

Meeting #556

CAPISTRANO BAY DISTRICT
AGENDA REPORT
February 23, 2010

Financial Reports

ITEM G.3

Possible Return to Participation in the Local Agency Investment Fund (LAIF)

The District's auditor recently forwarded the attached letter from the General Counsel of the Vallecitos Water District regarding the safety of investing surplus funds into LAIF. Included are current LAIF performance reports for comparison.

Last year the District opted to withdraw its reserves from LAIF due to concerns with the financial stability of the State of California which manages this investment program. On the advice of the District's Auditor, Charles Fedak & Associates, staff was asked to bring this information to the attention of the Board of Directors for consideration.

ITEM NO. G.3

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DATE: February 1, 2010
TO: Board of Directors, Vallecitos Water District
FROM: Jeffrey G. Scott, General Counsel
RE: Investment of District Surplus Funds in LAIF

At the January 11, 2010 Board Committee Workshop, a concern was raised relating to the security of the investment of District surplus funds in the state's Local Agency Investment Fund (LAIF). Given the state budget crisis, there was a concern that the Legislature and Governor could change the existing laws and either "borrow" or "raid" these funds for the benefit of the state.

Our office has reviewed the matter and based on the existing laws and the practicalities of this situation, it is clear that legally, the state could not attach these funds without passing a new bill and to the extent the legislation related to a budget bill it would require a 2/3 vote to pass the state Senate. Given the funds the District has invested are very liquid and can be withdrawn the same day, any type of legislative process would allow plenty of time for the District to withdraw its funds before any law could be passed.

Legally, Government Code §1623.3 specifically provides that the funds invested in LAIF are not subject to transfer or loan by the State or impoundment or seizure by any state official or agency. Moreover, Government Code § 16429.4 provides that the right to withdraw deposited funds from LAIF upon demand may not be altered, impaired or denied in any way by the state or a state agency based upon the state's failure to adopt a budget. This provision has also been upheld by the California Courts.

The issue of the security of the District funds invested in LAIF is separate and distinct from the issue of diversification which is a matter in the prudent discretion of the Board.

COMMITTEE MEETING 2/11/10
AGENDA ITEM 7