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To: Valley Water Board of Directors

Subject: Colleagues member on a potential Forgivable Loan Program for those in Santa Clara County affected by Covid-19

Date: April 28, 2020

Executive Summary

A forgivable loan program by directly helping out financially challenged constituents having problems paying their water bills. With the increasing high rate of unemployment and the inability of many of our constituents to pay for their bills, including food and shelter as well as water bills, Valley Water has the responsibility to ensure that our constituents are stabilized and solvent relative to water supply and drinking water. There is no larger management role of our County's water resources than we can engage in than ensuring that our constituents are able to receive water and is not threatened due to the economic situation which COVID-19 has placed us in.

The Details (to be discussed and subject to public input)

Our county, state, and nation face an unprecedented crisis. The human costs of Covid-19 so far include deaths, sicknesses, unemployment, housing loss, mental health crises and various other financial and emotional challenges.

Our constituents (individuals, households, non-profits and businesses) are uncertain and afraid for understandable reasons. Many are unable to pay essential bills like rent and utilities and are concerned about losing access to food and shelter. Governor Newsom has acted quickly to mitigate some of these issues by imposing a moratorium on evictions and water shutoffs. Counties, cities and towns have followed with their own forms of relief.

We at Valley Water support these efforts, but we worry that they don't go far enough to protect our constituents.

As many know, Valley Water is primarily a water wholesaler, and our direct customers are primarily water retailers. In our community, most constituents get their water through these retailers and are thus are indirect customers.

Programs to help constituents is not new to Valley Water. Take, for example, our successful water conservation program. We fund water conservation rebates directly to constituents and rely on the water retailers to implement it.

San Jose Councilwoman Sylvia Arenas has advocated for the use of an equity screen in this year's budget process, which we believe is the right policy. In our governing we must think about equity. Is there a way to help those hurting due to Covid-19 and yet keep water safe and reliable?

We think so. We propose a constituent assistance program in the form of a forgivable loan program for those having difficulties paying their water bills due to Covid-19. This program, just like the bipartisan Payroll Protection Program, would be a loan to pay for bill-paying purposes which can be forgiven if the constituent's financial circumstances do not improve within a year or so or some other time period such as 45 days after the Governor fully lifts the Stay-In-Place order.

Which constituents would qualify for this needs-based loan? We propose the following qualifications:

- Unemployment--whether an individual is unemployed, an independent contractor, or part of the gig economy.
- Demonstrated inability to pay rent.
- A documented hardship due to Covid-19 as per local, state or federal policies.
- Other policies that staff may propose

Documentation can include, but is not limited to medical bills, unemployment insurance payment receipts, pay stubs showing reduced work, letters showing school has been canceled, or other

forms of documentation to be developed by staff.

Our proposed plan is simple. Through the retailers we will provide a loan to these constituents by directly paying their water bills until their circumstance improve or for a time period (to be discussed). Those who qualify will receive a zero percent interest loan for up to a year (unless there is a legal interest requirement, of which then the rate will be the Minimum-Interest Rules as per section 7872 of the Internal Revenue Code). We will pay all late fees and penalties (if not waived by the retailer).

Either retailers or Valley Water may administer the program. Valley Water will reimburse the retailers at either the retailer costs or wholesale rates. The program will be effective before 30 days when the Board passes the final version of this proposal.

If a constituent's circumstances are not improved, starting at either 12 at the month mark, 45 days after the Governor fully lifts the Stay-In-Place order or some other time period (to be discussed and subject to public comment), all the unpaid bills will be forgiven.

It is complex to figure out the cost of this program. There is a defensible argument that it will cost nothing – any eventual forgiveness will be offset by constituent good will.

Some might question if this proposed policy is a gift of public funds? This proposal is not a gift but serves a myriad of specific public purposes allowed under our District Act (see Section 4) including, but not limited to, assisting our constituents in these trying times, continuing establishing positive relationships with the constituents, and securing the solvency and stability of our retailers.. It is no more a gift of public funds than the water conservation grants to for-profits. Is or giving grants or sponsorship to non-profits such as 501c(3), c(4) or c(6), from non-Safe, Clean Water and Natural Flood Protection Special Tax a gift of public funds?

As the Board is aware, expenditures made for specific public purposes are excepted from the prohibition against gifts of public funds. If a public purpose is served by the expenditure of public funds, the prohibition is not violated even though there may be incidental benefits to private persons, such as some of our retailers.

Valley Water's District Act specifically states that Valley Water "is empowered to take any actions to further the purposes of the District, which include the right to: protect Santa Clara County from flooding; "provide for the conservation and management of . . . water from any sources;" "increase and prevent the waste or diminution of the water supply in the district;" "obtain, retain, protect, and recycle . . . water from any sources . . . for any beneficial uses within the district;" and "preserve open space in Santa Clara County."

Some might question if this is legal. Is the Governor's order on a water payment moratorium legal? Are evictions moratoriums legal? Is suspending the right of assembly legal (see <https://abcnews.go.com/US/small-business-owners-file-suit-gov-newsom-ca/story?id=70365949>)? Many commentators on all sides of the political spectrum have questions on the legality of various government legal actions during the pandemic. We will find

out if the civil courts open and after they go through pending priority actions, which could be tomorrow or many years in the future.

As the District's General Council opined "Extraordinary times require extraordinary measures." It is up to this Board to listen and apply legal advice, but at the end of the day, this Board applies judgement in taking actions that are lawful and furthers our constituents' expectations of us.

We are looking into further opportunities to increase equity in water in this District. We hope staff at Valley Water might look at other alternatives for relief modeled on such programs as California Alternate Rates for Energy Program (CARE) or Family Electric Rate Assistance Program (FERA).

Next Steps

Provide direction to staff to craft a proposal for Board consideration which develops a forgivable loan program with the parameters discussed.