

***Before the Board of Supervisors in and for the  
County of Monterey, State of California***

**Resolution No.:** \_\_\_\_\_

Adopt a Resolution to:

- a. Receive the County Service Area 75 – Chualar Consolidated Draft Wastewater Rate Study; )
  - b. Approve the Rate Alternative 1B – No Loan Payback, Three (3)-Year Phase-In; and )
  - c. Approve the forgiveness of four (4) loans totaling \$1,166,483, and )
  - d. Finding that the forgiveness of said loans constitutes a public benefit. )
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**WHEREAS**, Wastewater service rates for County Service Area 75 (CSA 75) – Chualar have remained unchanged for over fourteen years. This has resulted in an inability of CSA 75 to generate sufficient revenues to offset operational and infrastructure costs and has resulted in the need for General Fund loans over the past few years. Between June 2012 and September 2014, the Board of Supervisors has authorized four (4) loans totaling \$1,166,483. In November 2015, the County Service Area 75 – Chualar Consolidated (CSA75) Draft Wastewater Rate Study (Rate Study) was completed by the Wallace Group. The Rate Study identified four (4) rate options needed to sustain wastewater operations, accomplish capital improvements, and establish reasonable reserves over the next five (5) years:

- 1A – No Loan Payback, No Phase-In
- 1B – No Loan Payback, Three (3)-Year Phase-In
- 2A – Loan Payback, No Phase-In
- 2B – Loan Payback, Three (3)-Year Phase-In

**Whereas**, Two (2) alternatives presented in the CSA 75 Rate Study address the need to generate adequate revenues that meet forecasted requirements. Alternatives 1A and 1B provide rate increase options with no payback of loans from the General Fund. Alternatives 2A and 2B provide rate increase options with payback of loans from the General Fund. Each alternative provides two (2) options: One (1) with No Phase-In (the new rate will be implemented in the first year of the rate increase) and an option with a Three (3)-Year Phase-In (the rates for the first two [2] years will not match anticipated expenses, however, in the third year the revenues will match expenses). Both the “No Phase-In” and “Three-Year Phase-In” options have the potential to require a subsidy.

**Whereas**, Alternative 1A – No Loan Payback, No Phase-In adjusts monthly service charges to customers that results in revenues exactly meeting expenses over the next five (5) years. If the rate increase begins in the middle of the fiscal year it could result in a negative cash flow up to \$104,957, requiring a subsidy.

**Whereas,** Alternative 1B – No Loan Payback, Three (3)-Year Phase-In would be phased in over the first three (3) years of the rate increase, resulting in a potential negative cash flow in the first two (2) years. Revenues would match expenses in the third year. A subsidy up to \$257,431 could be needed.

**Whereas,** two (2) community outreach events were held to inform the residents in CSA 75 – Chualar of the planned increase and obtain feedback related to the proposed increase. The first community event was held in December 2014 and provided background information about the wastewater system, the need to increase rates to support existing operations, meet capital improvements requirements and establish reserves. Additionally, members of the community were provided with details of previous County loans, comparative wastewater rates throughout the County (refer to Attachment B – Comparative Rates), as well as potential rates charges to residents of CSA 75. Approximately fifteen members of the Community of Chualar attended. The residents expressed concern about any potential rate increase, regardless of the amount and phase-in options.

**Whereas,** the second community event was held in November 2015. Approximately twenty-five members of the community attended. Information about the wastewater system as well as the need to increase rates was reiterated to the audience. Details about the alternatives were provided and a number of the attendees participated in a discussion about the wastewater system as well as other issues in the community. The general consensus by members of the audience that participated in the discussion was that all rate increase options were too high and could not be supported by the residents of the community. No specific rate alternative was recommended by the community. Meeting notices for both meetings, printed in English and Spanish, were sent to all water customers and were also posted throughout the community. Additionally, presentations and handouts were available in both English and Spanish and a translator was present at both meetings.

**Whereas,** any increase in the wastewater rates must be approved through the Proposition 218 Majority Protest process. A majority protest exists if, upon the conclusion of the required public hearing, a majority of written protests are received. Only one (1) written protest per parcel will be counted for purposes of determining if there is a majority protest. If there is a majority protest, the sewer fees cannot be increased, revenue will not increase, and the CSA will continue to experience deficits.

**Whereas,** during the March 7, 2017 Board hearing, the Board heard testimony from two Chualar sewer customers. Both requested the lower rate option and referenced the financial impact of a higher rate that included the loan payment as creating a financial burden to themselves as well as the members of the community. Following staff's presentation and the information and testimony received during the March 7, 2017 Board hearing, the Board directed Staff to prepare a Resolution to approve Rate Option 1B – No Loan Payback, Three (3)-Year Phase In, forgive the four (4) loans totaling \$1,166,483, with a finding that forgiveness of said loans would constitute a public benefit and not a gift of public funds, for the Board's consideration.

**Whereas,** California Constitution, at Article XVI, Section 6, provides as follows, in pertinent part:

The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any

individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever....

**Whereas**, appropriation or expenditure of public funds is not prohibited if it is made for a public purpose. The public purpose exception is a broad, judicially-established exception to the prohibition concerning gifts of public funds. Courts have deferred to a public agency's legislative determination of public purpose so long as there is a reasonable basis for such determination. Courts can infer a public purpose from legislative history. Expenditure by a local government or public agency serves a public purpose if there is a benefit to its own constituency. Further, an incidental private benefit does not invalidate a local government or public agency expenditure where there is a valid public purpose.

**Whereas**, at the June 29, 2016 Budget Committee meeting, a motion was made by Supervisor Parker, seconded by Supervisor Armenta to forward the recommend to the Board of Supervisors for their consideration. At the September 12, 2016 Capital Improvement Committee meeting the Committee accepted receipt of the vote. A split vote was obtained for the item. Supervisor Salinas expressed interest in option 1B, which requires no loan payback and a three-year payment phase-in. Supervisor Potter expressed an interest in option 2A, which requires a loan payback and no payment phase-in.

**Whereas**, during the March 7, 2017 Board hearing, the Board heard testimony from two Chualar sewer customers. Both requested the lower rate option and referenced the financial impact of a higher rate that included the loan payment as creating a financial burden to themselves as well as the members of the community. Following staff's presentation and the information and testimony received during the March 7, 2017 Board hearing, the Board directed Staff to prepare a Resolution to approve Rate Option 1B – No Loan Payback, Three (3)-Year Phase In, forgive the four (4) loans totaling \$1,166,483, with a finding that forgiveness of said loans would constitute a public benefit and not a gift of public funds, for the Board's consideration.

**Whereas**, all options have the potential to require General Fund subsidy. Alternative 1A – No Loan Payback, No Phase-In results in the lowest possible General Fund subsidy of up to \$104,957. Alternative 1B – No Loan Payback, Three (3)-Year Phase-In could require a General Fund subsidy of up to \$257,431. Alternative 2A – Loan Payback, No Phase-In could result in a General Fund subsidy up to \$173,002 and Alternative 2B Loan Payback, Three (3)-Year Phase-In would have the highest potential General Fund subsidy of up to \$442,198. At the end of the five (5)-year period following the initial rate increase, the County would be in a position to go back for another rate adjustment and which could include reimbursement of any subsidies provided during the initial five (5)-year year period of the current proposed rate structure.

**Whereas**, the current rate structure provides insufficient revenue to meet the expenditure requirements of CSA 75. As a result, no reserves have been established to fund annual equipment maintenance and replacements costs as well as a capital improvement program. Since June 2012, the Board of Supervisors has authorized four (4) loans in the amount of \$1,166,483. The source of these loans was the Facilities Maintenance Project Fund, Fund 401 in the amount of \$ \$257,546 and the Capital Projects Fund, Fund 402 in the amount of \$ \$908,937. If the rate alternative selected does not include provisions for payback of the loans, the CSA will be unable to repay the loans made by the Capital Projects Fund.

**Whereas**, it is anticipated that future general fund contributions will be required to continue the operation of CSA 75 if there is no rate increase. These General Funds are typically identified as a loan and have been funded out of the Facilities Maintenance Project Fund, Fund 401, and the Capital

Projects Fund, Fund 402. Future sources of funds needed is unknown at this time as all funds within the Capital Projects Fund have been allocated to specific projects and there is no uncommitted fund balance remaining. Because of the health and safety requirements related to sewer operations, it is unlikely that the existing level of service can be reduced. CSA 75 also receives approximately \$4,000 per year in assessments specifically for street lighting. Current street lighting costs are about \$9,500 per year. Additionally, approximately \$24,500 in Assembly Bill 8 (AB 8) property tax revenue is received annually. These funds can be used for any CSA service and are currently used to fund street lighting costs that are not covered by the current street lighting assessment. The remainder is used to supplement the inadequate sewer fees. Without a rate increase, it may be necessary to divert all of the AB 8 revenue to fund sewer operations. Without a rate increase or General Fund supplement, revenue would still be inadequate to meet maintenance costs, even if half of the street lights in the CSA were to be turned off. Additionally, there would be insufficient funding for any emergency repairs.

**Whereas**, forgiving said loans totaling \$1,166,483, and increasing revenue through future subsidies pursuant to a finding that said actions constitute a public benefit, would maintain the provision of essential water, sewer and stormwater services to CSA 75 residents. Increasing revenue through future subsidies based on a finding that said actions would constitute a public benefit, would facilitate infrastructure capital improvements, cover repairs and maintenance costs, and allow improvements and upgrades on the existing aging infrastructure. Increasing revenue would ensure the water supply for CSA 75 is protected and kept safe.

**NOW, THEREFORE, BE IT RESOLVED**, that the Monterey County Board of Supervisors does hereby:

- a. Receive the County Service Area 75 – Chualar Consolidated Draft Wastewater Rate Study;
- b. Approve the Rate Alternative 1B – No Loan Payback, Three (3)-Year Phase-In; and
- c. Approve the forgiveness of four (4) loans totaling \$1,166,483, and
- d. Find that the forgiveness of said loans constitutes a public benefit.

**PASSED AND ADOPTED** on this \_\_\_ day of March, 2017, upon motion of Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, by the following vote, to-wit:

AYES:  
NOES:  
ABSENT:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original resolution of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book \_\_\_\_\_ for the meeting on \_\_\_\_\_.

Dated:  
Supervisors

Gail T. Borkowski, Clerk of the Board of  
County of Monterey, State of California

By \_\_\_\_\_  
, Deputy