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Agenda Date: 5/10/2011
Agenda Placement: 10A

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: Britt Ferguson for Watt, Nancy - County Executive Officer
County Executive Office

REPORT BY: Helene Franchi, Principal Management Analyst - 253-4820

SUBJECT: Temporary loan of general fund moneys to the Napa Berryessa Resort Improvement District and to the Lake Berryessa Resort Improvement District

RECOMMENDATION

County Executive Officer requests the following actions regarding requests for County General Fund loans for the purpose of funding operation and maintenance to the Napa Berryessa Resort Improvement District (NBRID) and the Lake Berryessa Resort Improvement District (LBRID) totalling \$550,000:

1. Adoption of a resolution approving issuance of a Note to NBRID and authorizing the Chair and Clerk of the Board to sign the Note;
2. Approval of Budget Transfer No. CEO019 appropriating \$205,000 in the General Expenditure budget (18600) and reducing the General Fund Contingency by an equivalent amount to fund the District's loan (4/5 vote required);
3. Adoption of a resolution approving issuance of a Note to LBRID and authorizing the Chair and Clerk of the Board to sign the Note; and
4. Approval of Budget Transfer No. CEO020 appropriating \$345,000 in the General Expenditure budget (18600) and reducing the General Fund Contingency by an equivalent amount to fund the District's loan. (4/5 vote required)

EXECUTIVE SUMMARY

Adoption of the proposed resolutions would extend loans totaling \$550,000 of General Fund money to the Napa Berryessa Resort Improvement District (NBRID) and the Lake Berryessa Resort Improvement District (LBRID).

NBRID is requesting a \$205,000 loan to cover FY 10-11 operations activities and some required equipment repairs to fire hydrants and motors at the water treatment plant which equate to \$20,000 of the \$205,000 request. The loan is necessary due to a shortfall in revenues, additional operating expenses, and equipment repairs.

LBRID is requesting a \$345,000 loan to cover FY 10-11 operations activities and a pump replacement which equates to \$25,000 of the \$345,000 requested. The loan is necessary due to a shortfall in revenues, additional operating expenses and equipment replacement.

The table below allocates total loan amounts for each District.

	LBRID	NBRID	Total
Operations and Maintenance	\$320,000	\$185,000	\$505,000
Capital Improvements	\$ 25,000	\$ 20,000	\$ 45,000
Total Loan Amount	\$345,000	\$205,000	\$550,000

Previously, staff has identified different resources that are available to the Board to make loans of this type. These include, in addition to the General Fund, the Tobacco Master Settlement Fund and the Special Project Fund. Your Board has approved the use of General Fund contingencies in the past and, thus, staff continues to recommend the loans be from that source in this case as well.

The loans may be financed through different sections of the Government Code. Staff is recommending that the loan be financed pursuant to Government Code Section 25214.4 which will require the repayment within 3 years from the date of the loan.

PROCEDURAL REQUIREMENTS

1. Staff reports.
2. Public comments.
3. Motion, second, discussion and vote on the items.

FISCAL IMPACT

Is there a Fiscal Impact? Yes

Is it currently budgeted? No

What is the revenue source? The proposed source of both loans is the Napa County General Fund. The current balance in the County's General Fund Contingency is \$5,630,000. If the loans are approved, the remaining balance would be \$5,080,000.

Is it Mandatory or Discretionary? Discretionary

Discretionary Justification: For the Napa Berryessa Resort Improvement District, due to a reduction in the number of active water and sewer accounts and an overall reduction in water usage, revenues were approximately \$65,000 less than projected. Expenses have exceeded the amount budgeted as a result of County expenditures that were incurred in providing services to the District that were either billed and not paid or not previously billed. The reduction in revenues and increased expenses has resulted in an overall projected budget shortfall for FY 10-11 of approximately \$205,000. On February 1, 2011, a 70% increase in water and

sewer usage fees was adopted and was expected to cover the projected shortfall, however, due to the reduction in revenue, there is an overall budget shortfall for FY 10-11 in the amount of \$205,000.

For the Lake Berryessa Resort Improvement District, due to a reduction in the number of active water and sewer accounts and an overall reduction in water usage, revenues were approximately \$40,000 less than projected. Expenses have exceeded the amount budgeted as a result of failing infrastructure and equipment, increases in electrical costs and County expenditures that were incurred in providing services to the District that were either billed and not paid or not previously billed. The reduction in revenues and increased operating expenses has resulted in an overall projected budget shortfall for FY 10-11 in the amount of \$345,000.

Staff believes it is appropriate for the County to make these loans, despite the fact that these are independent districts, because the Board serves as the governing of the Districts. The table below summarizes outstanding loans to date and assumes approval of the request today:

	Outstanding Loans plus today's Request
NBRID	\$1,074,000
LBRID	\$ 930,500
TOTAL	\$2,004,500

Is the general fund affected?

Yes

Future fiscal impact:

The District will repay the loan as required by Government Code Section 25214.4. However, it is not contemplated that either District will have the ability to repay within the required 3 year period, which will likely require additional loans to essentially refinance the current loans.

In addition, even with these loans, it is likely that LBRID will require additional loans in the future, including potentially \$380,000 to make capital improvements required by the Regional Board and funds to cover additional annual operating shortfalls.

Consequences if not approved:

If the Districts do not receive a loan from Napa County, LBRID expenses will exceed approved appropriations and will be unable to pay vendors for materials and services rendered; additionally both Districts will end the fiscal year with a negative balance.

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

Loans to both Districts are needed for the following reasons:

- | To provide sufficient appropriations to end the fiscal year. Each District has experienced spills and violations during this past winter which has generated additional operating expenses and equipment replacement needs.
- | In Fiscal Year 2010-11 the County is identifying the significant amount of resources it provides each year to support both Districts through staff time spent in administration (County Executive Office, Public Works), accounting (Public Works, ITS and Auditor-Controller), and legal (County Counsel). In the past, the County has not billed the Districts for this effort due to concerns about the ability of the Districts to pay the bills. The County is now billing for the full cost of services to accurately represent the true operational cost of each District.

Because a portion of the money loaned to the Districts will be used to pay the County for the cost of existing staff already providing services there will be no net negative impact on the General fund for that portion of the amount loaned. Essentially, the County will loan money to the Districts and the Districts will, in turn, use that money to pay the County for services. The County subsidy of District rate payers, however, will now be explicit and will be included in future years. In the case of LBRID, approximately \$196,000 of the \$345,000 requested loan would appropriately reimburse the County for certain County staff time (primarily Auditor-Controller, County Counsel, Public Works management, and ITS) actually spent working specifically on LBRID issues. For NBRID, approximately \$175,000 of the \$205,000 requested loan will reimburse the County.

A detailed discussion of each District's specific circumstances follows.

The Napa Berryessa Resort Improvement District (NBRID)

NBRID 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. Over the past several years, NBRID 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.

An assessment district was formed on March 3, 2007 for the purpose of funding necessary repairs required by the Regional Board, however, efforts to secure a new operations concessionaire for the Steele Park Resort by the Bureau of Reclamation, the largest single landowner within the District, has delayed the implementation of the bond financing, and at the same time has resulted in the loss of the single largest customer to NBRID. While new water and sewer rates were approved during FY 10-11 that assumed no revenue from the operators of the Steele Park Resort (aka Lupine Shores), there has been a revenue shortfall in the amount of \$65,000 caused by a reduction in the number of customers in NBRID, and reduced water sales in general.

Expenses have exceeded the amount budgeted as a result of failing infrastructure, failing equipment and non-budgeted charges to the Districts for County costs as outlined above. In addition to the District operating expenses, there are immediate repairs that need to be made to leaking fire hydrants and refurbishment of the motors at the water treatment plant in the amount of \$20,000 for which funds are not available. The estimated budget shortfall in FY 10-11 is \$205,000.

Typically, staff would not recommend loaning County funds to another public agency, particularly when there is a

risk the money will not be repaid. Staff takes this position based on the principle that it is not good public policy to ask all County taxpayers to subsidize the cost of services provided only to a small group of residents living in a specific geographic area. However, this is a somewhat unique case because your Board serves as the governing body for the District and because of the historic close inter-relationship between the County and the District.

The existing loans made to the NBRID include the following:

- | On October 14, 2008, your Board approved a loan request from NBRID in the amount of \$474,000.
- | On June 8, 2010, your Board approved a loan request from NBRID in the amount of \$395,000.

On November 9, 2010, the NBRID Board sent a letter to the Local Agency Formation Commission (LAFCO) of Napa County requesting that the Commission utilize the expedited governmental reorganization provisions of SB 1023 to initiate proceedings to reorganize the District into a locally-governed and independent Community Services District (CSD) at the request of NBRID residents which was subsequently approved by LAFCO. On March 22, 2011, NBRID Board approved the issuance of a Request for Proposals (RFP) for Design-Build-Fund-Operate-Maintain (DBFOM) professional services for the NBRID's water and wastewater treatment and conveyance facilities. NBRID is currently in the process of forming a transition committee comprised of NBRID residents and a representative from Pensus during the transition from a Resort Improvement District to a CSD.

It is important to note however, that while staff is recommending the loan, it is not clear that based upon current rates and collection that NBRID will have the ability to repay the loan within the required 3 year period. There are a number of factors that will impact the repayment including: a) billing collections, b) negotiations with Pensus regarding the development of a new assessment to make necessary improvements to the facilities, c) Regional Board actions, and d) the transition to a CSD. Any rate increases which include repayment of the loan will need to be approved following the Prop 218 process.

Staff from NBRID and the County continue to assess the total costs to operate and maintain the water and wastewater treatment facilities. The need for additional loans for NBRID in the future is dependent on the timing of a successful transition to a CSD and the execution of the DBFOM contract.

Notwithstanding the Board's previous conditioned "one-time only" loan to the District made in October of 2008, staff is recommending approval of today's loan. Without the loan, the District is exposed to experiencing additional failures and will likely end the year with a negative balance.

Lake Berryessa Resort Improvement District (LBRID)

During the winter and spring of 2010, LBRID has experienced overflows which have been reported to the Regional Water Quality Control Board (Regional Board) as well as the failure of the earthen berm constructed to form one of the LBRID's ponds. This resulted in the Regional Board issuing a Notice of Violation which 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 LBRID. The ACLO resulted in additional fines in the amount of \$15,000. Of that amount \$8,300 to be paid in FY 10-11 with the remainder credited against improvements made at the facility. In addition, various reporting requirements were mandated.

During the winter and spring of 2011, LBRID 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. While it is uncertain what actions the Regional Board may take, in the case of LBRID substantial fines have been imposed, and it is likely that similar actions will be recommended by Regional Board staff for the District if improvements are not made to LBRID's wastewater facilities.

There has been a revenue shortfall in the amount of \$40,000 caused by a reduction in the number of customers in LBRID, and reduced water sales in general. Operating expenses have exceeded the amount budgeted as a result of failing infrastructure and equipment, increased electrical expenses and non-budgeted charges for District County expenses. In addition to the \$320,000 needed to cover District operational expenses in FY 10-11, there is a pump that needs to be replaced in the amount of \$25,000 at the wastewater treatment ponds immediately for which funds are not available. The estimated budget shortfall in FY 10-11 is \$345,000.

The existing loans made to LBRID include the following:

- 1 On April 8, 2008, your Board was presented with a loan request from LBRID. At that time, LBRID staff was concerned that there would not be enough funding available for the District to make it through the fiscal year. In response the Board authorized a one-time-only loan of \$100,000 with interest. Subsequently, LBRID was able to balance its budget and a loan was therefore unnecessary.
- 1 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, currently there is an outstanding balance of \$85,500. This loan was conditioned, however, upon LBRID adopting a resolution of intent to increase water and sewer rates sufficient to cover future projected expenditures and LBRID will continue to pursue sale of LBRID's water operations to Cal Water. The rate increase took effect on July 1, 2009.
- 1 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.

It is important to note however, that while staff is recommending the loans, it is not clear that based upon current rates and collections that LBRID will have the ability to repay the loans within the required 3 year period. There are a number of factors that will impact the repayment including: a) billing collections, b) a new assessment to make necessary improvements to the wastewater treatment facilities, and c) Regional Board actions. Any rate increases which include repayment of the loan will need to be approved following the Prop 218 process. LBRID staff and a small group of LBRID residents are currently reviewing the projected FY 11-12 budget and are working on developing a budget a potential rate proposal that will balance the budget.

LBRID staff and the County will be moving to conduct a complete assessment of the total costs to operate and maintain the water and wastewater treatment facilities. It is likely that this assessment may lead to additional loans for LBRID in the future. It is anticipated that this assessment will help to serve as a road map for future projects.

Notwithstanding the Board's previous conditioned "one-time only" loan to LBRID for prior loans, the current circumstances whereby the 2010 and 2011 unauthorized discharges will likely result in the Regional Board levying substantial fines if improvements to the wastewater facilities are not made. Without the loan, the District is exposed to experiencing additional failures and will likely end the year with a negative balance.

Loan Financing Options Previously, when approached by the LBRID and NBRID Board for a similar loans, staff discussed the various resources available to provide this type of funding. These include, in addition to the General Fund contingencies, the Tobacco Master Settlement Fund and the Special Projects Fund. The Board approved the use of the General Fund contingencies and staff is continuing to recommend that resource at this time. The current balance in this account is \$5,630,000. While it is important to note that the County remains in a precarious financial condition over the long term; the use of these funds with repayment over the next few years, makes the most sense on a short term basis.

Following are the three methods by which the Board can approve financing the loan. In the letters which are attached, both NBRID and LBRID requested either the use of GC 23010 or 25214.4 but preferred the latter.

1. Government Code Section 23010 - this the section used for the previous loan of \$480,000 to NBRID. Pursuant to this section, loans are limited to 85% of the anticipated revenue. In the case of the District, this would be approximately \$456,416. However, the section goes on to require that the loan must be paid back out of the first available revenues received prior to the payment of any other obligations. Staff does not recommend the continued use of this section.
2. Government Code Section 25214.4 - this section is similar to the previous section however, does not limit the loan amount and provides the County the ability to waive the requirement for repayment within the same fiscal year so long as repayment occurs within 3 years from the date of the loan. It is important to note that this waiver requires a 4/5 vote by the Board. This section also provides that in the event of demonstrated economic or fiscal hardship the loan may be waived in whole or in part. Once the Districts' fiscal condition is better known and the actions of the RWQCB have been identified, staff will be able to evaluate and propose options for repayment of the loans within the three year time period. Therefore, staff is recommending the use of this particular section.
3. Government Code Section 25214.5 - this section allows the County to establish a revolving fund of up to \$2,000,000. Until the more data is made available, staff is not recommending this section at this time.

SUPPORTING DOCUMENTS

- A . NBRID Loan Request
- B . NBRID Resolution with Promissory Note
- C . LBRID Loan Request
- D . LBRID Resolution with Promissory Note

CEO Recommendation: Approve

Reviewed By: Helene Franchi