



Board Agenda Item 62.2

DATE: June 4, 2019

TO: Board of Supervisors

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

SUBJECT: Blue Hills Disposal Facility Amendment to Financial Assurance Mechanism for
Post-Closure Care Permit Renewal

RECOMMENDED ACTION(S):

1. **Approve and authorize the Auditor-Controller/Treasurer-Tax Collector (and if he is not available, as determined by the County Administrative Officer, then the Chairman and the Director of Public Works and Planning, each, acting alone, is also so authorized):**
 - a. **to execute the County's Application for Amendment to Commercial/Standby Letter of Credit (the Application for Amendment) to authorize the Bank of the West to amend its existing \$1,468,124 Irrevocable Standby Letter of Credit (Letter of Credit), which has been issued to the State of California Department of Toxics Substances Control (the DTSC), as beneficiary thereunder, so that the Bank of the West may thereby issue to DTSC an amendment to increase the Letter of Credit to \$1,983,000 to satisfy the DTSC's revised financial assurance requirement for the County's post-closure care of the Blue Hills Disposal Facility (the DTSC Financial Assurance Requirement). (increase of County's financial obligation: \$514,876); and**
 - b. **to authorize, and/or approve and execute, any and all necessary documents, instruments, notices, and/or agreements, subject to the review and approval of the Auditor-Controller/Treasurer-Tax Collector as to accounting form, subject to the review and approval of County Counsel as to legal form, that may be needed by Bank of the West to issue to DTSC the amendment to the Letter of Credit that that would increase the amount of the Letter of Credit to \$1,983,000 to satisfy the DTSC Financial Assurance Requirement.**
2. **Approve and authorize the Auditor-Controller/Treasurer-Tax Collector, the Chairman and the Director of Public Works and Planning, to sign the Bank of the West Additional Authorized Signers form related to the Application for Amendment, and all necessary documents, instruments, notices, and agreements, referenced in Recommended Action No. 1.**

Approval of the recommended actions, and the Bank of the West's (the Bank) timely action on them, will allow the County to comply with the California Department of Toxic Substances Control (DTSC) revised financial assurance requirements for the County's post-closure care of the Blue Hills Disposal Facility (Site) as mandated by State regulations. The County is required to provide all documentation for the DTSC's anticipated issuance of the Site post-closure permit; the last requirement that the County needs to satisfy is

to arrange for the Bank to deliver the required amendment to the Letter of Credit (increasing the amount by \$514,876) to the DTSC no later than June 6, 2019. Authorization of the recommended actions by the Board would in turn allow the County to authorize the Bank to amend the Letter of Credit to meet the deadline imposed by DTSC. Because of the urgency of this item, the recommended actions provide for alternate County officials to take certain actions. This item pertains to a location in District 4.

ALTERNATIVE ACTION(S):

Department of Public Works and Planning staff consulted with DTSC officials and no viable alternative actions have been identified.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. The Site is funded by the County General Fund. The recommended actions would cause the Bank to amend the amount of its existing Letter of Credit, by an increase of \$514,876, from \$1,468,124 to \$1,983,000, and issue the amendment to DTSC, to demonstrate the County's current financial assurance for post-closure care of the Site.

As of May 30, 2019, the Bank has informed the County that the Bank is processing the County's request subject to internal Bank credit approval process. Once that process is completed, the Bank is prepared, once it receives the County's Application for Amendment to Commercial/Standby Letter of Credit (Attachment A), to increase the Letter of Credit by \$514,876, and issue it to DTSC. The Bank will not require the County to deposit cash or non-cash collateral for the Bank's amendment to the Letter of Credit for such increase, as such increase would be based upon the creditworthiness of the County.

The reoccurring fees associated with the Letter of Credit are estimated to be in the range of \$8,000 and \$12,000 per year. The fees for the cost of the Letter of Credit and the Blue Hills Post-Closure Care are included in the Department's Misc Pass-Through Org 43601250 FY 2018-19 Adopted Budget. The Letter of Credit will remain in place until the Site is deemed by DTSC no longer to be a threat to public health and the environment per Title 22 California Code of Regulations (CCR) Section 66264.117 et seq.

DISCUSSION:

The Site - Background:

The closed Site is located approximately nine miles northeast of the nearest city limits of the City of Coalinga, on Derrick Road, 1.2 miles north of the Fresno-Coalinga Road, Highway 33. Between its opening in 1973 to the commencement of closure in 1991, waste was disposed at the 32-acre site in four waste management units (WMUs). The Site was used as a Class I disposal facility for empty agricultural containers. All waste disposal operations at the Site ceased in October 1991, construction of an engineered final cover over the four WMUs was completed in December 1992. The 10-year post-closure care permit was issued from September 2007 through September 2017. In accordance with the State's regulations, the County submitted the post-closure permit application on March 9, 2017 to comply with 22 CCR Section 66270.1(c). The Site continues to operate under the previous post-closure permit while DTSC completes its administrative review of the County's post-closure permit application. The County is in the process of renewing the required 10-year post-closure care permit through DTSC.

County's Financial Assurance:

Prior to 2009, the County met its post-closure financial assurance method to the DTSC by utilizing the financial means test. However, in 2009, the DTSC disallowed the County from using that method, citing that such method had previously been allowed in error.

Under the State regulations (22 CCR Section 66264.145), the County may demonstrate its financial assurance to the DTSC by certain methods, including the use of a letter of credit and a related standby trust agreement, which serves as the mechanism that the DTSC uses if it needs to draw on the letter of credit.

On April 14, 2009, the Board approved the County's agreement to the DTSC's Consent Order for the Site, allowing the County to submit an alternate post-closure financial assurance method to the DTSC within three years.

On March 27, 2012, the Board authorized the County to obtain a Letter of Credit from a financial institution as the County's mechanism to satisfy its financial assurance requirements of 22 CCR Section 66264.145. The County used Bank of the West to issue the Letter of Credit based on the County's deposit of a certificate of deposit in the amount of \$1,468,124, which has been held by the Bank. The Letter of Credit was issued for the County's then-approved 30-year post-closure maintenance cost estimate in the amount of \$1,468,124.

The County submitted an application for a new post-closure permit on March 9, 2017. During the process, DTSC sought public comment regarding the County's application, and DTSC staff told the Department that the public comment period ended May 22, 2019 and it appears DTSC did not receive any comments.

Prior to issuance of the new post-closure care permit, the County is required demonstrate its financial assurance for the revised 30-year post-closure maintenance cost estimate submitted, during the permit renewal process. The 30-year post-closure care estimate increased from \$1,468,124 to \$1,983,000. DTSC has issued the Branch Chief Acceptance Memo (Attachment B) approving the \$1,983,000 revised post-closure cost estimate. In order to satisfy regulations, the Letter of Credit must be amended for the entire amount of the \$1,983,000.

If the County does not obtain an amended Letter of Credit, the post-closure care permit will not be issued and could subject the County to enforcement action and penalties that may include the potential of a fine in the amount of up to \$70,000 a day pursuant to 22 CCR Section 66272.62.

REFERENCE MATERIAL:

BAI #40, March 6, 2018
BAI #51, September 26, 2017
BAI #40, March 27, 2012
BAI #16, April 14, 2009
BAI #60, October 23, 2007

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map
On file with Clerk - Attachment A
On file with Clerk - Attachment B
On file with Clerk - Bank of the West Additional Authorized Signers form

CAO ANALYST:

Sonia M. De La Rosa