

RESOLUTION NO. 17-135**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**

WHEREAS, the residential wastewater treatment facility (WWTF) serving Zone D of County Service Area No. 44 (CSA 44D) requires upgrades to bring it into compliance with waste discharge requirements prescribed by the Regional Water Quality Control Board (RWQCB), which 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);

WHEREAS, the Proposed Improvements defined in Resolution No. 13-184, approved by the Board of Supervisors (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;

WHEREAS, the construction cost of the Proposed Improvements was originally estimated by the project consultant, Carollo Engineers, to be \$1,853,500;

WHEREAS, as previously authorized by this Board on August 10, 2010, by Resolution No. 10-298, the County of Fresno (County), on behalf of CSA 44D, has submitted an application for financial assistance to the State Water Resources Control Board (SWRCB), Division of Financial Assistance, and on December 17, 2015, the SWRCB after credit review approved total funding of \$2,506,018 comprised of a 20-year Clean Water State Revolving Fund (CWSRF) loan in the amount of \$1,773,937 and a Water Recycling Fund Program (WRFP) grant in the amount of \$732,081, for the purpose of financing all of the costs and expenses of the Proposed Improvements, including planning, engineering, and construction;

WHEREAS, on August 2, 2013, the Board of Supervisors (Board) of the County of Fresno (County) adopted Resolution No. 13-248 forming Assessment District No. 284 (AD 284), with boundaries coextensive with CSA 44D, and confirming an assessment in that district under the Municipal Improvement Act of 1913 (Division 12 of the California Streets and Highways Code) (1913 Act) in the maximum total amount of \$2,833,627.50 for the purpose of securing repayment of the 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) (Assessment);

WHEREAS, a certified copy of the diagram, notice, and list of property owners of assessed properties for the Assessment is on record in the Office of the Fresno County

Recorded, 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;

WHEREAS, on January 26, 2016, the County Department of Public Works and Planning (Department) advertised the necessary documents (Plans and Specifications) for Contractors to submit bids for the construction of the WWTF Capital Improvements and 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 \$3,196,000.00, substantially exceeding 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;

WHEREAS, the Board rejected all bids for the Proposed Improvements on May 24, 2016, and the Department then consulted with the SWRCB to develop a solution to the funding shortfall;

WHEREAS, 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 the total amount of the CWSRF loan is not yet fully determined;

WHEREAS, 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, coupled with a grant in the amount of \$ 732,081, is available to fully fund the project if the total amount of the Assessment is increased, and its term extended, to satisfy the revenue requirements under the applicable SWRCB policy;

WHEREAS, 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;

WHEREAS, the Board by 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 for the Assessment, and the Board by Resolution No. 13-201, adopted on June 4, 2013, determined that the assessment engineer's report complied with the requirements of the 1913 Act and Proposition 218, and approved the report as filed (collectively, Engineer's Report);

WHEREAS, to account for a larger CWSRF loan in the amount of \$4,144,919 with a 30-year term, 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;

WHEREAS, on January 10, 2017, the Board adopted Resolution No. 17-015 describing a proposed increase and extension of the Assessment; preliminarily approving the Engineer's Report Supplement; setting a public protest hearing under Proposition 218 and under Chapter 4.5 of the 1913 Act for February 28, 2017, at 9:00 a.m. (or as soon after as practicable) in the chambers of the Board, Hall of Records, 2281 Tulare Street, Third Floor, Fresno, California 93721, for hearing all objections and protests to the proposed increase and extension of the Assessment as set forth in the Engineer's Report and the Engineer's Report Supplement; and directing that appropriate notices, instructions, ballots, and other documents be prepared and then timely mailed and published as required by law;

WHEREAS, the Clerk to the Board has filed an affidavit setting forth the time and manner of compliance with the requirements of Resolution No. 17-015, Proposition 218, and Chapter 4.5 of the 1913 Act for mailing and publishing notices, instructions, ballots, and other documents for an assessment change proceeding;

WHEREAS, at the date, time, and place stated in the notice, the Board conducted a public protest hearing and gave all persons present a full and fair opportunity to be heard with respect to any matter relating to the proposed increased and extended assessment, and to object to the proposed changes to the Assessment;

WHEREAS, the Engineer's Report Supplement as preliminarily approved by the Board was on file with the Clerk to the Board for at least 45 days prior to the public hearing;

WHEREAS, during that public hearing, all assessment ballots were received and tabulated, and ballots submitted in opposition to the proposed increase and extension of the Assessment did not exceed the ballots submitted in favor, with ballots weighted according to the proportional financial obligation of each affected property; and

NOW, THEREFORE, THE BOARD HEREBY FINDS, RESOLVES, AND ORDERS AS FOLLOWS:

1. **Recitals.** All of the recitals above are true and correct.
2. **No Majority Protest.** The Board finds that there is not a majority protest and approves increasing and extending the Assessment as stated in this resolution.
3. **Increased Maximum Amount.** The maximum total amount of the Assessment is hereby increased from \$2,833,627.50 to \$5,403,750. That amount is estimated to be sufficient to cover (a) the principal amount necessary to repay a CWSRF loan in the estimated amount of \$4,144,919 to finance the Proposed Improvements (including planning, engineering, and construction costs), (b) interest on the loan, and (c) the additional amount calculated as 10 percent of the annual debt service payment on the loan, as required by the applicable SWRCB policy.
4. **Extended Term.** The term of the Assessment is hereby increased from 20 years to 30 years. The proposed 30-year term shall run from the date when the Assessment becomes due and payable as provided in Resolution No. 13-248.

5. **No Physical Changes.** The changes do not affect the design of the Proposed Improvements or any other physical attribute of the project.
6. **Annual Administrative Assessment.** The changes approved in this resolution do not affect the annual administrative assessment under Section 10204, subdivision (f), of the California Streets and Highways Code, as provided in Resolution No. 13-248, except to extend its term from 20 years to 30 years.
7. **Engineer's Report Supplement.** The Engineer's Report Supplement, together with the Engineer's Report, is approved as filed, and shall stand as the engineer's report for purposes of all subsequent proceedings with respect to AD 284 under the 1913 Act and Article XIII D of the California Constitution, except that the Engineer's Report may be confirmed, modified, or corrected, as provided in the 1913 Act.
8. **Notice of Changed Assessment.** The Clerk to the Board is authorized and directed to cause a notice of the Assessment changes to be mailed, postage prepaid, to all property owners of the assessed properties whose names and addresses appear on the last equalized assessment roll. The notices shall state the maximum total amount of the Assessment as increased, the maximum amount of the Assessment per parcel as increased, and the term of the Assessment as extended. The notice shall also refer to the Notice of Assessment recorded on August 22, 2013, in the Office of the Fresno County Recorder, document number 2013-0120910.
9. **Collection.** As provided in Resolution 13-184: (a) the Assessment as increased and extended shall be collected in the same manner, and be subject to the same penalties, as general property taxes; (b) under sections 10428 and 10550 of the 1913 Act, the assessment lien will continue until the expiration of four years after the due date of the last installment of debt service for the CWSRF loan; (c) the owner of assessed land may prepay the Assessment and remove the assessment lien at any time after the Assessment becomes due and payable, with a discount for the amount of the Assessment representing the Coverage (as defined in Resolution 13-184) for all future annual installments at the time of the prepayment; and (d) under sections 10402 and 10550 of the 1913 Act, the Assessment will not become due and payable until the total amount of the CWSRF loan is fully determined, after construction is complete, as established by the Board in a change proceeding under sections 10350 and following of the 1930 Act.
10. **Legal Compliance.** The Board hereby finds and determines that it took all of the foregoing actions and made all of the foregoing findings in full compliance with the law, including, without limitation, the 1913 Act, the Proposition 218 Omnibus Implementation Act, and Article XIII D of the California Constitution and any other law referred to in this resolution.
11. **Prior Resolutions.** All prior resolutions of this Board with respect to AD 284 and the Assessment, including but not limited to Resolution No. 13-184 (adopted May 21, 2013), 13-201 (adopted June 4, 2013), Resolution No. 13-248 (adopted August 2,

2013), and Resolution No. 17-015 (adopted January 10, 2017) remain in full force and effect except as provided in this resolution.

12. **Further Change.** The Assessment as changed by this proceeding remains subject to further change as provided in Section 3 of Resolution No. 13-248.

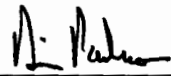
13. **Effective Date.** This resolution is effective immediately upon its adoption.

The foregoing resolution was adopted by the Board of Supervisors of the County of Fresno on February 28, 2017, by the following vote:

AYES: Supervisors Borgeas, Magsig, Mendes, Pacheco, Quintero

NOES: None

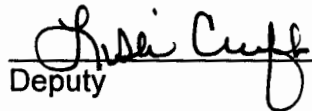
ABSENT: None



Brian Pacheco
Chairman, Board of Supervisors

Attest:

Bernice E. Seidel
CLERK TO THE BOARD OF SUPERVISORS



Deputy