



AGENDA STAFF REPORT

STEVE ROBBINS
ADMINISTRATION BUILDING
75515 Hovley Lane East
Palm Desert, CA 92211

CVWD's COACHELLA CAMPUS
51501 Tyler Street
Coachella, CA 92236

www.cvwd.org

Agenda Number: E
File ID: 1060, 1063

Section Name: Finance
Project ID:

MEETING DATE: July 11, 2023

SUBJECT: Adopt a State Water Project (SWP) Levy of \$0.11 per \$100 of Assessed Value (AV) for the Fiscal Year 2024 Tax Roll for both Riverside and Imperial Counties and Adopt Resolutions 2023-23 and 2023-24 Fixing Rates of Taxation Required by the Counties of Riverside and Imperial

TO: BOARD OF DIRECTORS

FROM: FINANCE, RICK ARAGON

**GENERAL MANAGER
RECOMMENDATION:**

RECOMMENDATION:

Staff recommends that the Board of Directors adopt Resolutions 2023-23 and 2023-24 authorizing a SWP levy of \$0.11 per \$100 of Assessed Value (AV) for the Fiscal Year 2024 Tax Roll for both Riverside and Imperial Counties.

BUDGET IMPACT:

The levy rate of \$0.11 per \$100 of AV is expected to yield approximately \$90.3 million in revenue to be used for SWP expenses for FY 2024. The proposed tax rate revenue, along with \$1 million in investment income and the use of \$2.8 million in reserves, is expected to cover FY 2024 anticipated expenses. The following table details the proposed revenues and adopted expenditures for FY 2024.

State Water Project Adopted Budget	FY 2022 Actual	FY 2023 Projected	FY 2023 Budget	FY 2024 Budget	Budget Change	% Change
Revenues						
Property Taxes - SWP	\$ 79,688,626	\$ 86,063,716	\$ 82,079,284	\$ 90,254,230	\$ 8,174,946	10.0%
Investment Income	101,412	356,106	251,247	980,505	729,258	290.3%
Total Revenues	\$ 79,790,038	\$ 86,419,822	\$ 82,330,531	\$ 91,234,735	\$ 8,904,204	10.8%
Expenses						
Salaries & Benefits (Net of Capitalized Labor)	\$ 281,087	\$ 306,555	\$ 306,555	\$ 615,525	\$ 308,970	100.8%
Supplies and Services	1,124,540	981,841	606,301	773,516	167,215	27.6%
Utilities	-	-	75	50	(25)	-33.3%
Water Purchases	60,131,882	72,245,957	72,245,957	92,623,919	20,377,962	28.2%
Capital Outlay	-	-	500	-	(500)	-100.0%
Total Expenses	\$ 61,537,509	\$ 73,534,353	\$ 73,159,388	\$ 94,013,010	\$ 20,853,622	28.5%
Operating Income (Loss)	\$ 18,252,529	\$ 12,885,469	\$ 9,171,143	\$ (2,778,275)	\$(11,949,418)	-130.3%

PROCUREMENT METHOD:

☒ N/A

If other, please explain: .

BACKGROUND

On June 13, 2023, the Board adopted the FY 2024 Budget, which included \$94 million in SWP expenses. To fund projected expenses, staff recommends that the Board adopt resolutions 2023-23 (Attachment 1) and 2023-24 (Attachment 2) to authorize the tax rate of \$0.11 per \$100 of Assessed Value (AV) for FY 2024. The tax rate has remained at \$0.11 per \$100 of AV for the past two fiscal years, and is expected to generate approximately \$90.3 million in tax revenue to offset anticipated expenditures.

Recently, the Riverside Superior Court ruled that State Water Project Contractors are obliged to make formal findings, supported by evidence in their ratemaking records, that it is not feasible to fund obligations under the State Water Project Contract solely from charges for water service. While that ruling will be appealed and may be incorrect, staff nevertheless engaged two experts to assist the Board in evaluating whether the Tax might be replaced in all or part by higher charges for water service.

SWP taxes are authorized by Water Code section 11652, part of the Burns-Porter Act voters approved in November 1960 and by Article 34(a) of the District's contract with the Department of Water Resources for SWP supplies.

Water Code section 11652 provides:

The governing body shall, whenever necessary, levy upon all property in the state agency not exempt from taxation, a tax or assessment sufficient to provide for **all payments under the contract** then due or to become due within the then current fiscal year or within the following fiscal year before the time when money will be available from the next general tax levy. (Emphasis added.)

Article 34(a) of the State Water Contract reads, in its entirety:

If in any year the Agency fails or is unable to raise sufficient funds by other means, the governing body of the Agency shall levy upon all property in the Agency not exempt from taxation, a tax or assessment sufficient to provide for **all payments under this contract** then due or to become due within that year. (Emphasis added.)

In his recent ruling on the merits in *Howard Jarvis Taxpayers Association v. Coachella Valley Water District*, Riverside Superior Court case number RIC1825310, Judge Craig Riemer concluded a SWP tax levied under Article 34(a), must be used "exclusively for SWP expenditures." His ruling does not, however, define "SWP expenditure."

Judge Riemer further held that CVWD's discretion to levy a SWP Tax is limited by the requirement that the tax be necessary:

To justify a practice that relies predominat[ly] on taxes to cover SWP expenses rather than user charges, there must be evidence that it is infeasible to impose or to increase user charges in order to reduce or eliminate taxes. For instance, an increase in water rates might be considered infeasible if the increase would put water out of the financial reach of the users, or if the rate being considered would be higher than rates charged elsewhere, putting the users at a competitive disadvantage.

To satisfy the recent ruling, the District worked with external consultants to evaluate alternative funding options and provide economic analysis to support the proposed tax levy. NBS Government Financial Group provided a report (Attachment 3) to evaluate the impact on ratepayers if the projected SWP expenses for FY 2024 were funded by water rates instead of property taxes. ERA Economics provided a report (Attachment 4) to conduct a broader economic analysis of the impact of shifting the SWP Tax from an ad valorem property tax to a District water charge, and to assess the feasibility of water rate funding for these costs by both irrigation and municipal and industrial (M&I) water users.

NBS Key Findings

NBS concludes CVWD cannot feasibly fund its FY 2024 State Water Project obligations with Replenishment Assessment Charge (RAC) charges.

Among other bases for this conclusion is that, for the first time in decades, CVWD projects it will receive its full allocation of State Water Project water this year due to the extraordinarily wet winter. That will increase water purchase costs significantly for FY 2024 over previous years because CVWD will buy much more water, some for use this year and other for storage for use in drier years. CVWD has sufficient reserves at this time to cover these increased costs without increasing the State Water Project property tax rates. However, collecting these expenses by increasing the Replenishment Assessment Charge would require a 558% increase in Mission Creek RAC rates and a 457% increase in West Whitewater RAC rates. This would generate rate shock and outstrip what many customers can pay.

ERA Key Findings

ERA also concludes CVWD cannot feasibly fund its FY 2024 State Water Project obligations solely with Replenishment Assessment Charge revenue. Shifting the SWP Tax to the RAC would result in a substantial increase in water cost for landscape irrigation and municipal and industrial (M&I) water users. Those increased water costs would put large irrigation water users, such as golf courses which are an integral part of the local tourism economy and the related jobs produced, in the West Whitewater and Mission Creek AOB's at a competitive disadvantage compared to East Whitewater AOB water users, as the East Whitewater RAC rate would remain unchanged.

In addition, groundwater is the primary source of domestic water supplies in CVWD's service area. The necessary increase in replenishment costs would significantly raise CVWD's domestic water rates as well as those of municipal water utilities that use groundwater supplies the District manages and augments with SWP supplies. The average annual water bill within CVWD would increase by an estimated \$372 if RAC rates were increased to cover all SWP expenses previously borne by the SWP tax. This increase in water bills would equally affect domestic water service throughout the service area, including the East Whitewater AOB and its larger portion of disadvantaged and low-income communities.

Replacing the tax with higher RACs has other adverse effects. First, owners of vacant land would no longer pay any share of the SWP expenses, despite benefiting from the increased property value attributable to access to that water source, which makes vacant land developable and therefore marketable. Second, if domestic water users bear the whole cost of the SWP, renters and other low-income domestic customers who do not own property will pay SWP expenses directly and entirely rather than indirectly and partially via rents paid to landlord property owners, which are constrained by the housing market. Renters are far more likely to have limited income than homeowners. Households with income of less than \$50,000 per year would see their disposable income fall by an

estimated 28%.

Financial Security Consideration

Lastly, outside of the impacts noted in the two consultants reports, the transition to recovering SWP Fundt expenses via a RAC rate would represent a significant degradation in the security and efficiency of the revenue source and would put the District at material financial risk in its ability to pay its SWP contract and related obligations timely. Specifically, unlike property taxes which are fixed in nature every year and backed by the County's an ability to enforce collection, the District is unable to physically shut-off RAC pumpers for non-payment like it is its Domestic service customers and would have to individually seek court enforcement of amounts owed at a significant expense and delay. RAC charges are also inherently variable based on water demand which could be significantly negatively impacted by the dramatic raise in RAC rates should the SWP Fund expenses be placed on RAC rates.

Conclusion

The expert reports from NBS and ERA provide evidence to support the staff recommendation that the Board conclude that levying the State Water Project Tax at its current rate of \$0.11 cents per \$100 of assessed value for FY 2024 is necessary because recovery of those costs through water rates is not feasible. If approved by the Board, the proposed tax rate will be levied on FY 2024 property tax bills beginning this gall, as in prior years.

PRIOR BOARD ACTION:

Update to SWP Reserve Policy on June 27, 2023

FY 2024 Budget Adoption on June 13, 2023

Information Item on FY 2024 SWP Budget and Reserve Policy on May 23, 2023

Board Study Session on April 18, 2023

Board Study Session on March 21, 2023

DISTRICT STRATEGIC PLAN GOAL(S)/OBJECTIVES(S):

Approval of the proposed FY 2024 SWP Tax Rate aligns with the CVWD Strategic Goal 6: Financial Viability, and Strategic Initiative 14 as an aspect of developing a comprehensive financial plan to ensure financial sufficiency.

ENVIRONMENTAL IMPACT:

This is not a project as defined by CEQA; therefore, approval does not require any CEQA action.

PUBLIC NOTICE REQUIRED

N/A

LEGAL REVIEW

Colantuono Highsmith Whatley, PC

ATTACHMENTS

Att 1 - Resolution No. 2023-23 Fixing Rates of Taxation in Riverside County

Att 2 - Resolution No. 2023-24 Fixing Rates of Taxation in Imperial County

Att 3 - Technical Memorandum from NBS Government Finance Group

Att 4 - Technical Memorandum from ERA Economics