

AGENDA REPORT

Meeting Date: November 5, 2015

To: Board of Directors

From: Marc Marcantonio, General Manager;
Art Kidman, General Counsel

Presented By: Art Kidman, General Counsel

Prepared By: Marc Marcantonio, General Manager;
Art Kidman, General Counsel

Subject: Board Discussion and Action Regarding Yorba Linda Taxpayer Association Petition

SUMMARY:

Legal Counsel has determined that the Board of Directors is not required by the Yorba Linda Taxpayer Association petition (Petition) challenging Resolution 15-22 (Rate Resolution) to either repeal the Rate Resolution or to suspend the Rate Resolution and to place it on the ballot. Legal Counsel has concluded that the referendum process is not applicable to water rates adopted in compliance with Prop 218. As a result, it is up to the sole discretion of the Board of Directors to repeal or suspend the Rate Resolution as requested by the Petition. District staff does not recommend either of these options because the District needs the revenue collected pursuant to the Rate Resolution to cover its cost-of-service due to the District's loss in revenue caused by the State of California's 36% conservation mandate. Further, if the Rate Resolution were repealed or even temporarily suspended, the District would be in immediate danger of not meeting its required Debt Service Covenant of 110% for the water fund, which would place the District in "technical default" of the District's outstanding bond and letter of credit.

STAFF RECOMMENDATION:

That the Board of Directors:

- A. Receive and file the certified signature counts received from the Orange County Registrar of Voters through the District's Election Official for the Petition.
- B. Select one of the following options (staff recommends option 1).
 1. Reject the Petition because the referendum process is not allowed by the laws applicable to the Rate Resolution as adopted in compliance with the requirements of Proposition 218. Confirm continued implementation of the water rates as set forth in the Rate Resolution.
 2. Voluntarily rescind or repeal the Rate Resolution (not recommended by staff).
 3. Voluntarily suspend the Rate Resolution pending the conduct of an election (not recommended by staff).

DISCUSSION:

At the September 17, 2015 Board of Directors regular meeting, the Board adopted the Rate Resolution approving water rate changes. The Rate Resolution became effective immediately, with rate changes applicable to water bills with a bill date of October 1, 2015 or later.

Before approving the Rate Resolution, the District complied with the procedural and substantive requirements of Prop 218, including preparation and analysis of a cost-of-service rate study. Although written protests were timely submitted against the Rate Resolution, there were not sufficient written protests to constitute a majority protest under Prop 218. As a result, the protests submitted did not prevent the Board from approving the Rate Resolution in accordance with Prop 218.

On October 14, 2015, the District received the Petition. The Petition “demand[s] that RESOLUTION NO. 15-22 be reconsidered by the Governing Board of the Yorba Linda Water District and repealed, or if not entirely repealed, that RESOLUTION No. 15-22 be submitted to a public vote of the voters of the YORBA LINDA WATER DISTRICT at the next regular election.” In form only, the Petition appears to be a referendum petition.

On October 15, 2015, the District’s General Manager and Board Secretary, who by law is the District’s “Election Official,” delivered the Petition to the Orange County Registrar of Voters for certification of the Petition signatures, as required by law for a referendum petition. The District’s Election Official informed the proponents of the Petition that the Petition had been submitted to the Registrar of Voters and also informed them that District’s legal counsel had advised him that the referendum procedures may not be applicable to the Rate Resolution.

On October 22, 2015, the Registrar of Voters certified to the District that, pursuant to a random sample count, 4,902 valid registered voter signatures had been submitted in accordance with law. If the Rate Resolution constituted a proper subject matter for referendum, the number of signatures submitted with the Petition would be sufficient to invoke the referendum process. The report from the Registrar of Voters is attached to this staff report along with the District’s Election Official’s certification of the Petition signatures is also attached to this report.

Option 1: Reject the Petition because the referendum process is not allowed by the laws applicable to the Rate Resolution as adopted in compliance with the requirements of Proposition 218 (staff recommends).

Proposition 218 (officially known as the “Right to Vote on Taxes Act”) is an amendment to the California Constitution which has occupied the field for direct voter participation in the establishment of fees for property related services, including water rates. Proposition 218 specifically relates to fees for property related services and, therefore supersedes other more general constitutional and statutory measures related to direct voter participation in local government affairs through referendum and initiative.

Proposition 218 specifies two direct democracy procedures applicable to property related fees, including water rates. The first direct democracy process built into Proposition 218 is a property owner protest procedure for adoption of water rates. The District complied with the protest procedures required by Proposition 218 before the Board adopted the Rate Resolution; the number of protests received was insufficient to require the Board to halt adoption of the Rate Resolution. After adoption of rates, Proposition 218 expressly provides for initiatives as the second direct democracy process applicable to property related fees. In addition, law outside of Proposition 218 prohibits the use of referendum to challenge tax measures. The entire premise (and title) of

Proposition 218 is to assure voter participation in tax measures, including water rates. Proposition 218 must be interpreted to be in harmony with these other laws.

Further, the initiative and, if applicable, the referendum processes both are required by law to provide for water rate revenues sufficient to cover: (1) the cost of District's operating expenses, (2) the cost of repair and depreciation of works owned or operated by the District, (3) the cost of debt service. In the process of adopting the Rate Resolution, the Board determined that the District's previous water rates, which would be reinstated if the Rate Resolution is rescinded or suspended as requested by the Petition, are insufficient to cover these costs.

Option 2: Voluntarily rescind or repeal the Rate Resolution (not recommended by staff).

The District has been mandated by the State of California to reduce its water deliveries by 36%. This mandate has resulted in a substantial reduction in projected District revenue. As a utility providing essential services, the District cannot sustain, even for a short period of time, a substantial reduction in revenue without impacting services vital to the public health, safety and well-being. The Rate Resolution reduces the District's dependence on volumetric water commodity sales, and increases charges for water service costs incurred by the District irrespective of water sales volume. The change in rate structure is revenue neutral if the District's customers achieve the water conservation level mandated by the State. If the Rate Resolution is rescinded or repealed as requested by the Petition, the District will have insufficient revenue to cover the cost of providing essential public utility services.

In addition, rescission or repeal of the Rate Resolution will have other direct and immediate negative impacts on the District's credit and, consequently, on its ability to continue essential services. According to its bond and other debt contracts, the District is required to collect rates and charges that will be at least sufficient to yield Net Revenues equal to at least 110% of the Debt Service obligations for the reporting fiscal year (this is known as and is referred to herein as the Debt Service Covenant).

Based on the approved 2015/16 Operating Budget, should the Board of Directors decide to voluntarily rescind or repeal the Rate Resolution, the District will not meet its Debt Service Covenant for the Period Ending June 30, 2016 – the Debt Service Covenant would be -30.88%. Upon reporting this violation of the Debt Service Covenant the District will be in breach of its debt contracts. Then, for example, Wells Fargo Bank could immediately request that the outstanding Letter of Credit principal amount be repaid – approximately \$7 million.

In addition, the District can be placed on "negative watch" by the Rating Agencies. Upon this occurring, the District's AA debt rating will be downgraded and the cost to borrow in the future will be at higher interest rates. A long-term consequence of non-compliance of the Debt Service Covenant is that the Bond Trustee, on behalf of a 50% majority of the bondholders, must proceed to protect and enforce the bondholders' rights by having the District raise its rates and charges in order to comply with the Debt Service Covenant. District's inability to do so could result in an accelerated payment of principal of outstanding District indebtedness.

Another immediate consequence of rescinding or repealing the Rate Resolution will be a halt in the construction of the Fairmont Booster Pump Station. This major capital improvement project is needed to reduce District reliance on expensive imported water resources by providing greater access to groundwater resources. The District is contractually bound to pay \$300,000 per year for the next 5 fiscal years for this access. Without the rates established in Rate Resolution completion of the Fairmont Booster Pump Station will be fiscally infeasible and the irrevocable \$1.5 million

investment in groundwater access will be wasted.

In addition, the District will not be able to fund reserves, such as Capital Project and Emergency Reserves, to financially responsible levels. Other identified future capital projects that would assist in our mission of providing safe and reliable water service to our customers have already been deferred due to lack of available funding.

Option 3: Voluntarily suspend Resolution No. 15-22 pending the conduct of an election (not recommended by staff).

If the Board of Directors elects to suspend the Rate Resolution pending an election process, the Board will need to decide whether to call for a Special Election in early February at a cost of approximately \$250,000 or to wait for the next County General Election in early June at a cost of approximately \$100,000.

If the Board of Directors elects to suspend the rates pending a Special Election, and the Special Election sustains the Rate Resolution, revenues from the Rate Resolution will be lost for approximately four months, resulting in a projected loss of water sales revenue in the amount of \$2.7 million. If the Board elects to suspend the rates approved in the Rate Resolution for the remainder of the current fiscal year, pending the next County General Election, and the Rate Resolution is sustained, the projected loss of water sales revenue would amount to \$5.6 million. Under either scenario, the District would breach the Debt Service Covenant even if the Rate Resolution is reinstated following the election. The effect on the District's financial position for FY 2015/16 would follow the same results as if the Board of Directors voluntarily rescinds or repeals the Rate Resolution as in Option 2 as listed above, including the immediate repayment of the \$7 million Wells Fargo letter of credit principal balance.

PRIOR RELEVANT BOARD ACTION(S):

At the September 17, 2015 Board of Directors regular meeting, the Board adopted Resolution No. 15-22 approving water rate increases.

At the Special Board meeting held on July 16, 2015, the Board received and filed the 2015 Water and Sewer Rate Study, prepared by Raftelis Financial Consultants, Inc., that provided the statistical and financial data in support of the proposed water and sewer rate increases.

On August 31, 2015, the Board received and filed the 2015 Water and Sewer Rate Study Report that summarizes the key findings and recommendations related to the development of the financial plans for the water and sewer utilities and the development of associated water and sewer rates and charges that are equitable and in compliance with Proposition 218.

ATTACHMENTS:

Certification of Signatures.



Yorba Linda Water District

*Independent, Reliable and Trusted
Service for More Than 100 Years*

STATE OF CALIFORNIA)
) §
COUNTY OF ORANGE)

I, MARC MARCANTONIO, Secretary to the Board of Directors of the Yorba Linda Water District and Elections Official of the Yorba Linda Water District, DO HEREBY CERTIFY that the signatures contained in the petition entitled "Referendum Against a Resolution of the Board of the Yorba Linda Water District" submitted by the Yorba Linda Taxpayers Association on October 14, 2015 have been verified by the Orange County Registrar of Voters as set forth in the attached document.

WITNESS my hand and the District's Official Seal this 5th day of November 2015.

Marc Marcantonio

Marc Marcantonio
Secretary to the Board of Directors/Elections Official
Yorba Linda Water District





NEAL KELLEY
Registrar of Voters

Mailing Address:
P.O. Box 11298
Santa Ana, California 92711

REGISTRAR OF VOTERS
1300 South Grand Avenue, Bldg. C
Santa Ana, California 92705
(714) 567-7600
FAX (714) 567-7627
www.ocvote.com

October 22, 2015

Mr. Marc Marcantonio
General Manager
Yorba Linda Water District
1717 E. Miraloma Avenue
Placentia, CA 92870

Dear Mr. Marcantonio:

Enclosed is the Certificate as to Verification of Signatures for the petition entitled "Referendum Against a Resolution of the Board of the Yorba Linda Water District".

The Registrar of Voters verified 500 signatures. The cost per signature verified is \$3.40 for a total cost of \$1,700.00. An invoice is enclosed.

If you have any questions, please feel free to contact me at 714-567-7606.

Sincerely,

A handwritten signature in cursive script that reads "Kay Cotton".

Kay Cotton
Candidate and Voter Services Manager

:kc

Enclosure

**CERTIFICATE AS TO VERIFICATION
OF SIGNATURES ON PETITION**

State of California)
)ss.
County of Orange

I, Neal Kelley, Registrar of Voters of the County of Orange, do hereby certify that I am the county officer having charge of the registration of voters in the County of Orange, and I have examined, or caused to be examined, the petition submitted to the Yorba Linda Water District entitled "Referendum Against a Resolution of the Board of the Yorba Linda Water District".

I further certify that from said examination I have determined the following facts regarding this document:

Number of signatures filed:	<u>5,520</u>
Number of signatures required:	<u>2,157</u>
Number of signatures verified:	<u>500</u>
Number of signatures found valid:	<u>444</u>
Number of signatures found invalid:	<u>56</u>
Invalid because of Duplicate:	<u>0</u>

WITNESS my hand and Official Seal this 22nd Day of October, 2016.




NEAL KELLEY
Registrar of Voters
Orange County

RANDOM SAMPLING VERIFICATION OF SIGNATURES
(California Administration Code §§ 20530, 20531, 20532)

V = Number of Valid Signatures
A = Value of Each Signature
B = Extra Value of Each Duplicate Signature
C = B x the Number of Duplicates

1. Calculate:

$$\text{Raw Count (5520)} \times \frac{\text{Sufficient in Sample (444)}}{\text{Sample (500)}} = \mathbf{V (4,901.76); \text{ rounded to } 4,902}$$

2. Divide:

$$\frac{\text{Raw Count (5520)}}{\text{Sample (500)}} = \mathbf{A (11.04)}$$

3. Multiply:

$$\mathbf{A (11.04)} \times \mathbf{A-1 (10.04)} = \mathbf{B (110.84)}$$

4. Multiply:

$$\mathbf{B (110.84)} \times \text{Number of Duplicates (0)} = \mathbf{C (0)}$$

5. Subtract:

$$\mathbf{V (4902)} - \mathbf{C (0)} = \mathbf{\text{Corrected Valid (4902)}}$$

The petition is considered qualified, without further verification, if the random sampling determines that the number of valid signatures is over 110% of the number of signatures required.

The number of signatures required:	2,157
110% of number of signatures required:	2,373
Random sampling	4,902



Petition Result Breakdown

* AA139- Yorba Linda Water District
Referendum Against a Resolution of the Board of the Yorba Linda Water District.

Signatures Required	0		
Raw Count	5,520		
Sample Size	500	<i>Percent of</i>	<i>Percent of</i>
Sigs Checked	500	<i>Sigs Checked</i>	<i>Sample Size</i>
Sigs Not Checked	0		0.0 %
Sigs Valid	444	88.8 %	88.8 %
Sigs Invalid	56	11.2 %	11.2 %
Duplicated	0	0.0 %	0.0 %
Non-duplicate Invalids	56	11.0 %	11.2 %

RESULT ABBR	RESULT DESCRIPTION		
Approved	Approved	444	88.8 %
NotReg	Not Registered	27	5.4 %
RegDiffAdd	Registered at a Different Address	16	3.2 %
SigNoMatch	Signatures Don't Match	13	2.6 %