WASHOE COUNTY

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STAFF REPORT
BOARD MEETING DATE: October 14, 2014

DATE: September 22, 2014

TO: Board of County Commissioners

FROM: Dave Solaro, Arch., P.E., Director
Community Services Department, 328-2040, dsolaro@washoecounty.us

THROUGH: Kevin Schiller, Assistant County Manager

SUBJECT: Introduction and first reading of an an Ordinance amending Chapter 40 of the Washoe County Code (water and sewage) by authorizing the Truckee Meadows Water Authority (TMWA) to participate in the Water and Sanitary Sewer Financial Assistance Program by allowing eligible residential property owners to obtain a loan funded by and to connect to TMWA's retail water service facilities, revising the dollar threshold for County Commission loan approval; and other matters properly related thereto. (All Commission Districts.)

SUMMARY
The purpose of this report is to support the merger of Washoe County Community Services' Water Utility (CSWU) with the Truckee Meadows Water Authority (TMWA) by recommending the Board of County Commissioners (Board) approve amendments to the Washoe County Code (WCC) regarding the Water and Sanitary Sewer Financial Assistance Program. The proposed WCC amendment would authorize eligible owners of residences with a private water system (i.e., a domestic well) to obtain funding from TMWA for a Washoe County loan to pay for the private costs to connect the residence to the facilities in street that are a part of the public water system.

This report is the first report in a series of three recommendations regarding TMWA's participation in the loan program. The second report includes a recommendation to approve an Interlocal Agreement (ILA) that establishes the terms and provisions for TMWA to participate in the County's Water and Sanitary Sewer Financial Assistance Program. The third report includes a recommendation to amend the County's Water and Sanitary Sewer Financial Assistance Program Policies and Procedures to accommodate TMWA's Role in those policies and procedures.

There will be no change to the terms or conditions of the 13 existing loans made under the Water and Sanitary Sewer Financial Assistance Program.

The adoption of this ordinance does not impose, increase or change the basis of calculation of a fee that is paid in whole or in substantial part by a business. There is no

AGENDA ITEM # 19

economic burden on the formation, operation or expansion of a business, and therefore, no business impact statement is required.

Washoe County Strategic Objective supported by this item: Sustainability of our financial, social and natural resources.

PREVIOUS ACTION

On December 9, 2009, the Board entered into an interlocal agreement with the TMWA Board of Directors governing a proposed merger of CSWU.

On July 27, 2010, the Board approved Ordinance 1449 establishing the Water and Sanitary Sewer Financial Assistance Program and the policies and procedures to administer the program.

On March 19, 2014, The Board and the TMWA Board of Directors held a joint meeting and directed staffs from both entities to complete the merger with an anticipated closing date to occur in December 2014.

BACKGROUND

At the direction of the Board, Washoe County staff has been working on a merger of CSWU with TMWA since 2008. On December 9, 2009, the Board entered into an interlocal agreement with the TMWA Board of Directors governing a proposed merger of the CSWU. From that point forward County and TMWA staffs have been working diligently to complete the merger of the two water utilities.

Staffs from the two entities have been reviewing the Washoe County Code in conjunction with the water utility merger. A small but important element of the CSWU operation is the option for Washoe County, when considered necessary, to offer eligible owners of residential properties with a failed or failing private water system (i.e., a domestic well) a loan to pay for the cost to connect to the public water system operated by CSWU. Washoe County provides those loans through the Water and Sanitary Sewer Financial Assistance Program, the authority of which was permitted by AB 54 (2009 Legislative Session). This legislation allows only a public water or sewer system operated by Washoe County to provide loans to qualified owners of residences to connect to the County's water or sewer systems, which was subsequently enacted in Ordinance 1449 on July 27, 2010, formally establishing the program in Washoe County Code Chapter 40.

Chapter 277 of the Nevada Revised Statutes authorizes public agencies to enter into interlocal and cooperative agreements to perform governmental functions. Staff is recommending WCC Chapter 40 be amended to authorize eligible owners of residences with a private water system (i.e., a domestic well) to obtain a loan from TMWA through Washoe County to pay for the cost to connect to the public water system operated by TMWA. In addition to the proposed WCC amendments, a separate report to the Board will include a recommendation to approve an Interlocal Agreement with TMWA that will establish the mechanism for TMWA to provide funding for use in the Financial Assistance Program and set forth the terms and provisions regarding the administration and implementation of the program. Finally a third report will include a recommendation

to amend the County's Water and Sanitary Sewer Financial Assistance Program Policies and Procedures to accommodate a role for TMWA in this program.

The proposed amendments to WCC include the following:

- ✓ Identify the Interlocal Agreement (ILA) between Washoe County and TMWA regarding the administration of a Water Financial Assistance Program.
- ✓ Define "Public Water System" to include the facilities of TMWA.
- ✓ Authorize the Community Services Department (CSD) Administrator to approve loans up to $50,000, changed from a previous limit of $25,000, or in any amount authorized in the ILA with TMWA.
- ✓ Change the reporting to the Board of County Commissioners from a quarterly basis to a yearly basis.
- ✓ Require the CSD Administrator to establish policies and procedures, approved by the Board, that are required by the ILA with TMWA.
- ✓ Expand program funding to include financing from TMWA, subject to the terms and conditions of the ILA.
- ✓ Establish the interest rate for a loan funded by TMWA as the average interest rate of the fixed rate debt of TMWA.

The proposal to include TMWA in the loan program will still allow the County to provide the loan to connect a residence to the public water system but require the connection to be subject to the ILA regarding TMWA's construction requirements. In addition, if TMWA funding is used the County will retain a 1% fee for administration the loan as authorized in the ordinance. Finally, an important consideration by TMWA to participate in this program is the County's authority to have the loan be secured by real property and the County's ability to collect loan payment delinquencies on the property tax roll.

FISCAL IMPACT

As of March 31, 2014, thirteen applications for the Water and Sanitary Sewer Financial Assistance Program have been approved with eight connecting to the County's water system and five connecting to the County's sewer system. The total original principal amount of the thirteen loans is $163,066.66, comprised of $91,924.61 for water and $71,142.05 for sewer connections. Two of the water connections have occurred in Callhan Ranch, five in Lemmon Valley and one in Spanish Springs. The average loan amount to connect to the water system is approximately $11,500, with the highest loan of $15,441 and the smallest loan $5,164.

Upon approval of the proposed amendment to WCC Chapter 40 and the close of the merger, the County's cost to administer the loans funded by TMWA will be offset by a 1% loan administrative fee paid by the property owners participating in the program and will be retained by the County.

RECOMMENDATION

It is recommended that the Board of County Commissioners hold and introduction and first reading of an an Ordinance amending Chapter 40 of the Washoe County Code (water and sewage) by authorizing the Truckee Meadows Water Authority (TMWA) to participate in the Water and Sanitary Sewer Financial Assistance Program by allowing

eligible residential property owners to obtain a loan funded by and to connect to TMWA's retail water service facilities, revising the dollar threshold for County Commission loan approval; and other matters properly related thereto.

POSSIBLE MOTION

It is recommended the Board of County Commissioners hold and introduction and first reading of an an Ordinance amending Chapter 40 of the Washoe County Code (water and sewage) by authorizing the Truckee Meadows Water Authority (TMWA) to participate in the Water and Sanitary Sewer Financial Assistance Program by allowing eligible residential property owners to obtain a loan funded by and to connect to TMWA's retail water service facilities, revising the dollar threshold for County Commission loan approval; and other matters properly related thereto.

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REGULAR TEXT: NO CHANGE IN LANGUAGE
~~STRIKEOUT TEXT~~: DELETE LANGUAGE
RED TEXT: NEW LANGUAGE
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SUMMARY: An ordinance authorizing the Truckee Meadows Water Authority to participate with Washoe County in the residential Water and Sanitary Sewer Financial Assistance Program.

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 40 OF THE WASHOE COUNTY CODE (WATER AND SEWAGE) BY AUTHORIZING THE TRUCKEE MEADOWS WATER AUTHORITY TO PARTICIPATE IN THE WATER AND SANITARY SEWER FINANCIAL ASSISTANCE PROGRAM BY ALLOWING ELIGIBLE RESIDENTIAL PROPERTY OWNERS TO OBTAIN A LOAN FUNDED BY AND TO CONNECT TO THE TRUCKEE MEADOWS WATER AUTHORITY'S RETAIL WATER SERVICE FACILITIES, REVISING THE DOLLAR THRESHOLD FOR COUNTY COMMISSION LOAN APPROVAL AND OTHER MATTERS PROPERLY RELATED THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WASHOE DO ORDAIN:

SECTION 1. Sections 40.335, 40.336, 40.337, 40.339, 40.340, 40.342, 40.343 and 40.346 of the Washoe County Code are hereby amended to read as follows

40.335. Purpose and Authority. The Nevada State Legislature of 2009 enacted Assembly Bill 54, Chapter 365, Statutes of Nevada, 2009, which was later added to Chapter 244 of the Nevada Revised Statutes as NRS 244.3651 and NRS 244.3653, respectively. NRS 244.3651 authorizes counties with populations between 100,000 and 400,000, as may be amended from time to time, to establish a financial assistance program by ordinance for residential property owners, who desire to abandon their private on-site domestic wells or septic systems and connect to Public Water or Sewer Systems, thereby protecting and conserving groundwater resources in the region. The purpose of this Ordinance and new section of Chapter 40 is to:

1. Establish rules and regulations governing the administration of the "Water and Sanitary Sewer Financial Assistance Program" and ensure that these rules are applied in a non-discriminatory manner to all eligible residential property owners.

2. Ensure that available financial assistance in the form of ~~loans~~Loans are exclusively used to pay actual and necessary costs and expenses to:

(a) disconnect from a Private Water or Sewer System;

(b) eliminate, decommission or properly abandon a Private Water or Sewer System; and

(c) connect to a Public Water or Sewer System.

3. Ensure that ~~loan~~Loan amounts, fees, charges, costs, and any delinquencies, including penalties and interest, are repaid in accordance with this Ordinance and the terms and conditions of the ~~loan~~Loan agreements, notes, and related documents.
['2, Ord. No. 1449]

40.336. Finding of Public Purpose and Benefit. Based on evidence provided at public hearings, the Board hereby finds and determines as follows:

1. As of 2009, it is estimated that several thousand parcels in the Truckee Meadows Service Area of Washoe County are being served by domestic wells, on-site septic systems, or both.

2. Based on studies performed and data reviewed by ~~the~~ Washoe County~~ Department of Water Resources~~, domestic wells in the southern portion of Washoe County have failed or no longer provide safe drinking water because of over-appropriation of groundwater resources, declining water tables, poor water availability due to geologic structure, and/or water quality issues caused by natural contaminants or groundwater contamination caused by septic system effluent. These various conditions pose a direct threat to the public's health, welfare and safety.

3. Converting parcels served by domestic wells or on-site septic systems to available Public Water or Sewer Systems, where such systems are or can reasonably be made available, would substantially reduce the impacts to property owners of overappropriation of groundwater resources, declining water tables and contamination that threaten the public health, welfare and safety. Cost estimates, however, for converting a significant number of these parcels to available Public Water and Sewer Systems indicate that the per parcel cost ranges from $15,000 to $30,000 to connect a parcel to each utility system, with a cumulative total cost of approximately $600 million for converting all such parcels to a public or private utility service provider designed to serve in the area. Many residential property owners do not have the financial means of paying these significant up-front costs associated with conversion to Public Water and Sewer Systems, especially under economic conditions that include high unemployment and depreciating property values.

4. For the foregoing reasons, the Board finds that it is necessary to establish a program to offer available financial assistance to eligible residential property owners to serve the public purpose and benefit of assisting property owners desiring to convert from Private Water and Sewer Systems to Public Water and Sewer Systems in order to protect and promote the health, welfare and safety of its citizens.
['3, Ord. No. 1449]

40.337. Establishment of Financial Assistance Program. The Board hereby establishes a program to provide financial assistance in the form of ~~loans~~Loans issued to eligible owners of

residential property, who desire to convert from a private onsite domestic well or septic system to a reasonably available Public Water or Sewer System. ~~In~~In order for property owners to be eligible in basins where financial assistance for domestic well conversions is proposed, a plan for the protection and sustainable management of groundwater of such a basin ~~shall be~~must have been established~~, and from time to time amended~~ by the Public Water System purveyor.
['4, Ord. No. 1449]

40.339. Definitions.

1. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Chapter 244 of the NRS, as amended, and, if not defined therein, their common and ordinary meaning.

2. "Administrator" means the Director of the Washoe County Community Services Department~~ of Water Resources~~ or designee.

3. "Board" means the Board of Washoe County Commissioners as the legislative body of the county.

4. "Code" means the official code of the county's ordinances of a general and permanent character, as may be adopted and amended by the Board.

5. "Contractor" means a Nevada State licensed and duly qualified contractor who is authorized to perform the work and services related to the abandonment, decommissioning and conversion of a private water or sewer system to a ~~public water~~Public Water or ~~sewer system~~Sewer System.

~~6.~~ 6. "Interlocal Agreement" means the Interlocal Agreement Regarding Administration of Water Financial Assistance Program between Washoe County and the Truckee Meadows Water Authority, as amended from time to time.

7. "Loan" means the extension of credit or financing of principal, interest, fees and charges, of whatever kind and in whatever amount, issued by the county from the Water ~~or Sewer Utility Enterprise Fund~~ Resources Fund or pursuant to the Interlocal Agreement for the exclusive purpose of providing financial assistance to eligible property owners under this Program.

~~7~~8. "Loan Package" means the Financial Assistance Program application, security agreement, promissory note, deed of trust and all other documentation, reports, authorizations, letters or requests for information required by the Administrator.

~~8~~9. "Private Water System" means an on-site domestic well, and any facility or facilities related thereto, that serves potable water to an existing residential dwelling unit.

~~9~~10. "Private Sewer System" means an on-site sewage or septic system, and any facility or facilities related thereto, that serves an existing residential dwelling unit for the disposal, collection, storage or treatment of sewage.

~~10~~11. "Public Water or Sewer System" means ~~Washoe County~~ a water ~~or sewer system~~ facility or facilities of the Truckee Meadows Water Authority or a sewer facility or facilities of the Washoe County sewer system for the collection, pumping, treatment, storage or conveyance of potable water or sewage and

includes, without limitation, mains, conduits, aqueducts, pipes, pipelines, ditches, canals, pumping stations, and all appurtenances, equipment and machinery necessary, useful and convenient for obtaining, storing, transporting or transferring water or sewage.

~~11~~12. "Reasonably Available" means that the residential property abuts or is within 400 feet of a Public Water or Sewer main, transmission or distribution line, and the residential property has legal access to the Public Water or Sewer System through either a public street, road or right-of-way, or through a ~~temporary construction and/or~~ permanent easement.

~~12~~13. "Truckee Meadows Service Area or TMSA" shall mean the defined area, as amended from time to time, within which municipal services and infrastructure will be provided and which boundary is intended to guide orderly urban and suburban development within the Truckee Meadows area.
['6, Ord. No. 1449]

40.340. Administrator's Program Authority.

1. Authority to Award Loan Commitments up to $~~25~~50,000. Subject to and in accordance with the eligibility criteria and requirements set forth in this Ordinance, the Board hereby authorizes the Administrator or designee to enter into Loan commitments with eligible residential property owners in amounts of $~~25~~50,000.00 or less~~.~~, or in such other amounts to the extent authorized in the Interlocal Agreement. For all other Loan commitments in amounts that exceed $~~25~~50,000.00, Board authorization shall be required.

2. Authority to Implement Administrative Regulations and Policies. The Administrator shall establish and implement regulations, policies and procedures regarding the administration of this Program~~.~~ and those policies and procedures required by the Interlocal Agreement. Program regulations, policies and procedures shall include, but not be limited to, the responsibility for: receiving and processing applications; developing and providing Loan funding and repayment terms, conditions, and specifications; awarding Loans; monitoring construction; approving disbursements of Loan funds for authorized expenditures; establishing mechanisms for the collection of Loan payments; and administering the repayment of delinquencies under this Ordinance. Regulations, policies and procedures shall be adopted by the Board prior to implementation and shall be consistent with the provisions of this Ordinance and NRS 244.3651.

3. Accounting. Funds used to support this Program shall be accounted for separately and in accordance with generally accepted accounting principles.

4. Reporting. The Administrator shall report to the Board on a ~~quarterly~~ yearly basis on the activities associated with this Program, including new ~~loans~~Loans made and ~~loan~~Loan repayment activity.
['7, Ord. No. 1449]

40.342. General Eligibility for Loans and Program Funding.

Loans shall be made subject to the following general eligibility requirements and Program funding terms and conditions:

1. Applicant. To qualify for financial assistance under the Program, the applicant must submit, upon verification by the Administrator, a certified copy of the deed from the Washoe County Recorder that evidences he/she is the current record owner of the residential property to be converted to the Public Water or Sewer System. An applicant must be current and not delinquent in payment of all Washoe County property taxes, fees and assessments, and payment of any existing mortgage, deed of trust, promissory note or other security instrument or agreement, if any.

2. Residential Property. The applicant's residential property must be currently served by a Private Water or Sewer System and must be reasonably available to a Public Water or Sewer System. For purposes of this Ordinance, "reasonably available" means that the residential property abuts or is within 400 feet of a Public Water or Sewer main, transmission or distribution line, and the residential property has legal access to the Public Water or Sewer System through either a public street, road or right-of-way, or through a ~~temporary construction and/or~~ permanent easement. The residential property to be improved and connected to the Public Water or Sewer System must contain a permanent residential structure or mobile or manufactured home with a permanent foundation and must be assessed as real property by the Washoe County Assessor.

3. Program Funding. The Program may be funded by any combination of grants, gifts, financing from the Truckee Meadows Water Authority pursuant to the Interlocal Agreement, or other available monies on hand or accepted by the Board. The Administrator is encouraged to obtain additional funding in the form of grants or gifts to be used for the exclusive purpose of reducing Loan amount commitments to eligible property owners under this Program. Program funding is subject to availability. Grant funding, if available, is subject to the terms and conditions of the grant and shall be apportioned equally and uniformly to benefit each eligible property owner in accordance with the purpose, terms and conditions of the grant. Funding from the Truckee Meadows Water Authority, if available, is subject to the terms and conditions of the Interlocal Agreement. ['9, Ord. No. 1449]

40.343. Financial Assistance Application Process. An applicant must satisfactorily complete and submit the applicable Program forms and fees to the Administrator before being considered eligible for financial assistance.

1. Loan Package and Program Funding Forms. The Administrator shall prescribe and make available to applicants Loan Package and Program forms.

2. Application Fee. All applicants for financial assistance shall be charged a standard, non-refundable application fee, which amount shall be established by the Administrator on an annual basis each July. The standard application fee shall be used to pay standard costs for processing the application and

issuing financial assistance, including, but not limited to, all costs of administration, authorization, obtaining credit or other reports, certifications or other documents, and ~~loan~~Loan set-up fees.

3. Priority. Except as otherwise provided in this subsection, a Program application, together with the standard application fee, will be rated on a first-come, first-serve basis as of the date a completed and submitted application is received by the Administrator, with priority determined as of the date of the application's postmark, receipt date of facsimile or electronic mail transmission or hand delivery date stamp received.

4. Emergency Conditions. The Administrator or designee shall have the discretion to offer financial assistance to an eligible residential property owner who does not have priority status based upon the Program application's date of receipt, if:

(a) All other general eligibility requirements have been satisfied; and

(b) An emergency condition exists or is likely to exist, which necessitates providing the residential property owner with financial assistance, if the residential property owner's Private Water or Sewer System fails to operate and an imminent and substantial endangerment to the environment or to the health, safety and welfare of persons requires immediate action.

5. Acceptance of Application Not a Final Determination of Financial Assistance Granted. Receipt and acceptance of a Program application for financial assistance indicates only a determination that the application has been satisfactorily completed and that it is generally eligible, but does not constitute or imply a commitment of the Board to provide financial assistance, and shall not be construed as such until issuance of a final written determination. Applications will be accepted by the Administrator or designee until Program funding or credit for Loans is no longer available.

6. Denials. Letters of denial will be issued to applicants who are not qualified stating the reason for denial.

7. Withdrawal of Application. An applicant may decline financial assistance or withdraw a Program application at any time prior to disbursements of funds for any reason or no reason at all. Applicants who withdraw an application at any stage in the process shall not be entitled to a refund of the standard application fee.

['10, Ord. No. 1449]

40.346. Loan Commitments.

1. Loan Commitment. Upon submission of an application for financial assistance under this Program, the Board or Administrator or designee, as authorized by the Board, may approve the issuance of a Loan to an eligible applicant, subject to payment of a Loan Administrative fee described in 40.346(4). If a Loan under this Program is authorized, the residential property owner must execute applicable Loan Package documents, in the form of a promissory note and deed of trust or such other similar instruments, to pledge the real property as security for

the Loan. Interest rates charged on Loans issued under this Program shall be determined by the county and may be subject to modification pursuant to the terms and conditions of the Loan agreements, instruments and documents.

2. Contractor Agreements with Residential Property Owner. Except as otherwise provided in this Ordinance, when a Loan commitment is authorized, the owner of the residential property shall enter into an appropriate agreement with the Contractor to perform and complete the work or services authorized under this Program. The Board, Administrator or any other county officer or representative shall not be a party or a third party beneficiary to any such agreement.

3. Loan Disbursements. The Board hereby authorizes the Administrator or designee to determine whether invoices and amounts submitted for payment qualify as Authorized Expenditures under the Program. After the Administrator or designee determines such invoices and amounts qualify as Authorized Expenditures, Loan disbursements for such amounts shall be made directly and only to the residential property owner, but only after a further determination is made by the Administrator or designee that all abandonment and conversion work or services of a Private Water or Sewer System to a Public Water or Sewer System have been performed and completed satisfactorily and in accordance with applicable public works and utility standards. Loan disbursements shall only be made to a loan applicant or applicants.

4. Loan Administrative Fee~~.~~ and Interest Rate. Each recipient of a Program Loan shall be charged a Loan Administrative Fee in the amount of one percent (1%) interest above the Loan interest rate~~-~~. The interest rate charged on the Loan shall be based on the weighted average ~~cost~~interest rate of debt within the County's ~~Department of~~ Water Resources Fund, or, if applicable, the weighted average interest rate of fix rate debt of the Truckee Meadows Water Authority pursuant to the Interlocal Agreement, which is recalculated at the beginning of each fiscal year, for ~~loans~~Loans made using cash on hand. ~~This loan~~The Loan administrative fee shall be incorporated into the ~~loan~~Loan interest amount appearing on billing statements. The Loan Administrative Fee shall be used to pay the costs of issuing and servicing the ~~loan~~Loan, including, but not limited to, all costs of billing and collecting payment related to the ~~loan~~Loan. ['13, Ord. No. 1449]

SECTION 2. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance

SECTION 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases, or sentences contained in the Washoe County Code in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall be published by title only, together with the names of the County Commissioners voting for or

against its passage, in a newspaper published in and having a general circulation in Washoe County, Nevada, at least once a week for a period of two (2) weeks, and shall be in force and effect thereafter.

[Business Impact Note: The Board of County Commissioners hereby finds that this ordinance does not impose a direct and significant economic burden upon a business, nor does it directly restrict the formation, operation or expansion of a business.]

Proposed on the _____ day of _____, 2014.
Proposed by Commissioner _____.
Passed on the _____ day of _____, 2014.

Vote:
Ayes:
Nays:
Absent:

_____
David Humke, Chairman
Washoe County Commission

_____
Nancy Parent, County Clerk

This ordinance shall be in force and effect from and after the ____ day of _____