## REVISED STAFF REPORT

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| **Agenda Item:** |  | **Name:** | Beth Mountsier |
| **Proposed No**.: | 2015-0331 | **Date:** |  |

**COMMITTEE ACTION**

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| ***Proposed Substitute Ordinance 2015-0331.2 passed out of committee on May 11, 2016 with a “Do Pass” recommendation and was expedited to full Council. The motion was amended in committee with Amendment 1 to replace a placeholder attachment with the actual loan agreements with the Department of Ecology.*** |

**SUBJECT**

AN ORDINANCE authorizing the executive to enter into two agreements with the Washington State Department of Ecology for loan financing for two wastewater capital projects.

**SUMMARY**

Proposed Ordinance 2015-0331 authorizes the executive to enter into loan agreements with the Washington state Department of Ecology (Ecology) for a total of approximately $40 million in loan financing. The loans are estimated to save King County over $19.24 million in interest expense over 30 years compared to conventional bond financing, for a net present value of over $8.6 million in 2015 dollars. Amendment 1 inserts the actual loan agreements for the Murray and North Beach projects, replacing a placeholder document.

**BACKGROUND**

The State Revolving Fund (SRF) Loan

The State Water Pollution Control Revolving Fund, created by the Legislature in 1988, is intended to “provide financial assistance to…local governments for…water pollution control facilities…for the protection of the state's waters.” The state’s Department of Ecology administers the loan program, and accepts and reviews applications for funding water pollution control projects.

In July 2015, the county received a final SRF loan offer from the state Department of Ecology for two projects in the construction phase, contingent upon signature of a loan agreement by both parties. Authorization for the loan agreements is the subject of this proposed ordinance. The following projects have been awarded SRF loans for state fiscal year 2016.

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| Murray Overflow (CSO) Control Project Construction  This project includes the construction below grade of a new one million gallon combined sewage storage tank and connection of the tank to the existing Murray Avenue pump station and influent sewers. The work includes construction of a concrete storage tank structure 67 feet in depth; above and below grade structures on the storage tank site housing odor control, mechanical, electrical, and standby power generator equipment. The project includes construction of influent and diversion sewers, manholes, smaller sewer pipes, and ancillary piping, electrical ducts and odor control system duct connections to the existing wet well. Modifications to the existing Murray Avenue pump station include reconfiguration of electrical connections and new equipment. The overall goal of this project is to limit CSOs to no more than one untreated discharge per year on average. | Loan amount |
| $30,876,256 |
| North Beach CSO Control Project Construction  This project includes the construction of a new 0.23 million gallon underground storage tank located in Triton Drive NW and NW Blue Ridge Drive public right-of-way to control combined sewer overflows (CSOs) at the North Beach CSO basin. This facility will be able to store to 380,000 gallons of untreated water during peak flows when the North Beach Pump Station reaches maximum capacity. The overall goal of this project is to limit CSOs to no more than one untreated discharge per year on average. | Loan amount  $9,136,058 |

**ANALYSIS**

Savings

The estimated savings on utilizing SRF loan financing instead of standard bond financing are detailed in the fiscal note. For these two projects, the 2.4 percent interest loan agreements are estimated to save King County a total of over $19.24 million in interest expense over 30 years, at a present-day value of $8.6 million in savings in 2015 dollars.

The use of alternative financing reduces expenses, which helps to keep wastewater treatment rates lower.

Loan Requirements

The proposed SRF loan comes with various requirements, including quarterly reporting to the state and completion of the project in accordance with the proposed timeline and scope. WTD does not anticipate any difficulties in complying with the project completion deadlines for the loans. WTD’s grant administration infrastructure should be able to meet loan requirements with a minimum of added cost. Therefore, there are no additional expenses in accepting this SRF loan compared to conventional bond financing.

Loan Agreement Organization and Specific Requirements

Ecology moved to a digital format for development and approval of new loan agreements in the last several years. Ecology has also been updating and revising its loan agreements. Though the SRF loans were approved for these projects as of July 2015, WTD did not receive the proposed loan documents until February 2016. They were then forwarded to Council staff.

Council staff noted at the time that the organization and some of the specifics of the 2016 proposed loan agreements had changed substantially from the 2015 version of the loan agreement approved by the Council the year before.

Council staff requested and received an analysis from the WTD staff regarding WTD’s assessment of the potential impact of any of these changes in organization and specific requirements of the agreement with regard to utilizing the loans for the Murray or North Beach projects. *WTD reports that none of the changes in the proposed agreements have an impact on their utilization of the loans for these projects.*

Briefly noted are some of the changes – all of which WTD reports have no impact on their loan utilization for the Murray and North Beach projects:

* Added definitions of terms that are used in the 2016 agreement;
* Sections of the agreement have been moved to a different section in the 2016 agreement;
* Section 2 regarding Best Management Practices (BMP) implementation is moved from Section 3, and noted for application to certain types of projects only;
* Section 2 regarding Cultural and Historic Resources Protection Compliance with Environmental Laws and Regulations has been ‘enhanced’. A loan recipient is required to develop a complete Inadvertent Discovery Plan (IDP) and there is an added requirement regarding a notifications list;
* Section 2 regarding Electronic Fund Transfers is new in Section 2 (WTD already utilizes this function);
* Section 2 regarding Lobbying and Litigation is new and restricts loan proceeds from being used in this manner;
* Section 2 regarding Project Status Evaluation and Technical Assistance are moved from Section 3 in the 2015 agreement;
* Some of Sections 4 and 5 of the previous agreement have combined into Section 3;
* Section 4 regarding Audit Requirements is different than requirements in the 2015 agreement. (The new audit requirements have no impact on WTD since the division already complies with the new audit standards);
* Section 4 regarding Archeological Resources and Historic Properties is new but references the earlier Section 2.C of the 2016 agreement;
* Section 4 also includes new language regarding a “Consultant Cap” limiting expenses for consultants. (WTD reports this has no impact);
* Section 4 requires use of a Data Universal Numbering system (DUNS) and Central Contractor Registration (CCR);
* Some of the General Terms and Conditions regarding Disadvantaged Business Enterprise, and Non-discrimination Provisions have been moved to Section 4 of the 2016 Agreement;
* Section 4 also now includes compliance with the Hotel-Motel Fire Safety Act for conferences/meetings associated with the projects and prohibitions on Trafficking in Persons by the loan recipient and recipient employees;
* Section 5 regarding Sewer-Use Ordinance or Resolution – if not already in existence the loan recipient shall adopt and enforce a sewer-use ordinance or resolution – with the ordinance including a provision to “require connections necessary to meet debt obligations associated with the planning and construction of this facility as well as the expected costs of operation and maintenance”;
* General Terms and Conditions there is new language regarding any communications intended for public distribution that use Ecology’s logo must comply with the agency’s graphic requirements.

Legal Review

Legal counsel reviewed the agreements and identified a number of provisions that are inconsistent with county code or that have been left without necessary dates of deliverables filled in. Legal counsel recommended that these issues should be corrected and clarified. WTD and Ecology have indicated that although they may consider changes to the contract language for the next fiscal year, in their view it is not possible to revise or complete the form loan agreement as provided by Ecology within the short time left before the end of the current state fiscal year. WTD and Ecology staff have stated that they do not view correcting these issues as being necessary for approval of the loan agreements for these two projects.

Timing

The ordinance needs to be approved and in effect in order for the WTD Director to sign the loan agreements and for the Department of Ecology to release the funds. To secure the loans they reportedly must be signed by June 30, 2016.

**AMENDMENTS**

There is an amendment in the packet. Amendment 1 replaces the placeholder agreement with the actual agreements sent from the Department of Ecology in February.