

STRADLING YOCCA CARLSON & RAUTH, P.C.  
660 NEWPORT CENTER DRIVE, SUITE 1600  
NEWPORT BEACH, CA 92660-6422  
SYCR.COM

NEWPORT BEACH  
RENO  
SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
SANTA BARBARA  
SANTA MONICA

BRIAN FORBATH  
949.725.4193  
BFORBATH@SYCR.COM

February 12, 2015



Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 "I" Street, 24th Floor  
Sacramento, California 95814

Re: *Board Date February 17, 2015*  
*Agenda Item No. 6*

Dear Ms. Townsend:

Stradling Yocca Carlson & Rauth, A Professional Corporation ("Stradling") serves as Bond Counsel to the City of Malibu ("Malibu"). We understand that the State Water Resources Control Board (the "Board") is considering certain amendments to its Policy for Implementing the Clean Water State Revolving Fund (the "Policy"). One of the proposed amendments to Policy is to add Section IX(B)(4)(c)(v), which states that "Assessment-backed financing will be a closed lien pledge. No additional debt will be permitted to be secured against the assessment." We urge the Board to reconsider the addition of this provision to the Policy.

**Background.** On September 21, 2010, the Board approved a Basin Plan Amendment that prohibits discharge of onsite wastewater disposal systems into existing dispersal fields in the Malibu Civic Center area. On June 27, 2011, the City Council of the City approved a Memorandum of Understanding ("MOU") between the City and the Regional Water Quality Control Board and the Board.

The MOU identifies the implementation schedule and plan to construct a centralized sewer treatment facility for the Civic Center Prohibition Area. The MOU requires the City to implement a wastewater treatment plant (the "Project") in a three-phased approach whereby the first phase requires certain properties in the Civic Center to be connected to a centralized wastewater treatment facility by June 2017.

The City has proactively been working towards meeting the June 2017 date in order to be in compliance with the deadlines imposed by the Board. The City must form an assessment

district to fund the wastewater treatment plant, which is estimated to cost \$45 million. The State Revolving Fund ("SRF") Loan program provides a low interest funding source that will make the project affordable for the property owners currently under the prohibition. Failure by the City to receive an SRF loan could dramatically affect the City's ability to successfully complete the project. Successful completion of this project is critical in improving water quality in the Southern California region as mandated by the SWRCB.

The City financed a portion of the initial design costs of the Project through the issuance of \$6,500,000 Community Facilities District No. 2012-1 of the City of Malibu (Malibu Civic Center Wastewater Treatment Plant Design Phase One) Special Tax Bonds, Series 2013 (the "CFD Bonds"). The community facilities district which issued the CFD Bonds covers only a portion of Phase I of the Civic Center Prohibition Area. The CFD Bonds served as a "bridge financing" and were intended to be refunded by assessment district bonds secured by assessments levied on all of the property within Phase I of the Civic Center Prohibition Area.

The City has been actively and cooperatively working with the Board's staff to complete its SRF loan application. During this process, the City has been told that the refinancing of the CFD Bonds is not a cost eligible to be refunded from proceeds of an SRF loan. Additionally, the City has been informed that, due to the assessment district structure and a current inability to pledge revenues from a system that has not yet been constructed, it would need to fund a reserve fund for the SRF loan in an amount equal to 1.5 to 2 times annual debt service on the SRF loan. The City has been informed by the Board's staff that the reserve fund is not eligible to be funded from proceeds of the SRF loan. Accordingly, the City has approximately \$10,000,000 in Project-related costs that are not eligible to be funded by the SRF loan. The sole source of funding for the Project is the proposed assessment district.

**Policy Amendments Jeopardize the Project.** Due to the limitations described above with respect to the use of SRF loan proceeds, the City has been working with Stradling and the Board's staff on a financing plan that would include a combination of publicly sold assessment bonds and the SRF loan to finance the Project. The assessment bonds and the SRF loan would be secured on a parity with one another on assessments levied on property within the proposed assessment district pursuant to the Municipal Improvement Act of 1913 (the "1913 Act") and the Improvement Bond Act of 1915 (the "1915 Act"). The amendments to the Policy as proposed would not allow such a structure. Additionally, the protections that the Board is seeking in such an amendment are already statutorily and constitutionally provided under the 1913 Act and Article 13D of the Constitution ("Prop 218"). Pursuant to the 1913 Act and Prop 218, an engineer's report must be prepared and approved in connection with the formation of any assessment district. The engineer's report must identify the project to be financed, the cost of the project and incidental expenses therewith and allocate or "spread" the special benefits of the project to all of the property within the assessment district. The "spread" of the special benefits is ultimately the assessment that is voted on by the property owners and if approved becomes a fixed lien on the property within the assessment district. Bonds (or an SRF loan) are issued in the amount of the fixed lien and are secured by the

State Water Resources Control Board  
February 12, 2015  
Page Three

assessment. There is no ability to increase the amount of the assessments without conducting new assessment proceedings in compliance with the 1913 Act and Prop 218.

The City is actively working on the formation of the assessment district and has engaged consultants and an assessment engineer to prepare the report required by the 1913 Act and Prop 218. The assessments will be for the entire cost of the Project and incidental expenses as ultimately detailed in the engineer's report. The proposed assessment bonds and the SRF loan will be for the entire amount of the assessments. The City will not have the legal authority to issue assessment bonds or enter into an SRF loan in an amount in excess of the assessments. Accordingly, the Board is statutorily and constitutionally protected from a dilution of its credit, and the "closed lien pledge" as proposed in the amendments to the Policy does not provide the protection it is intended to provide. Most importantly, the proposed amendment to the Policy would prohibit the type of financial flexibility that the Board and municipal issuers need in order to finance challenging and important projects like the Project and to overcome the funding constraints imposed by other aspects of the Policy (i.e., no funding of a reserve fund or refinancing of existing debt from SRF loan proceeds). If the Policy amendments are adopted, the City would have to forego SRF loan funding and seek financing for the entire Project from the public market at a significantly higher cost, which could jeopardize the support of property owners within Phase I of the Civic Center Prohibition Area of voting in favor of the assessment district.

The City greatly appreciates the cooperation the Board and Board staff have provided in trying to finance the Project. We hope you will strongly consider the concerns we have raised in connection with the proposed amendments to the Policy, and we urge the Board not to add Section IX(B)(4)(c)(v). Should you have any additional questions or need any additional information, please do not hesitate to contact me or Jim Thorsen, City Manager of the City of Malibu, at (310) 456-2489.

Very truly yours,

STRADLING YOCCA CARLSON & RAUTH



Brian Forbath

BPF:pm

Cc: Jim Thorsen, City Manager  
Reva Feldman, Assistant City Manager  
Christi Hogin, City Attorney