

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109
(415) 749-5000

APPROVED MINUTES

Summary of Board of Directors
Budget & Finance Committee Meeting
9:30 a.m., Wednesday, December 8, 2010

- Call to Order:** Chairperson Carole Groom called the meeting to order at 9:30 a.m. without an initial quorum
- Roll Call:** Chairperson Carole Groom and Vice Chairperson Harold Brown
- Absent:** Directors Chris Daly, Susan Garner, Scott Haggerty, Ash Kalra, Eric Mar, Mark Ross, and Gayle Uilkema
- Also Present:** Board Chairperson Brad Wagenknecht and Director Pamela Torliatt
- Public Comment Period:** There was no public comment.

Chair Garner re-arranged the order of the Agenda due to the lack of a quorum.

6. First Quarter Financial Report – Fiscal Year 2010-11

Finance Manager David Glasser gave the staff report and presented the First Quarter Financial Report, as follows:

GENERAL FUND: STATEMENT OF REVENUE

Comparison of Budget to Actual Revenue

County receipts	\$211,815	(1%) of budgeted revenue.
Permit Fee receipts	\$12,373,220	(49%) of budgeted revenue.
Title V Permit Fees	\$2,102,939	(63%) of budgeted revenue.
Asbestos Fees	\$472,964	(30%) of budgeted revenue.
Toxic Inventory Fees	\$220,515	(33%) of budgeted revenue.
Penalties and Settlements	\$546,452	(36%) of budgeted revenue.
Miscellaneous Revenue	\$7,873	(7%) of budgeted revenue.
Interest Revenue	\$69,544	(25%) of budgeted revenue.

Noted Present: Director Uilkema arrived at 9:36 a.m.

GENERAL FUND BUDGET: STATEMENT OF EXPENDITURES

Comparison of Budget to Actual Expenditures

Salaries and Benefits	\$9,192,838	(20%) of budgeted expenditures.
Operational Services and Supplies	\$3,076,869	(15%) of budgeted expenditures.
Capital Outlay	\$1,059,168	(31%) of budgeted expenditures.

Investment Balances as of September 30, 2010:

Cash and Investments in County Treasury:

General Fund	\$ 21,406,975
TFCA	\$ 54,929,394
MSIF	\$ 29,030,184
Carl Moyer	\$ 7,790,935
CA Goods Movement	\$ 3,189,530
	<u>\$116,347,019</u>

Investments Held as:

Fixed Income Investments	34% of total investment pool
Short Term Investments	66% of total investment pool

Year End Results - Fund Balances:

	6/30/2009 Audited	6/30/2010 Unaudited	6/30/2011 Projected
Imprest Cash	500	-	-
Building and Facilities	1,731,690	1,900,000	1,500,000
PERS Funding	2,300,000	1,900,000	1,500,000
Radio Replacement	75,000	75,000	75,000
Capital Equipment	130,425	130,425	1,219,818
Contingencies	400,000	-	-
Post-Employment Benefits	-	-	2,000,000
Workers' Compensation	1,000,000	1,000,000	1,000,000
Economic Uncertainties	9,277,570	7,816,963	130,660
Total Special Reserves	<u>14,915,185</u>	<u>12,654,078</u>	<u>10,657,168</u>
Undesignated	<u>411,797</u>	<u>411,797</u>	<u>411,797</u>
Total Fund Balances	<u>15,326,982</u>	<u>13,065,875</u>	<u>11,068,965</u>

Committee Comments/Discussion:

Vice Chair Brown questioned State and Federal budgets' effect on District funding, and confirmed with Director of Technical Services Eric Stevenson that approximately \$1.3 million comes from federal revenues.

Directors and staff discussed potential cuts and takings of the State, their impacts to local city and county governments, the District's reserve position, and Mr. Broadbent noted these would be further discussed under Agenda Item 7.

Public Comment: None

Committee Action: None; Informational only.

7. Air District Financial Overview

Deputy APCO Jeffrey McKay gave the staff presentation and said reserves are what they were directed to be by the Board. The District is approaching a 20% Other Post Employment Benefits (OPEB) funding level.

Mr. McKay presented an overview of the District's financial position, reporting a \$62.4 million General Fund budget, 363 positions, and reserves that reflect prior Board direction. He reviewed General Fund revenue sources, noting the highest as permit fees (49%) and property taxes (34%). General Fund expenditures are divided up into salary and benefits (65%), services and supplies (24%), CalPERS (8%), and Capital (4%).

He stated the District has responded to challenges by taking a pro-active, balanced, multi-faceted, and multi-year approach to address personnel costs, expenditures, fees, reserves and utilization of staff resources.

Noted Present: Directors Garner and Mar arrived to establish a quorum at 9:51 a.m.

Mr. McKay discussed personnel costs, stating the FTE is unchanged from the amended FYE 2008 budget. The vacancy count has steadily increased, with 23 vacancies held and 7 additional vacancies from turnover. He noted management has had a productive relationship with the Employees Association and since vacancies are not being filled, staff is trying to maintain budget for leadership and training to enhance existing staff abilities to cover vacancies. The District has also cut its services and supplies budget, and capital spending has been deferred.

Regarding fees, the District increased its fees by 5.5% in FYE 2011. However a 10% fee increase was previously projected as necessary through 2012 and the lowered rate of cost recovery reduces the effectiveness of fee increases. If the District gets further behind in cost recovery, it will be that much more difficult to catch up, as there is a 15% annual cap on fee increases.

Regarding reserves, Mr. McKay stated that in prior years property taxes exceeded the budget which allowed funds to be available for the temporary budget gap. Currently, the Board approved the use of reserves to balance the budget.

Staff is assuming vacancies will continue to be unfilled in the future, is assuming service & supplies, capital and property taxes will remain unchanged, and that the District will continue with a 5.5% fee increase each year.

He presented Reserve projections, stating the District is attempting to take a balanced approach and work over a multi-year period to balance revenues and expenditures. He then presented a scenario of projections with no increased cost recovery after 2011, which dramatically and compoundedly draws down the reserve year by year.

Committee Comments/Questions:

Directors discussed the drawdown of reserves. Directors discussed the District's conservative, multi-faceted and multi-year budgeting approach, and the need to maintain the District's regulatory force and address cost recovery.

Director Garner questioned the District's practice of backfilling positions with temporary staff versus hiring benefitted, full-time employees. Mr. Broadbent said temporary positions are limited to specified numbers of hours, are mostly utilized in grant positions, and staff is working to review every position, its level and criticalness, and is developing a target number of an additional 15-20 positions that will not be filled. Staff simultaneously and continuously reviews property taxes, permit fees, and penalty monies which have been reduced by half, and he expects to provide a recommendation which will come before the Board of Directors.

Director Garner cited the current budget and economic climate and the need to accept staff reductions and look to restructure and potentially eliminate some positions, as she did not think backfilling positions with temporary staff was truly reducing costs. Mr. Broadbent indicated that there are federally mandated programs that must be staffed and he noted the importance of cost recovery efforts which will come before the Committee and Board during fee schedule and budget discussions.

Director Uilkema expressed uneasiness with the District's projection of county revenues and assessed valuations, and asked to ensure assumptions are not overstated. She cited declines in assessed values as much as 17% in some Contra Costa County areas and suggested the District participate with Beacon Economics, a Bay Area leading economic forecaster.

Chair Groom referred to Director Garner's comments, cited the District's efficiency measures, and suggested looking at attrition and voluntary retirements and not employee layoffs.

Mr. McKay summarized his presentation stating the District came in \$1 million higher in property taxes in FYE 2010; however, current year numbers have not been received and he anticipates it will be \$100,000 to \$200,000 less.

Public Comment: None

Committee Action: None; Informational only.

Approval of Minutes of April 28, 2010:

Committee Action: Director Brown made a motion to approve the April 28, 2010 Budget and Finance Committee Minutes; Director Garner seconded the motion; unanimously approved without objection.

Consideration of Accepting an EPA Grant and Awarding a Contract for Continued Development of Data Management System Services

Director of Technical Services Eric Stevenson gave the staff presentation, and said staff is requesting recognition of an EPA informational exchange network grant for \$200,000 to continue the District's data management system that collects data. He reviewed initial grants received from EPA Region IX of \$100,000 and \$279,000 and an additional grant this year in the amount of \$200,000. Work has been done by Sonoma Technology in the past and staff recommendation is to award a contract to Sonoma Technology for continued development of data management system services.

Committee Comments/Questions: None

Public Comment: None

Committee Action: Vice Chair Brown made a motion to recommend Board of Directors' approval to accept an EPA Grant in the amount of \$200,000 and award a contract to Sonoma Technology for continued development of data management system services for ambient air quality and meteorological data; Chair Wagenknecht seconded the motion; unanimously approved without objection.

Possible Impacts of Proposition 26 on the District

Senior Legislative Advisory Tom Addison presented an overview of the recently approved Proposition 26, a Constitutional amendment that defines a tax. He said the Proposition's passage was one of the most significant election results, as it was expected to fail until several weeks before the election and passed with a 5% margin. It was supported by Chevron, the Chamber of Commerce, the alcohol and tobacco industries, and the California Taxpayers Association. Opponents were outspent by three to one.

Mr. Addison stated the Proposition's definition is very broad, and he reviewed specific exemptions below and as outlined in the staff report:

New definition of tax: any "levy, charge, or exaction of any kind":

- Local governments (including the District) have some things exempted from being a tax:
 1. A charge imposed for a specific benefit, government service, or product directly to or for the payer that is not provided those not charged, and which does not exceed reasonable costs to the local government of conferring the benefit;
 2. A charge imposed for the reasonable regulatory costs for issuing licenses and permits, performing investigations, inspection, and audits, and the administrative enforcement and adjudication thereof;
 3. A fine, penalty, or other monetary charge imposed as a result of a violation of a law;
 4. A charge imposed for the purchase, rental, or lease of local government property.

Mr. Addison described the following additional changes:

- New taxes require two-thirds vote (either of the people for local governments or of the Legislature);

- New burden of proof on the District to show that any new fee is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and the manner in which those costs are allocated to those paying bear a fair or reasonable relationship to the payer's burdens on, or benefits received from, the governmental activity.

In response to questions from Committee members, Mr. Addison explained that the provision is not retroactive for local governments, but applies to new taxes and fees going forward, and to increases to existing fees. With certain exceptions, it requires a two-thirds vote of the Legislature or the public for many things that previously required only a majority vote. He distributed the text of the proposition and said there will be argument back and forth and most likely litigation.

Director of Engineering Brian Bateman gave a staff presentation on District fees prior to Proposition 26, stating regulatory fees are a major source of the District's revenue. He reviewed regulatory fees as being designed to recover an agency's cost of carrying out a regulatory program, to which fee payers are subject.

He reviewed the following characteristics for regulatory fees:

- Regulatory fees are designed to recover an agency's cost of carrying out a regulatory program to which fee payers are subject
- Characteristics for regulatory fees:
 - In the aggregate, the fees do not exceed the reasonable costs of the regulatory program for which the fee is charged; and
 - The costs are apportioned among the fee payers such that the costs allocated to each fee-payer bears a fair or reasonable relationship to its burden on and benefits from the regulatory system
- Additional points:
 - All costs, including indirect costs, of the program may be recovered
 - It is not necessary that the fee payer perceive the regulatory program as providing a benefit
 - Apportioning costs based on emissions has been determined to be valid

Types of District fee schedules include:

- Hearing Board fees
- Permit Fees
- Non-Permitted Source Fees
- Indirect Source Review (ISR) fees (adopted as a placeholder pending adoption of ISR Rule)

Mr. Bateman reviewed fee schedules A to U, with a brief explanation of each. He reviewed permit fees which are compiled based on the source type or capacity, as covered by 7 schedules, and by solvent use, as covered by 2 schedules. He noted there is a minimum and maximum fee, and between those the fee goes up depending on the source size.

- Source category-based (nine schedules)
 - Based on source type or capacity (seven schedules), or
 - Based on solvent throughput (two schedules)
 - Minimum Fee
 - Fees increase on a linear basis above the minimum fee as capacity or throughput increases
 - Maximum Fee
- Add-on fees (or credits)
 - Permit applications
 - Filing Fee
 - Risk screening fee
 - Schools notification fee
 - CEQA-related fees
 - Small business and green business discounts
 - Permit renewals
 - Processing Fee
 - Toxics surcharge

As staff moves forward, it will continue to assess the impacts of Proposition 26 and report back in the spring of 2011 on a specific fee proposal. He discussed the 1997 State Supreme Court's ruling on Sinclair

Paint, which reversed a Court of Appeals decision. This fee was imposed as the result of the Childhood Lead Prevention Act, which addresses companies that pay fees to mitigate adverse health effects of lead exposures to children, to screen children for lead levels and provides follow-up medical services. He said this particular program does not regulate lead at all in products, and the Supreme Court decision was that the fee qualifies as a regulatory fee.

Mr. Broadbent said the District's fee structures are directly related and tied to how it issues permits and inspection. Since the program applies to future fees, staff will try to structure the schedule while being mindful of the proposition, and continue to analyze cost recovery.

Committee Comments/Questions:

Chair Groom supported an update return in the spring and a strategy for raising fees to address cost recovery for the Committee and full Board, as well as budget projections and strategies.

Director Garner referred to the Health and Safety Code requirement of limiting fee increases to no more than 15% and while difficult, suggested a more aggressive fee schedule to reach total cost recovery. She supported the District's review of identifying areas where the District is under and over collecting.

Public Comment: None

Committee Action: None; Informational only.

Committee Member Comments: None

Time and Place of Next Meeting: At the Call of the Chair.

Adjournment: The meeting adjourned at 11:04 a.m.

LS/ Lisa Harper

Lisa Harper
Clerk of the Boards