May 12, 2021

Hello Glenn,

Thank you so much for your response. I will share it with the FVC email list.

So I take it legal counsel has reviewed the last reimbursement resolution from 2017 and it is still valid. That is good news.

With the draft budget as is, next month, the Board will be approving a $25 million transfer to developer funds before debt is issued and reimbursements occur. In the past, the Board has approved a transfer only when actual funds were available and all conditions were known, and only with a separate Board action specific to the transfer. Please consider more conservative budgeting by showing reimbursed debt proceeds being deposited into the funds from which the reimbursed costs were spent. Reserve Board approval for transfers only when appropriate.

<u>Subsidy</u>

A subsidy is money granted by a government or public body to assist an industry or business so that the price of a commodity or service may remain low or ***competitive***. [***Emphasis added***]

Subsidies can be in the form of low-interest loans. Currently, interest on the loan from ratepayers is accruing at 1.16%. Developers do not have access to tax-exempt interest loans. The 1.16% interest rate is significantly below "prevailing" interest rates available to private entities.

Vallecitos' Finance Committee directed you to keep the developers' capital facility fees "***competitive***." At the time of that admonishment, the anticipated new water capital facility fee (Cap Fee) was $8,994 per EDU and $18,523 for sewer. After private negotiations with developers and their representatives, the Cap Fees ultimately adopted were $7,896 for water and $12,986 for sewer.

I detailed Cap Fee calculation deficiencies to you in my rate protest letter last year and other communications. By the time Cap Fees were adopted, there was a $54 million shortfall (the Fee Study's anticipated Cap Fee revenue since the assumed effective date in 2016 less actual Cap Fee revenue). Fees were adopted without adjustment for the shortfall.

The California Constitution provides that "Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed." Financing a subsidy (with or without a low-interest loan) from ratepayer revenue is not an exception. The loan from ratepayers was not made public, not authorized, and is not constitutional.

The deficit (loan) is only part of the subsidy. Without deficiencies in the adopted fee and without the four-year delay in the effective date, Vallecitos should have a surplus considering recent development activity. For example, Carlsbad, the only other water agency in San Diego County that uses the Cap Fee calculation method Vallecitos uses (the Incremental Cost Method), reported a combined Water/Sewer developer fund surplus of $47.7 million at the end of the last fiscal year.

Another part of the subsidy is the failure of Vallecitos to use the proper Cap Fee calculation method. Other than Carlsbad, Vallecitos is the only water or sewer agency in San Diego County that does not require developers to “buy-in” to the equity/value of existing assets to put them at par with ratepayers who shoulder the burden of replacement and maintenance of the system. Revenue from a buy-in component can go directly to a replacement reserve and offset water rate increases. I will provide you with an FVC Educational Release on this topic within a few days.

Vallecitos is the only water agency in San Diego County with a deficit in their developer fund – the only agency that subsidizes urban development with ratepayer money. Otay may be close. They report neither a restricted fund balance (net position) nor a related commitment or contingency in their audited financial statements. The answer would be in their AB1600 Mitigation Fee Act report if they prepare one. Catch me with an actual misstatement and I will report out with humility.

I do appreciate your response to my comments and the apparent intent to issue debt, but what would be more appreciated by me and all ratepayers of the District is responsiveness to other recommendations I have made to restore ratepayer equity (add a Buy-In component to the Cap Fees, correct deficiencies in the Cap Fees, revise your Reserve Policy to industry standards, commission a new Master Plan study, adopt reimbursement resolutions with every budget, reverse policies that favor developers at the expense of ratepayers, and set policy that ratepayers should not bear the legal costs incurred to address potential or threatened claims from developers in response to initiatives that restore the deficit and maintain developer fund surpluses).

Thank you,
tom