Board Agenda Item 7

DATE: February 28, 2017

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Public Protest Hearing and Assessment Ballot Proceedings and Approval of a Resolution of the Board of Supervisors for the County of Fresno Ordering Changes Increasing and Extending the Assessment in Assessment District No. 284 ($5,403,750) to Secure Repayment of a Loan from the Clean Water State Revolving Fund to Finance Upgrades to the Wastewater Treatment Facility Serving Zone D of County Service Area No. 44, and Approving the Engineer's Report Supplement

RECOMMENDED ACTION(S):

1. **Conduct a public protest hearing to receive and consider all objections or protests, if any, to the proposed assessment to secure repayment of a loan from the Clean Water State Revolving Fund to finance upgrades to the Wastewater Treatment Facility Serving Zone D of County Service Area No. 44 (Monte Verdi Estates), and upon completion tabulate all ballots returned and approve item A or B.**

   A. **If the ballots submitted in favor of the proposed assessment exceed the ballots submitted in opposition, determine that there is not a majority protest, adopt "A Resolution of the Board of Supervisors for the County of Fresno Ordering Changes Increasing and Extending the Assessment in Assessment District No. 284 ($5,403,750) to secure repayment of a loan from the Clean Water State Revolving Fund to Finance Upgrades to the Wastewater Treatment Facility Serving Zone D of County Service Area No. 44, and Approving the Engineer's Report Supplement," and proceed to Recommended Action 2.**

   B. **If the ballots submitted in opposition to the proposed assessment exceed the ballots submitted in favor, determine that there is a majority protest and terminate these proceedings.**

2. **Adopt a Resolution authorizing the Director of the Department of Public Works and Planning to execute any Funding Agreement amendments deemed necessary by the Director to complete and administer the project for the construction of improvements to the Wastewater Treatment Facility serving Zone D of County Service Area No. 44, from the State Water Resources Control Board, subject to the review and approval of County Counsel and the Auditor-Controller/Treasurer-Tax Collector ($4,144,919).**

3. **Adopt a Resolution relating to reimbursement from the State Water Resources Control Board, Clean Water State Revolving Fund, increasing the maximum principal amount for capital expenditures for improvements to the Wastewater Treatment Facility serving Zone D of County Service Area No. 44 ($4,144,919).**

4. **Authorize the Director of the Department of Public Works and Planning to advertise Contract No. 17-09-C, County Service Area 44D Wastewater Treatment Facility Improvements, for bids for construction and set bid opening date.**

The first recommended action enables the Board, in accordance with the Municipal Improvement Act of 1913 (the 1913 Act) and Article XIII D of the California Constitution (Proposition 218), to conduct a protest hearing and assessment ballot proceedings wherein property owners within Zone "D" of County Service Area 44 (CSA 44D), Monte Verdi Estates, may indicate their support for, or opposition to, the proposed changes to the assessment in Assessment District 284 (AD 284), which would increase and extend the assessment from a maximum total amount of $2,833,627.50 payable over 20 years to a maximum total amount of $5,403,750 payable over 30 years. If there is no majority protest, the Board may approve Action Item A which will adopt a resolution to approve the engineer's report supplement on file with the clerk, and will change assessments for each of the 125 parcels within CSA 44D so that each will be subject to a lien of $43,230, payable over 30 years. The proposed increased and extended assessment is necessary to secure repayment of a State Water Resources Control Board (SWRCB), Clean Water State Revolving Fund (CWSRF) loan, proceeds of which, together with a Water Recycling Funding Program (WRFP) grant, are to finance upgrades to the existing wastewater treatment facility (WWTF) serving the community of CSA 44D. If there is a majority protest, these proceedings should be stopped, the other recommended actions should not be considered, the loan agreement with SWRCB will be invalidated, and the WRFP grant approved under that agreement will most likely be lost.

The second and third recommended actions will grant the Director the authority to seek an increase in the maximum principal amount and borrowing authority for the loan portion of the SWRCB financing package, originally authorized by Resolution 10-298 (adopted August 10, 2010) and Resolution 13-434 (adopted November 5, 2013), to $4,144,919.

The fourth recommended action will authorize the advertisement and solicitation of bids for this project. The estimated cost of construction is between $3,040,000 and $3,360,000.

ALTERNATIVE ACTION(S):

Staff has not identified any viable alternative actions. Staff and the community's Citizens Advisory Committee (CAC) and Homeowner's Association (HOA) have conferred regarding various scenarios, and have determined that the most effective course of action would be to pursue the increased assessment and the SWRCB financing.

FISCAL IMPACT:

There is no Net County Cost associated with approval of the recommended actions. All costs associated with the proposed increased and extended assessment are paid by the property owners within CSA 44D. The Department of Public Works and Planning (Department) will return at a later date with a short-term cash-flow loan from the County General Fund as per policy adopted under Resolution 16-389. If the new assessment is approved by the majority of the property owners in AD 284/CSA 44D, then all the associated costs (already incurred and projected) are accounted in the joined CWSRF loan and WRFP grant financing package; the loan portion of which will be repaid by property owners within CSA 44D. All costs associated with the proposed project will be funded by CSA 44D through Org 9247, and the Department will return the Board with Budget Resolutions prior to, or concurrent with, award of the project.

If the majority of the property owners oppose the assessment and the recommended actions are not approved, then CSA 44D will be responsible for repayment of funds loaned by the County, and the project will be on hold until a new source of funding is secured.

DISCUSSION:

CSA 44D's formation was approved by LAFCo on January 20, 1999, and was formed by the Board on February

23, 1999, for the purpose of providing operation and maintenance of a community water system, the WWTF, and the sanitary sewer collection system for the Monte Verdi Estates subdivision (Tract No. 4351). The WWTF became operational on February 1, 2002. The Department provides operations and maintenance services for the WWTF.

The WWTF is currently not capable of producing discharge of suitable quality to comply with the State imposed Wastewater Discharge Requirements (WDR). Therefore, discharge cannot be recycled to irrigate the common landscape areas of the development and must be diverted to leach fields. Potable water drawn from the community's well is currently used for irrigation.

WWTF serving CSA 44D requires upgrades to bring it into compliance with waste discharge requirements prescribed by the Regional Water Quality Control Board (RWQCB). The upgrades will, in general, involve the installation of a membrane bioreactor, appurtenant equipment, and construction of a 20-foot by 31-foot addition to the south side of the WWTF building to house a grinder, magnetic flow meter, blowers and influent mechanical screening equipment (collectively, Proposed Improvements). It is important to note that the Proposed Improvements defined in Resolution No. 13-184, approved by the Board on May 21, 2013, had a clerical error in the dimensions of the building addition and the correct dimensions are 20-feet by 31-feet, as has always been depicted in the Design plans

As previously authorized by the Board on August 10, 2010, by Resolution No. 10-298, the County, on behalf of CSA 44D, has submitted an application for financial assistance to the SWRCB. The construction cost of the Proposed Improvements was originally estimated by the project consultant, Carollo Engineers, to be $1,853,500.

Resolution No. 13-184, adopted on May 21, 2013, appointed Wilson & Associates, a professional engineer registered pursuant to the Professional Engineers Act (California Business and Professions Code, Division 3, Chapter 7, beginning with Section 6700), as the assessment engineer. The Board determined that the assessment engineer's report complied with the requirements of the 1913 Act and Proposition 218, and approved the report as filed, and adopted Resolution No. 13-201 on June 4, 2013 (collectively, Engineer's Report).

On August 2, 2013, the Board adopted Resolution No. 13-248 forming AD 284, with boundaries coextensive with CSA 44D, and confirming an assessment in that district under the 1913 Act in the maximum total amount of $2,833,627.50 (Assessment) for the purpose of securing repayment of a CWSRF loan (including an additional amount calculated as 10 percent of the annual debt service payment on the loan, as required by the applicable SWRCB policy). A certified copy of the diagram, notice, and list of property owners of assessed properties for the Assessment was recorded at the Office of the Fresno County Recorder on August 14, 2013, in Book 43 of Assessment and Community Facilities Districts at Pages 99-101 and as document number 2013-0115567, and a Notice of Assessment was recorded in that Office on August 22, 2013, as document number 2013-0120910, as required by Section 3114 of the California Streets and Highways Code.

On December 17, 2015, the SWRCB, after credit review, approved total funding of $2,506,018 comprised of a 20-year CWSRF loan in the amount of $1,773,937 and a WRFP grant in the amount of $732,081 for the purpose of financing all of the costs and expenses of the Proposed Improvements. Those costs and expenses include planning, engineering, and construction.

On January 26, 2016, the Department advertised the necessary documents (Plans and Specifications) for Contractors to submit bids for the construction of the Proposed Improvements. On March 24, 2016, the Department received and opened seven bids for the construction of the Proposed Improvements, of which the apparent lowest responsible bid was in the amount of $3,196,000. That amount substantially exceeded the original cost estimate for the construction of the Proposed Improvements, the amount of the CWSRF loan and WRFP grant, and the maximum total amount of the Assessment. The Board subsequently rejected all bids for the Proposed Improvements on May 24, 2016, and the Department consulted with the SWRCB, the CAC, and the HOA to develop a solution.

The Department held a meeting with the CAC on April 19, 2016 followed by a Public Meeting on May 11, 2016 to inform the community of the outcome of the bids. The community HOA was present at the meeting and requested the Department hold the project because they were going to research alternative solutions. The HOA and CAC started looking for other options independently.

The Department again met with the HOA and CAC on October 4, 2016, at which time the CAC advised County staff that no more viable alternative had been found, and asked staff to prepare revised project costs and information necessary to pursue a new Proposition 218 proceeding based on a 30 year assessment to cover the increased costs.

The Department held a second public meeting on October 24, 2016 where estimated project costs and potential maximum assessment at 30 years were presented. It was the consensus of the people at that Public Meeting to start the new Proposition 218 proceeding to approve a higher assessment.

The County has not yet taken any disbursement of the CWSRF loan and the Assessment, as provided by Resolution No. 13-248, is not yet due and payable because it is contingent upon the completion of the project.

The SWRCB represents to the County that additional funding, in the form of a larger loan in the amount of $4,144,919 with a 30-year term at 1% interest rate, coupled with the WRFP grant in the amount of $732,081, is available to fully fund the project if the total amount of the Assessment is increased to satisfy the revenue requirements under the applicable SWRCB policy.

To account for a larger CWSRF loan, the Department has prepared an Engineer's Report Supplement, which, together with the Engineer's Report, is intended to satisfy the requirements of the 1913 Act and Proposition 218 for the Assessment with changes as proposed in this resolution. The Engineer's Report Supplement is on file with the Clerk to the Board. Approval of the recommended resolution approves the Engineer's Report Supplement, together with the Engineer's Report, for purposes of the assessment proceeding.

Chapter 4.5 of the 1913 Act (beginning with Section 10350 of the California Streets and Highways Code), establishes a procedure by which the Board may make changes to an assessment, such as increasing its maximum total amount and extending its term, provided the Board also complies with the requirements of Article XIII D, Section 4, of the California Constitution (Proposition 218) for increased or extended assessments.

Assessment Ballot Measure

Owners of property in AD 284 will be given the opportunity, in assessment ballot proceedings (also called a "majority protest proceeding") to indicate their support of or opposition to (in a single assessment ballot measure) an assessment imposed on their parcels, weighted according to each parcel's financial obligation, to secure repayment of a CWSRF loan to finance upgrades to the wastewater treatment facility serving CSA 44D.

Assessment Ballot Process

A single assessment ballot per parcel, along with a detailed notice of the public meeting and public protest hearing and related assessment ballot instructions, was mailed by the Clerk to the Board to owners of record whose names and addresses appeared on the last equalized property tax roll for all parcels located in AD 284. To be counted toward a majority protest, a ballot must be properly executed and delivered as follows:

1. By U.S. mail so that it is received by the Clerk to the Board no later than 9:00 A.M. on February 28, 2017; or

2. Delivered to the Clerk to the Board no later than 9:00 A.M. on February 28, 2017; or

3. Delivered to the Clerk to the Board at the Public Hearing on February 28, 2017, before the close of public testimony.

Assessment ballots will remain unopened and in the charge of the Clerk to the Board until they are opened and tabulated by the Board's designated officials after the conclusion of the Public Hearing.

Substitute assessment ballots will also be made available for owners who previously returned their assessment ballot (or substitute assessment ballot) and wish to change or withdraw their assessment ballot (or substitute assessment ballot). Substitute assessment ballots will also be made available for owners who claim that they did not receive or lost their assessment ballot, or that their assessment ballot (or substitute assessment ballot) is unusable.

If more than one of the record owners of an identified parcel wishes to submit an assessment ballot, they may do so before the conclusion of public testimony at the Public Hearing but only by using the County-provided co-owner assessment ballot for that purpose. Co-owner assessment ballots will indicate the amount of the proposed assessment to be imposed upon the identified parcel, but there shall be allocated to each properly completed and timely submitted co-owner assessment ballot the assessment in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the Board by documentation provided by the record owner. In either case, co-owner assessment ballots and substitute assessment ballots will be provided once the property owner executes an appropriate County request form, also to be made available upon request to the Clerk, to ensure orderly assessment ballot proceedings.

In either case, co-owner assessment ballots and substitute assessment ballots will be provided once the property owner executes a County request form, which will be made available upon request to the Clerk to ensure orderly ballot proceedings.

All properly completed and timely returned assessment ballots will be tabulated at the conclusion of the Public Hearing. If the assessment ballots submitted in opposition to the proposed assessment exceed the assessment ballots submitted in favor of the proposed assessment, with the assessment ballots weighted according to the proportional financial obligation of the affected property, there is a majority protest and the assessment shall not be imposed.

If there is no majority protest to the proposed assessment, then the Board may adopt a resolution to approve and levy the assessment in AD 284 through the first recommended action.

The second and third recommended action will authorize the Director of the Department to execute an amendment to the existing Agreement with SWRCB, to increase the available financing and enable the project to proceed without unnecessary delay. These resolutions are required by SWRCB policy, and will enable their staff to process the amendment.

The fourth recommended action will authorize re-advertisement of the project. This is necessary because the original bids were rejected. The plans and specifications for the project already have been adopted by the Board and the project previously was advertised under proposed Contract No. 15-09-C (BAI #53, October 13, 2015). The revised estimate is anticipated to cover the new construction bids.

REFERENCE MATERIAL:

LAFCo Resolution No. AD-98-2, January 20, 1999
BAI #45, February 23, 1999
BAI #66, March 24, 2009
BAI #58, April 14, 2009
BAI #72, August 10, 2010
BAI #30, May 21, 2013

BAI #34, June 4, 2013
BAI #5, August 2, 2013
BAJ #53, November 5, 2013
BAI #53, October 13, 2015
BAI #36, December 15, 2015
BAI #59, May 24, 2016
BAI #37, January 10, 2017

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map
On file with Clerk - Resolution, Changes to Assessment
On file with Clerk - Resolution, Authorization
On file with Clerk - Resolution, Reimbursement
On file with Clerk - Engineer's Report, AD 284
On file with Clerk - Engineer's Report Supplement, AD 284

CAO ANALYST:

John Hays