

TO: Thomas Frutchey, City Manager  
Dick McKinley, Public Works Director

FROM: Matt Thompson, Wastewater Resources Manager

SUBJECT: Consider a Budget Adjustment to the Sewer Fund for a Supplemental Environmental Project Related to Wastewater Penalties

DATE: September 20, 2016

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Needs: For City Council to consider a budget adjustment to the Sewer Fund for a Supplemental Environmental Project (SEP), to facilitate payment of mandatory minimum penalties incurred at the wastewater treatment plant.

Facts:

1. The Paso Robles Wastewater Treatment Plant (WWTP) is closely regulated by the State of California Regional Water Quality Control Board (Water Board).
2. The Water Board issues permits to the City that set numeric limits on how much pollutants the WWTP may discharge to the Salinas River.
3. These various limits are stringent and the Water Board expects 100% compliance, regardless of the status of the City's treatment plant. The California Water Code establishes mandatory minimum penalties of \$3,000 for each and every violation of a permit limit.
4. Prior to recent completion of the WWTP Upgrade, the old treatment plant was antiquated and severely overloaded with waste. Wastewater strength greatly exceeded capacity of the trickling filters. Consequently, the City consistently violated permit limits and incurred mandatory penalties. These violations continued throughout the long construction period of the WWTP Upgrade. The City Council and staff knew of the shortcomings of the old treatment plant and had already taken actions to build the new plant, but the old plant continued to be unable to meet the stringent permit standards.
5. In December 2015, the Water Board issued a complaint to the City noting the many effluent violations and penalties from the old treatment plant.
6. City staff pursued and exhausted all possible remedies to minimize the amount of the penalties. The Water Board subsequently reduced the penalty amount by \$24,000, for some violations that occurred during startup of the upgraded wastewater treatment process.
7. City staff also requested that some of the penalty be directed to a project that would benefit the Paso Robles area, rather than send all of the penalty money to State Water Resources Control Board in Sacramento. This type of project is called a Supplemental Environmental Project (SEP) and puts the penalty money to good use.

8. On August 24, 2016, the Water Board issued a revised complaint with a list of all violations that occurred between October 2013 and June 2016. All the violations are legitimate.
9. The penalty amount of \$495,000 is the mandatory minimum amount prescribed by the Water Code. Water Board staff does not have discretion to reduce the penalties any further, but they could increase the penalties if the City doesn't take action on an SEP and other payments by September 23rd.
10. The recent complaint includes an offer to direct \$255,000 of this penalty—the maximum amount allowed by the Water Code—to the Supplemental Environmental Project Water Board staff developed to benefit the Paso Robles Groundwater Basin. The project includes three major tasks:
  - Develop a sustainable groundwater management methodology for the Paso Robles Groundwater Basin for implementation by local entities;
  - Conduct groundwater sampling to help sustainably manage the Paso Robles Groundwater Basin, with emphasis on elevation and water quality data as key elements of a sustainable groundwater management plan;
  - Sample domestic wells in the Paso Robles Groundwater Basin as an expansion of the Regional Board's existing domestic well sampling program.
11. The supplemental environmental project will be implemented by the Bay Foundation of Morro Bay, with direction by Water Board staff. The Bay Foundation of Morro Bay is a non-profit organization whose mission is to lead in restoring, enhancing, and protecting the marine resources and watersheds of Morro Bay and the Central Coast of California. The Bay Foundation is overseen by a board of directors comprised of volunteers from local institutions and private industries. The Water Board chose the Bay Foundation of Morro Bay as the implementing party because it has a long history of properly administering programs and projects funded by state and federal grants. The Bay Foundation will hold the funds paid by the City in a restricted fund specifically for implementing the project. This restricted fund may receive funding from other sources.
12. The complaint includes an offer to settle the penalties and thus avoid an adjudicatory hearing. The complaint states that if the City chooses to settle the matter, the Water Board will “forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations ...”
13. In order to settle this matter, the City will pay \$255,000 to the Bay Foundation of Morro Bay for the SEP, and pay a penalty of \$240,000 to the State Water Resources Control Board.
14. Payment of the penalty was anticipated in the budget. A total of \$254,000 was appropriated (Budget No. 6013550-52420), adequate to cover the payment to the State Water Resources Control Board. The original budget appropriation, however, is not adequate to cover the cost of the SEP. An additional

appropriation of \$241,000 will provide the total funds necessary to enable the Bay Foundation to undertake the Supplemental Environmental Project and provide the needed data on the Paso Robles Groundwater Basin.

Analysis

& Conclusion: The proposed penalty amount is the minimum amount prescribed by law; over half of the penalty amount will be directed to a project that will benefit the Paso Robles Groundwater Basin. Acceptance of the Regional Board's settlement offer is in the best interests of the City, as (1) the Board cannot reduce the penalty and (2) acceptance eliminates the possibility that the penalty amount could be increased. Staff recommends City Council approve the Resolution and satisfying the mandatory minimum penalty payments and authorizing a budget amendment for \$241,000, to facilitate payment for the SEP.

Policy

Reference: California Water Code Section 13385

Fiscal

Impact: The proposed budget adjustment and payment of the SEP and other penalty amounts will impact the Sewer Fund, but should not affect the City's ability to deliver necessary sewer services or capital improvement projects. These costs are best recognized as an offset for the delay in the City's decision to construct the new facility. Failing to take these actions at this time could have a significant adverse impact on the Sewer Fund.

- Options:
- A. Approve Resolution 16-XXX appropriating an additional \$241,000 from the Sewer Fund, and authorizing the City Manager to make payments for the Supplemental Environmental Project and to satisfy the mandatory minimum penalties; or
  - B. Amend, modify, or reject the above option.

Attachments:

- 1. Budget Adjustment Request form
- 2. Resolution 16-XXX

Approvals/workflow 1. Dept Head 2. Admin Svcs 3. City Manager 4. City Council	<b>City of Paso Robles</b> <b>BUDGET ADJUSTMENT REQUEST</b> Sewer Fund - Supplemental Environmental Project	Budget JE # Bar # AGENDA DATE <div style="text-align: right;">9/20/2016</div>
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DESCRIPTION	ORG #	OBJECT #	PROJECT #	AMOUNT
<b>REVENUE SOURCES</b>				
Sewer Fund-Control Account	601	99999		\$241,000
<b>TOTAL REVENUES</b>				<b>\$241,000</b>
<b>EXPENDITURE USES</b>				
Sewer Treatment-Violation Penalties	6013550	52420		\$241,000
<b>TOTAL EXPENDITURES</b>				<b>\$241,000</b>

**JUSTIFICATION: (attach letter if required)**      See attached Reso.

<b>REQUESTED BY:</b>  _____ Date                      Department Head	<b>REVIEWED &amp; APPROVED BY:</b> <div style="text-align: center;">             9/9/16      _____            Date                      Administrative Services         </div>
<b>APPROVED BY:</b>  _____ Date                      City Manager	

**PASSED AND ADOPTED** by the City Council of the City of Paso Robles, State of California, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_. Agenda Item No. \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
    Deputy City Clerk