



Santa Clara Valley Water District

File No.: 23-0244

Agenda Date: 2/28/2023

Item No.: *3.6.

SUPPLEMENTAL BOARD AGENDA MEMORANDUM

Government Code § 84308 Applies: Yes ☐ No ☒
(If "YES" Complete Attachment A - Gov. Code § 84308)

SUBJECT:

Adopt Recommended Positions on State Legislation: AB 30 (Ward) Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program, *AB 400 (Blanca, Rubio) Local Agency Design-Build Projects: Authorization, SB 23 (Caballero) Expedited Permitting for Water Supply and Flood Risk Reduction Projects, *SB 532 (Wiener) Ballot Measures: Local Taxes and Other Legislation Which May Require Urgent Consideration for a Position by the Board.

REASON FOR SUPPLEMENTAL MEMORANDUM:

This supplemental Board agenda memorandum conveys additional information received after the initial agenda item was released, consistent with Executive Limitations Policy EL-7-10-5.

RECOMMENDATION:

- A. Adopt a position of "Support" on: AB 30 (Ward) Atmospheric Rivers: Research, Mitigation, and Climate Forecasting Program;
- B. *Adopt a Position of "Support" on: AB 400 (Blanca, Rubio) Local agency design-build projects: authorization;
- C. Adopt a position of "Support" on: SB 23 (Caballero) Expedited Permitting for Water Supply and Flood Risk Reduction Projects; and
- D. *Adopt a position of "Support" on: SB 532 (Wiener) Ballot measures: local taxes.

SUMMARY:

***AB 400 (Blanca, Rubio) Local agency design-build projects: authorization. (I-02/02/23)**

Position Recommendation: Support

Priority Recommendation: 3

AB 400 would remove the January 1, 2025, repeal date for the existing law authorizing local agencies, to use the design-build procurement process for specified types of projects, thereby making these provisions operative indefinitely.

Existing law, includes several requirements for the design-build procurement process, including specified information submitted by a design-build entity to be certified under penalty of perjury. The authority for Valley Water to use design-build is part of the chapter in Public Contract Code 22162.5 that would be repealed if the January 1, 2025 sunset date is not removed or extended.

Importance to Valley Water

Design-build is one of several methods of project delivery that are available to an entity seeking to design and construct a building or other infrastructure. Using design-build, a single entity is contracted both to design and construct the project. Design-build can provide benefits for project owners because a single unified team is responsible for the successful completion of the project, avoiding mistakes or miscommunications between the designer and the builder. With only one contract to award and manage, the project owner saves money, achieves faster project completion, and reduces their liability for project failures.

Valley Water manages an integrated water resources system that includes the supply of clean, safe water, flood protection and stewardship of streams on behalf of Santa Clara County's nearly 1.9 million residents. Valley Water expanded the authority to use design-build with the passage of AB 851 (Caballero-Gloria) which authorized Valley Water to procure design-build contracts through January 1, 2025 for the following types of public works projects that exceed \$1 million:

- Flood protection improvements
- Habitat restoration or enhancement
- Groundwater recharge or storage facilities
- Water treatment facilities
- The retrofit, repair, or expansion of existing surface water storage facilities

AB 400 will remove the sunset date for design-build authority for public agencies, including the Valley Water authority.

Staff recommends a position of “support” on AB 400.

Pros

- Indefinitely extends the authority for public agencies to use design-build.
- Saves public agency funding as the use of design-build is typically a more streamlined process.

Cons

- None at this time.

***SB 532 (Wiener) Ballot Measures: Local Taxes**
Position Recommendation: Support

Priority Recommendation: 3

SB 532 would permit the proponents of a local initiative measure, or a local jurisdiction submitting a local ballot measure, that imposes or increases a tax with more than one rate, or authorizes the issuance of bonds, to choose to include in the ballot label either the estimate of the amount of money to be raised annually and the rate and duration of the tax levied in accordance with existing law or the phrase "See voter guide for measure information statement."

In the event that the local jurisdiction includes the statement "See voter guide for measure information statement", the bill requires the following information to be included in the tax rate statement mailed to voters:

- (1) A concise description of the purpose of the tax proposed, including how the bond proceeds or tax revenue will be spent to benefit the community.
- (2) If the measure imposes a tax expected to have more than one tax rate, a list of all the tax rates that are expected to apply and a description of how the tax will be imposed.
- (3) A plain language description of any mechanism that would cause the tax rate or rates to vary over time.
- (4) An explanation of the duration of the tax stating whether the tax expires on a specific date, expires upon final payment of indebtedness, does not expire until further action by the voters or the local governing body, or expires as the result of some other action or occurrence.
- (5) Except if the information specified in paragraph (6) of this subdivision is included, the best estimate from official sources of the average annual dollar amount of taxes that would be collected during the ten-year period following the initial levy.
- (6) If the tax measure would authorize the issuance of bonds, the security for which constitutes a lien on the property for ad valorem taxes within the jurisdiction, all the disclosures required by Section 9401.

Impact to Valley Water

California Elections Code Section 13119 proscribes how a measure, proposed by a local governing body or submitted to the voters as an initiative or referendum measure, poses a ballot question to voters. Beginning in 2015, with the enactment of AB 809 authored by Assembly Member Jay Obernolte (R-Big Bear Lake), the code section has been amended with the intent of increasing transparency to voters by requiring that a measure that imposes or increases a tax shall include in the ballot label language "the amount of money raised annually and the rate and duration of the tax to be levied." Subsequent amendments by AB 195 (Obernolte, 2017) further clarified that this section of law also applies to a measure authorizing the issuance of bonds or the incurrence of debt.

While these changes to Elections Code 13119 may have been well intended, they have severely limited the ability of local entities, including schools, cities, counties, special districts, hospitals, and libraries, to pass local general obligation bonds for critical infrastructure projects or to enact tiered or progressive tax rates. Further complicating compliance for local agencies is the long-standing limit of 75 words or less in Elections Code Section 9051, which applies to ballot label language for all local measures. This limit is intended to keep ballot labels clear

and concise and to facilitate the efficient administration of elections. When paired with the new requirements in Elections Code Section 13119, it is very difficult, if not impossible, to state all the rates of a tiered or progressive tax structure, thereby forcing local agencies to take simpler flat rate approaches to local taxation. Those flat rate approaches favor large property owners and the wealthy, while applying a higher tax burden on the owners of smaller properties and low income communities.

For bond measures, ballot label language that complies with Elections Code Section 13119 is confusing and misleading to voters. The interest rate for bonds issued in multiple series under one authorization approved by the voters may fluctuate significantly over time. Attempting to comply with the new law, local agencies are forced to insert rates into their ballot label language that are averages, projections, or statutory maximums that may not be charged in any given year. Also, the timing of individual bond borrowing can occur over a period of many years due to economic conditions, lengthy project permitting, construction delays, and changes in local priorities. These over-simplified ballot labels do not make sense in the context of bonds and ultimately mislead voters.

The required statements for tiered tax rate measures, bond measures, or measures combining a tax and bonds, may consume most of the 75 words of the ballot label language leaving few, if any, words to describe how taxes or bond proceeds will be spent in the community. Additionally, placing averages, projections, or maximums in the ballot label language may create legal issues, such as a cap on the rate, duration, and amount raised annually. De facto caps make it difficult for local agencies to access the full amount authorized by voters and may create credit concerns with bond investors.

Remarkably, AB 809 and AB 195 were enacted with broad bipartisan support and with no registered opposition. In 2018, some public agencies began to realize the difficulties in complying with the new law, and there was an effort to suspend the bond related provisions of the Elections Code statute through budget trailer bill language. However, that effort failed. In 2019, a coalition of cities, counties, special districts, school districts, and other local agencies, as well as labor organizations, formed to find a solution to the problems created by Elections Code Section 13119.

In November 2020, voters in Santa Clara County overwhelmingly approved Measure S, a renewal of Valley Water's Safe, Clean Water and Natural Flood Protection Program. The program was first passed by voters in 2000 as the Clean, Safe Creeks and Natural Flood Protection Plan, then again in 2012 as the Safe, Clean Water and Natural Flood Protection Program. The measure includes a separate tax rate per unit of area that is applied to each of five different land use categories, ranging from vacant undisturbed land (which is taxed at the lowest rate) to commercial/industrial (which is taxed at the highest rate). These tiered tax rates also included a cap for single-family residential parcels to keep taxes low for homeowners, and preferential rates to support the preservation of agricultural lands. Measure S is the type of bond measure that SB 532 intends to address.

Elections Code Section 13119 forces the complexities of modern, progressive taxation, that

can be fully and concisely explained in the voter information guide, to be precisely explained in 75 words or less on the ballot itself, or else face potential legal challenge. The bond investor concerns likely will result in less favorable rates for borrowing, increasing costs for taxpayers, and reducing the public benefits delivered from special tax proceeds.

Staff recommends that the Board take a position of support on SB 532.

Pros

- Would enable the continued enactment of special taxes such as the Measure S parcel tax and bond authorization that supports Valley Water's Safe, Clean Water and Natural Flood Protection Program in a fair and equitable manner.
- Would address problematic ballot language requirements that force the misrepresentation to voters of the actual cost, rate, and timing of a tax and bond issuances through averages, projections, or maximums that may not be charged in any given year.
- Would enable the continuation of tiered, progressive taxation that doesn't unfairly burden the owners of smaller properties and low-income communities.
- Would reduce the cost of borrowing by allowing the continued timely issuance of bonds as they are needed for public infrastructure costs.

Cons

- The issue can be construed, incorrectly, as an attempt to decrease transparency.

ENVIRONMENTAL JUSTICE IMPACT:

There are no Environmental Justice impacts associated with this item. The Board's position does not enact the legislation discussed above. If the enactment of legislation necessitates an action by the Board with associated Environmental Justice impacts, those impacts will be assessed when the Board takes the action.

FINANCIAL IMPACT:

There is no financial impact associated with this item.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

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None.

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