



Santa Clara Valley Water District

File No.: 20-0797

Agenda Date: 9/8/2020

Item No.: *2.7.

SUPPLEMENTAL BOARD AGENDA MEMORANDUM

SUBJECT:

Adopt Resolution Authorizing the Issuance of Not to Exceed \$120 Million Water System Refunding Revenue Bonds, Authorizing the Execution and Delivery of Not to Exceed \$155 Million Revenue Certificates of Participation, Approving the Execution and Delivery of Certain Documents, and Authorizing Certain Acts in Connection Therewith

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. Adopt the Resolution AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$120 MILLION REFUNDING REVENUE BONDS, AUTHORIZING THE EXECUTION AND DELIVERY OF NOT TO EXCEED \$155 MILLION REVENUE CERTIFICATES OF PARTICIPATION, APPROVING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS, AND AUTHORIZING CERTAIN ACTS IN CONNECTION THEREWITH; and
- B. Authorize and direct the Chief Executive Officer, Assistant Chief Executive Officer-Operations, Chief Financial Officer, Treasury and Debt Officer, District Counsel, the Clerk of the Board, and such other officers and staff of the Santa Clara Valley Water District, acting singly, to do any and all things, and to execute and deliver any and all documents, which such officers may deem necessary or advisable in order to consummate the sale and delivery of the Refunding Revenue Bonds and the Revenue Certificates of Participation.

SUMMARY:

Executive Summary

On August 25, 2020, the Santa Clara Valley Water District ("Valley Water") Board of Directors ("Board") considered authorizing: (a) issuance of a principal amount of up to \$120 million of Water System Refunding Revenue Bonds, Series 2020A (Tax-Exempt) and Series 2020B (Taxable) (the "2020A Bonds" and the "2020B Bonds," respectively and collectively, the "Bonds"); and (b) cause the Santa Clara Valley Water District Public Facilities Financing Corporation to execute and deliver up to \$155 million of Revenue Certificates of Participation (Water Utility System Improvement Projects), Series 2020C (Tax-Exempt) and Series 2020D (Taxable) (the "2020C Certificates" and the "2020D

Certificates,” respectively and collectively, the “Certificates”) (the Bonds and Certificates, together, the “Obligations”). The proceeds of the Obligations will be used to: (i) refund the currently outstanding Commercial Paper Certificates, Series A (Tax-Exempt) and Series B (Taxable) issued to finance projects for the water utility system (the “Outstanding CP”); (ii) acquire and/or construct, or reimburse the cost of the acquisition or construction of, certain water utility system capital improvements; and (iii) pay costs of issuance of the Obligations

During the meeting the Board provided additional feedback for the Preliminary Official Statement (“POS”) and continued the item to the next Board meeting on September 8, 2020. Staff worked with internal stakeholders as well as bond/disclosure counsel to update the POS to address the feedback provided by the Board. Supplemental Attachment 1 summarizes the list of Board feedback and provides a cross reference of the page numbers in the POS that addresses each item. Supplemental Attachment 2 provides the updated POS for the Board’s review and consideration. Supplemental Attachment 3 provides the revised financing schedule which outlines the full list of actions that must take place after the Board authorizes the transaction.

Discussion

At the August 25, 2020 Board meeting, the Board raised two questions regarding the process and timing of conducting a debt issuance:

1. What is the process for determining the financing schedule and why are events lined up sequentially in such close proximity to the Board authorization date?
2. How can the Board engage in the preparation and commenting period of the POS?

Staff’s responses to the above two questions are provided in the discussion below.

Financing Schedule

As outlined in the Financing Schedule provided in Supplemental Attachment 3, there are a number of sequential events that are legally required to take place after the Board authorizes the financing. These events are scheduled in close proximity to each other where possible, subject to legal requirements and external events that are outside of staff’s control (e.g. credit rating agency review period, competing debt offerings from the State of California or other municipal issuers, market condition, investor demand and funding availability, economic data releases, etc.).

It’s important to keep a tight schedule to achieve multiple goals: (1) complete the transaction as quickly as possible to ensure Valley Water obtains the funding it is seeking to raise in the capital markets; (2) minimize the market timing risk to ensure the best interest rates are achieved to reduce the overall cost of the financing; (3) ensure the POS as approved by the Board remains valid and relevant, as amended by the Supplement to the Official Statement, if any; and (4) minimize the risk that rating agencies may withdraw or amend its rating assignment should a significant event occur (e.g. force majeure, global and national political events, natural disasters, litigation and new regulatory requirements, etc.) that could warrant a reevaluation of the credit assessment.

Pending Board approval of the financing on September 8, 2020, staff will release the Board approved POS to the rating agencies to obtain credit ratings. Each credit rating agency will take some time to conduct its own internal credit review and schedule a credit review meeting before it releases the assigned credit rating (the current ratings' release date is targeted for September 16). The POS will need to be updated with the credit ratings and released to the underwriters as well as published to potential investors (the current POS release date and underwriter due diligence meeting are targeted for September 23).

Pricing is currently scheduled for September 30, 2020 to accommodate a seven-day investor review period of the POS. On the pricing day, the underwriters will market Valley Water's Obligations to potential investors, and the financing team will negotiate the final pricing and terms of the Obligations in conformance to the Board approved financing terms as set forth in this Board agenda item. Actual pricing terms will be dependent on the market conditions on the pricing date. If actual market conditions are such that the financing team is unable to achieve the optimal pricing structure within the Board approved terms, the financing team will have the option to not accept the pricing terms offered by the Underwriters, cancel the sale of the Obligations, and return to the Board to receive further direction on the pricing terms at a future date that would be appropriate given Valley Water's business process. Currently the next best opportunity to market Valley Water Obligations after the October 2020 window is between March to April 2021 to accommodate the timing for Board approval of the FY 2020 Comprehensive Annual Financial Report in December 2020 or January 2021, and the publication of the February 2021 Protection and Augmentation of Water Supplies Report which will reflect the Board's guidance for the FY 2021-22 water utility rates and charges.

Between the pricing date of September 30 and the currently scheduled closing date of October 14, 2020, bond counsel will be drafting the final legal documents and final Official Statement that reflect the final sale price and terms of the Obligations, and staff will coordinate with the signatories to obtain final execution of the documents. The final Official Statement ("OS") must be delivered to the underwriters within 7 business days of the pricing date (currently scheduled for October 6, 2020) and is required by federal securities laws to be updated to reflect any material events which occurred subsequent to the date of the POS. In order to ensure timely delivery and execution of all legal documents, the Board Resolution pursuant to this agenda item requests the Board to authorize certain executive staff to take the necessary actions to execute the final OS and all related legal documents to close the transaction.

Federal securities laws require that Valley Water disclose all material updates to the OS in a Supplement for a period of 25 days after the transaction closing date. Per the current schedule, 25 days after the closing date of October 14, 2020 is November 8, 2020. The material events that must be filed in a Supplement by November 8, 2020 include the following: (1) results of the November 3, 2020 election for the Safe, Clean Water program tax initiative; (2) updates to the litigation section for any events that have transpired between the date the Official Statement was published to November 8, 2020, if any; and (3) any other material information that has transpired that may impact Valley Water's operations and/or ability to repay the water utility Obligations.

The OS, Supplement, Continuing Disclosure Annual Report as well as any event based disclosures

are legally required to be filed on the Electronic Municipal Market Access website (<https://emma.msrb.org/>) pursuant to the regulatory requirements established by the Municipal Securities Rulemaking Board (<http://www.msrb.org/>), and the Securities Exchange Act of 1934 (Rule 10b-5).

The Financing Schedule in Supplemental Attachment 3 provides all the events that must occur subsequent to Board approval of the financing. Highlighted below are a few of the key events as described above:

- 9/8 Board approval
- 9/16 Credit ratings released
- 9/23 Release POS and conduct Underwriter due diligence meeting
- 9/30 Pricing date
- 10/6 Final OS delivered
- 10/14 Closing date
- 11/8 Post final Supplement to the OS (end of 25-day disclosure period)

Board Engagement in POS Preparation

For future debt issuances, to ensure the Board has ample time to provide feedback to the POS, staff recommends the following protocol:

1. Submit the Board memorandum for the financing, including the POS, as part of the regular board agenda which is posted 10 days prior to the scheduled Board meeting date pursuant to the Brown Act requirement.
2. Follow up and email the POS in Word document format to the Board on the same day as the regular 10-day posting date, and request the Board to review and provide feedback to staff by the Monday prior to the posting deadline for the supplemental agenda. To avoid the serial meeting prohibitions of the Brown Act, any such communications from Board members shall be directed to staff alone and shall not copy any other Board members.
3. Receive and consider any Board feedback with consultation from internal stakeholders and legal counsel. Submit any revised POS via a supplemental memorandum to be published on Valley Water's agenda website on the Friday before the board meeting date.
4. Provide the Board with a copy of the final OS. Request the Board to notify the financing team of any material information or events that transpired subsequent to Board approval of the POS that could materially impact Valley Water's operations and/or ability to repay the water utility Obligations. The notification must take place as quickly as possible and within the 25-day disclosure period after the closing date to ensure the appropriate information is incorporated into the Supplement to the Official Statement.

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 a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Supplemental Attachment 1: Board Feedback from August 25, 2020
Supplemental Attachment 2: Updated Preliminary Official Statement
Supplemental Attachment 3: Updated Financing Schedule

UNCLASSIFIED MANAGER:

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