



Santa Clara Valley Water District

File No.: 20-0144

Agenda Date: 1/28/2020

Item No.: *7.1.

SUPPLEMENTAL BOARD AGENDA MEMORANDUM

SUBJECT:

Receive a Brief Program Update and Approve Budget Adjustment in the Amount of \$773,200 to the to the Fiscal Year 2020 Budget of the Safe Clean Water Renewal Project, Project No. 62061049.

REASON FOR SUPPLEMENTAL MEMORANDUM:

This report conveys additional information received after the initial report was released, consistent with Executive Limitations Policy EL-7-10-5.

RECOMMENDATION:

- A. Receive brief update on new program development for a potential future funding measure; and
- B. Approve a budget adjustment in the amount of \$773,200 to the Fiscal Year 2020 Budget of the Safe Clean Water Renewal Project; and
- *C. Receive information on general taxes versus special taxes following the Board request for information at the December 10, 2019 Board meeting.

SUMMARY:

General Taxes versus Special Taxes

At the December 10, 2019, Board meeting, the Board had questions regarding: (1) the level of voter approval required to pass a general tax; and (2) whether Santa Clara Valley Water District (Valley Water) can pursue a general tax measure rather than a special tax. For the reasons set forth below, Valley Water will be unable to pursue a general tax.

Generally, the California Constitution defines general taxes as “any tax imposed for general governmental purposes.” (Cal. Const., art. XIII C, §1 subd. (a).) Local governments may impose, extend, or increase general taxes by submitting the tax to the electorate and having it approved by a simple majority vote. (Cal. Const. art. XIII C, §2 subd. (b).) The imposition of general taxes is also subject to Proposition 62 (Govt. Code §§53720-53730) and Proposition 218 which require, in part, a two-thirds majority vote of the legislative body to adopt a resolution to place the measure on the ballot.

(Govt. Code §53724.) In contrast, special taxes are those imposed for specific purposes. (Cal. Const. art. XIII C, §1 subd. (d).) For a tax to be considered general rather than special, the use of the proceeds must be limited in some fashion, even where there may be multiple specific purposes the funds may be spent on. Local legislative bodies may only impose, extend, or increase *special* taxes by submitting the taxes to the electorate and obtaining approval by at least two-thirds of the voters. (Cal. Const. art. XIII C, §2 subd. (d).)

Please note that voters, through the initiative process, can also propose special taxes, and currently there is an open issue as to whether a voter-initiated special tax proposal needs a two-thirds vote or can be adopted by a simple majority. The Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, suggests the Court might permit a simple majority vote for voter-initiated special tax measures. However, the question has not been firmly resolved, and further guidance from the courts is likely. Since Valley Water will be pursuing the new tax, however, the voter threshold from the initiative process is not relevant to the Board's questions.

While there is a lower voter approval requirement for general taxes compared to special taxes (simple majority rather than two-thirds for special taxes), the Constitution holds that special districts or agencies have no power to levy general taxes. (Cal. Const. art. XIII C, §2 subd. (a).) Valley Water is a special district created by the California Legislature and it is therefore subject to this Constitutional restriction against levying general taxes. Further, even if this constitutional impediment did not exist, the District Act contains no express authorization for Valley Water to levy general taxes. Instead, it holds that the Board shall have the power to levy ad valorem taxes or assessments. (District Act §13 Taxation.) Article XIII A, Section 4 of the California Constitution permits Valley Water to impose a special tax by a two-thirds vote of the qualified electors within Santa Clara County.

FINANCIAL IMPACT:

There is no change to the originally reported financial impact associated with this item.

CEQA:

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

ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:

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