not being approved, government revenues would be lower than otherwise would have occurred. This, in turn, likely would result in comparable decreases in state spending.

Given the range of fees and charges that would be subject to the higher approval threshold for taxes, the fiscal effect of this change could be major. Over time, we estimate that it could reduce government revenues and spending statewide by up to billions of dollars annually compared with what otherwise would have occurred.

**Repeal of Conflicting Laws.** Repealing conflicting state laws could have a variety of fiscal effects. For example, repealing the recent fuel tax laws would increase state General Fund costs by about \$1 billion annually for about two decades and increase funds available for transportation programs by the same amount.

Because this measure could repeal laws passed *after* this analysis was prepared and some of the measure’s provisions would be subject to future interpretation by the courts, we cannot estimate the full fiscal effect of this repeal provision. Given the nature of the proposals the state was considering in 2010, however, it is likely that repealing any adopted proposals would decrease state revenues (or in some cases increase state General Fund costs). Under this proposition, these fiscal effects could be avoided if the Legislature approves the laws again with a two-thirds vote of each house.



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Submitted July 15, 2010

## Proposition 26

# Increases Legislative Vote Requirement to Two-Thirds for State Levies and Charges. Imposes Additional Requirement for Voters to Approve Local Levies and Charges With Limited Exceptions. Initiative Constitutional Amendment.

### Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact

- **Fiscal Impact:** Depending on decisions by governing bodies and voters, decreased state and local government revenues and spending (up to billions of dollars annually). Increased transportation spending and state General Fund costs (\$1 billion annually).

#### Yes/No Statement

A **YES** vote on this measure means: The definition of taxes would be broadened to include many payments currently considered to be fees or charges. As a result, more state and local proposals to increase revenues would require approval by two-thirds of each house of the Legislature or by local voters.

A **NO** vote on this measure means: Current constitutional requirements regarding fees and taxes would not be changed.

## Background

State and local governments impose a variety of taxes, fees, and charges on individuals and businesses. Taxes—such as income, sales, and property taxes—are typically used to pay for general public services such as education, prisons, health, and social services. Fees and charges, by comparison, typically pay for a particular service or program benefitting individuals or businesses. There are three broad categories of fees and charges:

- **User fees**—such as state park entrance fees and garbage fees, where the user pays for the cost of a specific service or program.
- **Regulatory fees**—such as fees on restaurants to pay for health inspections and fees on the purchase of beverage containers to support recycling programs. Regulatory fees pay for programs that place requirements on the activities of businesses or people to achieve particular public goals or help offset the public or environmental impact of certain activities.
- **Property charges**—such as charges imposed on property developers to improve roads leading to new subdivisions and assessments that pay for improvements and services that benefit the property owner.

State law has different approval requirements regarding taxes, fees, and property charges. As Figure 1 shows, state or local governments usually can create or increase a fee or charge with a majority vote of the governing body (the Legislature, city council, county board of supervisors, etcetera). In contrast, increasing tax revenues usually requires approval by two-thirds of each house of the state Legislature (for state proposals) or a vote of the people (for local proposals).

Figure 1

### Approval Requirements: State and Local Taxes, Fees, and Charges

	State	Local
<b>Tax</b>	Two-thirds of each house of the Legislature for measures increasing state revenues.	Two-thirds of local voters if the local government specifies how the funds will be used. Majority of local voters if the local government does not specify how the funds will be used.
<b>Fee</b>	Majority of each house of the Legislature.	Generally, a majority of the governing body.

<b>Property Charges</b>	Majority of each house of the Legislature.	Generally, a majority of the governing body. Some also require approval by a majority of property owners or two-thirds of local voters.
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**Disagreements Regarding Regulatory Fees.** Over the years, there has been disagreement regarding the difference between regulatory fees and taxes, particularly when the money is raised to pay for a program of broad public benefit. In 1991, for example, the state began imposing a regulatory fee on businesses that made products containing lead. The state uses this money to screen children at risk for lead poisoning, follow up on their treatment, and identify sources of lead contamination responsible for the poisoning. In court, the Sinclair Paint Company argued that this regulatory fee was a tax because: (1) the program provides a broad public benefit, not a benefit to the regulated business, and (2) the companies that pay the fee have no duties regarding the lead poisoning program other than payment of the fee.

In 1997, the California Supreme Court ruled that this charge on businesses was a regulatory fee, not a tax. The court said government may impose regulatory fees on companies that make contaminating products in order to help correct adverse health effects related to those products. Consequently, regulatory fees of this type can be created or increased by (1) a majority vote of each house of the Legislature or (2) a majority vote of a local governing body.

## Proposal

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**Current Requirement.** The State Constitution currently specifies that laws enacted "for the purpose of increasing revenues" must be approved by two-thirds of each house of the Legislature. Under current practice, a law that increases the amount of taxes charged to some taxpayers but offers an equal (or larger) reduction in taxes for other taxpayers has been viewed as not increasing revenues. As such, it can be approved by a majority vote of the Legislature.

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