



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 12/3/2013
Agenda Placement: 9C
Set Time: 9:20 AM
Estimated Report Time: 20 Minutes

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: Helene Franchi for Nancy Watt - County Executive Officer
County Executive Office

REPORT BY: Molly Rattigan, PRINCIPAL MANAGEMENT ANALYST - 253-4112

SUBJECT: Consideration of a waiver of the repayment of loans made to the Lake Berryessa Resort Improvement District

RECOMMENDATION

County Executive Officer requests discussion and possible adoption of a resolution waiving the repayment of loans made to the Lake Berryessa Resort Improvement District (LBRID) in the amount of \$1,672,000 pursuant to Government Code Section 25214.4, \$500,000 of which will only be waived if LBRID is not awarded a State Revolving Fund grant. (4/5 Vote Required)

EXECUTIVE SUMMARY

Over the past five years, the Board of Supervisors has approved a series of loans to the Lake Berryessa Resort Improvement District pursuant to Government Code Sections 23010 and 25214.4 to balance the operating budget. The existing loans with a balance totalling \$1,672,000 made to LBRID include the following:

- On April 21, 2009, your Board approved an LBRID loan request in the amount of \$95,000 in order for LBRID to avoid ending the fiscal year with a negative fund balance, at the time there was an outstanding balance of \$76,000. This loan was conditioned, however, upon LBRID adopting a resolution of intent to increase water and sewer rates sufficient to cover future projected expenditures. The rate increase took effect on July 1, 2009.
- On September 29, 2009, your Board approved a LBRID loan request in the amount of \$500,000 in order for LBRID to make necessary improvements to its facilities and show its good faith efforts to the Regional Water Quality Control Board and hopefully avoid any future fines.
- On May 10, 2011, your Board approved a LBRID loan request in the amount of \$345,000. The \$345,000 loan was used for non-budgeted County costs that included engineering, accounting, Auditor's Office, legal and County Executive Office expenses that were needed for the day-to-day operations of the district. In addition to the operating expenses, there were immediate repairs that were needed to be made.

- On June 5, 2012 your Board approved a LBRID loan request in the amount of \$751,000. Of this, \$500,000 was from the Accumulated Capital Outlay to fund necessary capital improvements to avoid additional fines and \$246,000 from the General Fund for operational expenses.

The District is an economically disadvantaged community that pays some of the highest water and sewer rates in the state; well over the Environmental Protection Agency's (EPA's) estimated affordable rates. In June 2013, District residents approved a rate increase that doubled water and sewer bills in order to balance the operations budget of the District and better position the District to qualify for grant funding. The District property owners previously approved an assessment for capital improvements which is paid with annual property tax installments. The District cannot qualify for the grant funds that would remedy the District's infrastructure problems and continuing Regional Water Quality Control Board (RWQCB) fines so long as its budget reflects the County loans. The only way to repay the County loans would be to increase water and sewer rates further, which would create a grave economic hardship to District residents.

Government Code section 25214.4 authorizes the Board of Supervisors to waive repayment of these loans if it finds that repayment would result in an economic or fiscal hardship to the property owners or residents in the District. The Lake Berryessa Resort Improvement District Board of Directors is expected to take action on December 3, 2013 to formally request a waiver of repayment to better position themselves for grant funding to make necessary repairs and upgrades. The County Executive Officer has discussed this request with District Staff and recommends the adoption of a resolution waiving the repayment of the loan as it has been determined that repayment would result in an economic or fiscal hardship to property owners in the District and such action is necessary in order for the District to be eligible for grants to make the necessary repairs and upgrades to their facilities.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	General Fund and Accumulated Capital Outlay
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The District is an economically disadvantaged community that pays some of the highest water and sewer rates in the state; well over the EPA's estimated affordable rates. Government Code section 25214.4 authorizes the Board of Supervisors to waive repayment of these loans if it finds that repayment would result in an economic or fiscal hardship to the property owners or residents in the District. The District has applied for a grant to make necessary repairs and upgrades. Adoption of a resolution waiving the repayment of the loan is necessary in order for the District to be eligible for grants to make the necessary repairs and upgrades to their facilities.
Is the general fund affected?	Yes
Future fiscal impact:	None
Consequences if not approved:	If this item is not approved, LBRID would be required to pay the County back creating an economic or fiscal hardship in a disadvantaged community and the District may not be positioned to receive grant funds to make the repairs necessary to avoid future fines.

Additional Information:

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The Lake Berryessa Resort Improvement District ("District") is a special district of the State of California organized under the Resort Improvement District Law (Public Resources Code Section 13000 et seq.) for the provision of water and sewer service in an unincorporated portion of the County of Napa ("County"). Over the past several years, the District has suffered deterioration of its infrastructure, which has resulted in negative action by the Regional Water Quality Control Board ("Regional Board") mandating repair and replacement of its facilities.

During the winter and spring of 2010, the District experienced overflows that were reported to the Regional Water Quality Control Board (Regional Board). This resulted in the Regional Board issuing a Notice of Violation that included various reporting requirements, which District staff is complying with. On March 24, 2011 Regional Board issued Administrative Civil Liability Order (ACLO) No. R5-2011-0538 to the District. The ACLO resulted in additional fines in the amount of \$8,300 to be paid in FY 10-11, as well as various reporting requirements.

During the winter and spring of 2011, the District again experienced controlled discharges due to the excessive rains and received a Notice of Violation from Regional Board despite the measures implemented from the previous loans. During the fall of 2011, the District executed a contract with Western Water Constructors to repair sections of the sewer collection system in the amount of \$627,000 which was paid for utilizing bond proceeds. The District has not experienced any controlled discharges from the wastewater storage system since the spring of 2011.

On March 9, 2012, the District received Administrative Civil Liability (ACL) Complaint R5-2012-0522 issued by Regional Board for wastewater discharge violations that occurred in FY 10-11. The proposed fine associated with the ACL Complaint is in the amount of \$597,000. District Counsel is currently negotiating with the Regional Board regarding the ACL Complaint, however the completion date for the required wastewater storage facilities expansion is January 1, 2014.

Over the past five years, the Board of Supervisors has approved a series of loans to the Lake Berryessa Resort Improvement District pursuant to Government Code Sections 23010 and 25214.4 to balance the operating budget. The existing loans with a balance totalling \$1,672,000 made to LBRID include the following:

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- On September 29, 2009, your Board approved a LBRID loan request in the amount of \$500,000 in order for LBRID to make necessary improvements to its facilities and show its good faith efforts to the Regional Water Quality Control Board and hopefully avoid any future fines.
- On May 10, 2011, your Board approved a LBRID loan request in the amount of \$345,000. The \$345,000 loan was used for non-budgeted County costs that included engineering, accounting, Auditor's Office, legal and County Executive Office expenses that were needed for the day-to-day operations of the district. In

addition to the operating expenses, there were immediate repairs that were needed to be made.

- On June 5, 2012 your Board approved a LBRID loan request in the amount of \$751,000. Of this, \$500,000 was from the Accumulated Capital Outlay to fund necessary capital improvements to avoid additional fines and \$246,000 from the General Fund for operational expenses.

The District submitted a funding application to the Clean Water State Revolving Fund (CWSRF) on May 6, 2013. Based on initial feedback from the State Water Resources Control Board, Division of Financial Assistance (SWRCB), the District would qualify for a 100% grant from CWSRF because of the Disadvantaged Community (DAC) status and the sewer rates being higher than 2% of the Medium Household Income (MHI). On July 12, 2013 the District was notified by SWRCB that the Wastewater Storage and Disposal Expansion project was placed on the Project Priority List. A project must be on the list in order to receive CWSRF financing, but listing does not guarantee approval or disbursement of funds. A funding commitment from the State Water Board will be subject to financial, credit, environmental and legal reviews as well as available funding from EPA for the next fiscal year. District is currently awaiting approval of said grant funding and is also planning to submit a grant application for a Community Development Block Grant (CDBG) as soon as the County of Napa receives a certified housing element or its equivalent.

The total balance of existing loans made to the District by the County is \$1,672,000; \$500,000 of the outstanding loan balance was allocated towards the design and financial consultant services for the design of the expansion and upgrade of the wastewater storage, disposal and collection system. It is anticipated that the \$500,000 for design and financial services will be paid back to the County once grant funding is obtained since these are qualifying costs for reimbursement by the grant. In the event the grant is not awarded, waiver of the entire loan amount will be requested.

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Government Code section 25214.4 authorizes the Board of Supervisors to waive repayment of these loans if it finds that repayment would result in an economic or fiscal hardship to the property owners or residents in the District. The Lake Berryessa Resort Improvement District Board of Directors is expected to take action on December 3, 2013 to formally request a waiver of repayment to better position themselves for grant funding as described above. The County Executive Officer has discussed this request with District Staff and recommends the adoption of a resolution waiving the repayment of the loan as it has been determined that repayment would result in an economic or fiscal hardship to property owners in the District and such action is necessary in order for the District to be eligible for grants to make the necessary repairs and upgrades to their facilities.

SUPPORTING DOCUMENTS

A . Resolution

CEO Recommendation: Approve

Reviewed By: Molly Rattigan