

DEPARTMENT: Public Works/Yosemite West

BY: Dana Hertfelder

PHONE: 966-5356

10-127

RECOMMENDED ACTION AND JUSTIFICATION:

1) Approve Budget Action transferring all funds (\$121,159 as of 3/05/10) remaining in the Yosemite West Wastewater Project Fund to the Yosemite West Utility Capital Fund for future maintenance needs of the wastewater treatment plant. 2) Approve funds from the sale of reserve capacity of the Yosemite West wastewater treatment plant to be general purpose revenue for the County General Fund. 3) Approve Budget Action transferring all funds from previous sales of reserve capacity (\$75,842 as of 3/05/10) from Fund 108 to the General Fund.

The law firm of Jones Hall was selected by Mariposa County to act as bond counsel for the Yosemite West wastewater facility project. We relied on their expertise to establish the assessment district that was needed to secure funding for the project. Attached are two letters from Scott Ferguson of Jones Hall regarding funds remaining in the Capital Improvement Fund (Fund 545) after construction was complete, and options regarding the disposition of those funds.

It is the legal opinion of Jones Hall that by adopting the Engineer's Report for the Yosemite West wastewater project that the Board of Supervisors "designated \$886,997.20 in prior advances as a contribution to the cost of the Yosemite West project" that is not eligible for reimbursement from assessment bond proceeds.

It is the recommendation of the Public Works Department that all funds remaining in the Capital Improvement Fund for this project be transferred to the Yosemite West Utility Capital Fund for future maintenance needs of the wastewater treatment plant. At the meeting of the Yosemite West Maintenance District Advisory Committee held on October 31, 2008 the committee voted unanimously in favor of this action.

Properties in Yosemite West could only be assessed for the "special benefit" they would receive from the upgrade to the wastewater plant. For existing homes this meant their assessment was directly related to the amount of plumbing fixtures in the home and for vacant lots a standard amount was charged based on a home including two bathrooms, one kitchen and one laundry.

The County issued Certificates of Participation in the amount of \$300,000 that were completely separate from the assessment in order to fund the "Reserve Capacity" of the treatment plant. The reserve capacity can be sold to property owners who wish to build a larger home than the standard one mentioned above, or to existing homeowners that wish to build additions that would result in increased sewer use (another bathroom, for example). It is the opinion of bond counsel that it is acceptable for the County to have revenue from the sale of reserve capacity go to the County General Fund. The reserve capacity currently stands at roughly 24 EDU's which represents future revenue of \$239,909 at the existing price of \$9,996.21 per EDU. It is the recommendation of Public Works that the Board formally set a policy that all funds received from the sale of reserve capacity will go to the County General Fund as general purpose revenue.

Funds from the sale of reserve capacity previously sold are being held in Fund 108 (a Trust Fund) by the County Auditor. We are requesting approval of a Budget Action to transfer those funds to the General Fund.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On May 4, 2004 the Board approved the Engineer's Report for the Yosemite West Wastewater Facilities Project, Res. No. 04-184.

On April 20, 2004 the Board set the price of an EDU from the reserve capacity at \$9,996.21 Res. No. 04-170.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

The Board could direct staff to use the remaining project funds to redeem bonds, thereby reducing property owners' assessments (by roughly \$341 for each EDU). As mentioned in the first letter from Jones Hall, money left in the construction fund should be spent (or transferred out) as soon as possible.

Financial Impact? (X) Yes () No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? (X) Yes () No () Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		1. Jones Hall letter dated 8/28/08 (3 pages)
Source:		2. Jones Hall letter dated 8/28/08 (2 pages)
Internal Transfer		3. Mary Hodson memo on YW loans/grants
Unanticipated Revenue <u>X</u> 4/5's vote		4. Budget Action #1
Transfer Between Funds _____ 4/5's vote		5. Budget Action #2
Contingency _____ 4/5's vote		
() General () Other		

CLERK'S USE ONLY:

Res. No.: 10-127 Ord. No. _____
 Vote - Ayes: 5 Noes: _____
 Absent: _____
 Approved
 Minute Order Attached () No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
 Date: _____
 Attest: MARGIE WILLIAMS, Clerk of the Board
 County of Mariposa, State of California
 By: _____
 Deputy

COUNTY ADMINISTRATIVE OFFICER:

X Requested Action Recommended
 _____ No Opinion
 Comments:

 CAO: 2493



COUNTY of MARIPOSA

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

BRAD ABORN
LYLE TURPIN
JANET BIBBY
KEVIN CANN
JIM ALLEN

DISTRICT I
DISTRICT II
DISTRICT III
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: DOUG WILSON, Interim Public Works Director

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: Approve Budget Action Transferring all Funds (\$121,159 as of 3/5/10) Remaining in the Yosemite Wastewater Project Fund to the Yosemite West Utility Capital Fund for Future Maintenance Needs of the Wastewater Treatment Plant; Approve Funds from the Sale of Reserve Capacity of the Yosemite West Wastewater Treatment Plant to be General Purpose Revenue for the County General Fund; and Approve Budget Action Transferring all Funds from Previous Sales of Reserve Capacity (\$75,842 as of 3/5/10) from Fund 108 to General Fund Contingency (4/5ths Vote Required)

RES. 10-127

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on March 16, 2010

ACTION AND VOTE:

- 5 **Public Works**
Approve Budget Action Transferring all Funds (\$121,159 as of 3/5/10) Remaining in the Yosemite Wastewater Project Fund to the Yosemite West Utility Capital Fund for Future Maintenance Needs of the Wastewater Treatment Plant; Approve Funds from the Sale of Reserve Capacity of the Yosemite West Wastewater Treatment Plant to be General Purpose Revenue for the County General Fund; and Approve Budget Action Transferring all Funds from Previous Sales of Reserve Capacity (\$75,842 as of 3/5/10) from Fund 108 to General Fund Contingency (4/5ths Vote Required)
- BOARD ACTION:** Discussion was held with Dana Hertfelder relative to the status of the funding provided for the Yosemite West wastewater treatment project and the recommended action. Chair Cann advised that he is asking for the Water Agency Advisory Board to meet and suggested that they could further consider the \$323,000 loan to the project. (M)Allen, (S)Aborn, Res. 10-127 was adopted approving the recommended budget actions/Ayes: Unanimous.

Cc: Chris Ebie, Auditor
Mary Hodson, Deputy CAO
File



JONES HALL

650 California Street
18th Floor
San Francisco, CA 94108
t. 415.391.5780
f. 415.391.5784

August 28, 2008

Dana Hertfelder
Public Works Director
Department of Public Works
County of Mariposa
4639 Ben Hur Road
Mariposa, CA 95338

Re: COUNTY OF MARIPOSA
ASSESSMENT DISTRICT NO. 01-1
(Yosemite West Wastewater Facilities Project)

Dear Dana:

You have asked for a letter describing the County's options with regard to unused amounts remaining in the Improvement Fund established for the assessment district captioned above. Bonds for this assessment district were issued on July 20, 2004, in a total principal amount of \$3,080,000 (which is the combined amount of the Series 2004-A Bonds and the Series 2004-B Bonds). We understand that approximately \$120,000 remain in the Improvement Fund, a portion of which is attributable to assessment bond proceeds and a portion of which is attributable to other sources.

You have advised us that, starting in Fiscal Year 1998-99, the County made a series of advances from its General Fund toward certain preliminary design and repair work with respect to the Yosemite West Wastewater Treatment Plant, and those advances have a combined amount of \$1,080,000. You have asked whether and to what extent amounts remaining in the Improvement Fund can be used to reimburse these County advances. For purposes of this letter we assume that all of the \$1,080,000 in design and repair work carried out using these advances fell within the scope of the approved project set forth in the Engineer's Report for the assessment district, and therefore that the County advances spent on this work was a qualified cost of the landowner-approved assessment project.

Engineer's Report. As a general matter, expenditures from the Improvement Fund are governed by the Engineer's Report, which sets forth the scope of the project and extent of project costs to be assessed that were approved by the landowners within the assessment

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ATTACHMENT #1



district. Essentially, the Engineer's Report memorializes the agreement between the County and the District residents as to the amount of project costs for which their properties will be assessed (and hence the amount of bonds that will be sold and secured by the assessments on these properties). Part of this agreement is that, if bond proceeds are left over after the project is completed and all project costs have been accounted for, those excess amounts will be returned to the District residents in some form (following the provisions of the 1913 Act that govern how "surplus" improvement funds must be used).

For this District, the Engineer's report states that the County Board of Supervisors designated \$886,997.20 in prior advances as a "contribution" to the cost of the Yosemite West project. The Engineer's Report states (on page I-5) that this contribution amount has been "committed to pay a portion of the Yosemite West project total cost," and that it does not have to be repaid by the assessment district. These contributions were authorized under Streets and Highways Code Section 5125, under which a public agency forming an assessment district is authorized to make non-reimbursable contributions to a project to be funded by that assessment district. Under Streets and Highways Code Section 5360.2, these contributions are to be deducted from the project amount to be assessed to property owners, and the Engineer's Report makes this deduction on page III-6 and in Exhibit B, Table B-1.

Therefore, based on the Engineer's Report, \$886,997.20 of the County general fund advances must be considered non-reimbursable contributions that cannot be repaid from the assessment bond proceeds, leaving \$193,002.80 of the total contribution amount that would be eligible for reimbursement from assessment bond proceeds.

Disposition of Surplus Bond Funds. Section 10427 of the 1913 Act contains a set of guidelines for the disposition of "surplus" amounts in the Improvement Fund (that is, amounts left in the Improvement Fund after the improvements are complete and all claims on the Improvement Fund have been paid). Generally, "surplus" must be (a) transferred to the general fund, but only if the amount transferred is less than \$1,000, (b) applied as a credit against future assessment levies, (c) used to maintain the improvements that were financed by the assessment district, or (d) used to redeem bonds, thereby reducing future assessments.

Federal Tax Reimbursement Rules. Under federal tax law, in order for the Series 2004-A Bonds and the Series 2004-B Bonds to be tax-exempt, the County must comply with certain spending rules with respect to bond proceeds, including the rule that the County may not reimburse itself for "hard" construction costs incurred more than 60 days before it adopted its official intent resolution, which in this case was the Resolution of Intention to Make Acquisitions and Improvements adopted on April 6, 2004. (Note: for federal tax purposes, there is no distinction between the County's general fund and the Public Works department's capital project fund.)

We understand that all of the expenditures made from the County general fund on this project were made more than 60 days before the April 6, 2004, Resolution of Intention date. However, we note that a number of the expenditures may have been for "soft" costs related to the project, which include monitoring, design, environmental review, and other preliminary costs. All of these "soft" costs may be reimbursed from the Improvement Fund without tax consequences, so long as they do not exceed 25% of the original bond proceeds (\$3,080,000), that is, \$770,000.

Any "hard" construction costs, including physical repair work on the wastewater treatment plant and the purchase of materials needed for any construction, on the other hand,

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generally may *not* be reimbursed without jeopardizing the tax-exempt status of the bonds. However, the County may reimburse the amount attributable to Yosemite West hard costs under the following conditions: the County must place that amount in a separate fund, and agree to treat that amount as new bond proceeds, i.e., to spend them only on new capital projects of the County (which need not be related to Yosemite West -- they can consist of any County projects, such as road work, bridge repair, or utility work). Essentially, this amount is treated for federal tax purposes not as a reimbursement for past expenditures, but rather as a new borrowing for current capital projects.

Because we have gone beyond the 3-year "temporary period," you should spend all of the unspent money in the Improvement Fund (including the amounts you transfer to the general fund for capital improvements) as soon as possible. In addition, until these amounts are spent, you will need ensure that the investment earnings on these amounts are no greater than the yield on the Series 2004-A Bonds and the Series 2004-B Bonds.

We would be happy to review a more detailed list of the design and repair work paid for by the County advances and to help you determine which expenses are properly considered "hard" and "soft" costs for purposes of this analysis.

Non-Bond Proceeds. It may be possible to use the portion of the amounts in the Improvement Fund attributable to funds *other than* bond proceeds to reimburse the County general fund. These other funds are not governed by the Engineer's Report or federal tax law, and therefore would not be subject to the restrictions described above. However, the disbursement of these other funds would need to be done in accordance with any terms or conditions under which those other funds were obtained (for example, if EPA grant funds were used, the County advances should have been used to pay for expenses that the EPA grant was meant to cover).

In sum, in order to use bond proceeds to reimburse the County general fund for these past advances, the County should (a) restrict the amount of the reimbursement to the difference between the total contribution (\$1,080,000) and the amount shown in the Engineer's Report as a non-reimbursable contribution to the project (\$886,997.20), and (b) segregate the portion of the reimbursement amount attributable to Yosemite West hard costs and ensure that those funds are spent on County capital projects as soon as possible. It may be possible to use non-bond amounts to reimburse the County general fund, but only if the projects the County general fund advances paid for are consistent with the terms under which those non-bond amounts were obtained.

Please feel free to contact me to discuss this memo or with any further questions.

Very truly yours,

Scott R. Ferguson

cc: Carl Casey, Fiscal Officer ✓

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JH

JONES HALL

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San Francisco, CA 94108
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August 28, 2008

Mr. Dana Hertfelder
Public Works Director
Department of Public Works
County of Mariposa
4639 Ben Hur Road
Mariposa, CA 95338

Re: COUNTY OF MARIPOSA
ASSESSMENT DISTRICT NO. 01-1
(Yosemite West Wastewater Facilities Project)

Dear Dana:

You have asked for a letter evaluating the County's proposed course of action with regard to unused amounts remaining in the Improvement Fund established for the assessment district captioned above. Bonds for this assessment district were issued on July 20, 2004, in a total principal amount of \$3,080,000 (which is the combined amount of the Series 2004-A Bonds and the Series 2004-B Bonds). We understand that \$117,793 remains in the Improvement Fund, and that \$300,000 was transferred to the County general fund in October 2006 as reimbursement for prior advances.

Carl Casey outlined the County's proposed course of action in his email to me dated August 6, 2006. I have summarized the proposed course of action below, together with our responses:

(a) Attribute the full amount of a \$242,496 federal EPA grant (which was received by the County in connection with this project) to a County general fund reimbursement for work done during Fiscal Years 1998-99 through 2000-01 (which is detailed in the Engineer's Report in Exhibit B, Table B-3). Although this amount is listed in the Engineer's Report as a non-reimbursable contribution to the project, it is appropriate to attribute these funds to the general fund reimbursement since the source of the reimbursement is the EPA grant, not bond proceeds (so long as this work is consistent

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ATTACHMENT #2



Mr. Dana Hertfelder
August 28, 2008
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with the types of projects on which the EPA grant funds can legally be spent, which appears to be the case). The reimbursement does not raise federal tax issues for the bonds because the source of reimbursement is not bond proceeds.

(b) Attribute the remaining \$57,504 of the \$300,000 transfer to reimbursement of soft costs incurred between July 1, 2002 and June 30, 2004, consisting primarily of work done by Wilson & Associates, Michael Skenfield (biological consultant) and Public Works staff time spent on the project. Because this is not listed in the Engineer's Report as a non-reimbursable contribution to the project, it is appropriate to attribute these funds to the general fund reimbursement. The reimbursement does not raise federal tax issues for the bonds because the costs being reimbursed are soft costs (which are exempt from the reimbursement resolution requirements), and the amount does not exceed 25% of the original bond proceeds.

(c) Transfer the remaining cash balance in the project fund of \$117,793 to the Yosemite West Utility Capital Fund to be used for maintenance of the wastewater treatment plant. Maintenance of the improvements financed with bond proceeds is an appropriate use of surplus assessment bond proceeds under the 1915 Act, and does not raise federal tax issues because the amount is less than 5% of the principal amount of the bonds.

(d) Treat any funds obtained from the sale of "Reserve Capacity" of the treatment plant as revenue to the County general fund. This appears to be appropriate because we understand that reserve capacity revenues are not pledged to any debt service or otherwise restricted.

In sum, each of the four points outlined above appears to be consistent with our prior discussions, with the assessment law and with federal tax law. Please feel free to contact me if you wish to discuss this letter or with any further questions.

Very truly yours,


Scott R. Ferguson

cc: Carl Casey, Fiscal Officer ✓

(3)

March 7, 2005

To: Tom Guarino, County Counsel

From: Mary Hodson, Deputy CAO

Subject: Yosemite West Wastewater Treatment Plant Funding Sources

Listed below is the information you requested regarding the Yosemite West Wastewater Treatment Plant funding sources.

- ⇒ **\$25,000** - During budget hearings in FY 02-03 the Board of Supervisors approved a "grant" from the Water Agency for well monitoring.
- ⇒ **\$100,000** - During budget hearings in FY 01-02 the Board of Supervisors approved this funding from the General Fund for expenditures relating to the assessment vote.
- ⇒ **\$235,000** - During budget hearings in FY 00-01 the Board of Supervisors approved a loan from the General Fund to begin the required repairs on the Treatment Plant.
- ⇒ **\$280,000** - In June 1999, the Board of Supervisors approved funding from the General Fund as a loan, for repair, improvements design and environmental review. This amount was included in the FY 99-00 budget.
- ⇒ **\$323,000** - During the budget hearings in FY 98-99, the Board of Supervisors approved this loan from the Water Agency for additional project activities.
- ⇒ **\$45,000** - Resolution WA99-1 was approved as a loan from the Water Agency.

Total: \$1,008,000

Please contact me if you need additional information or have any questions.

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ATTACHMENT #3

