

Measure M Litigation Status and Implications

Measure M Background (1)

- 60 years: transfers for operations from Water/Sewer and Gas funds
- 2016 - Lejins lawsuit challenged the long-standing water/sewer transfers
- 2017 settlement – City agreed to only transfer when supported by costs (nexus).
\$8 million annual loss in water/sewer revenue
- 2018 - Measure M restored historical transfer – added a 12% of revenue limit
- 2019 - second Lejins lawsuit alleged Measure M Water/Sewer (only) violated Proposition 218
- 2019 (December) - Superior Court ruled against Sacramento in litigation on a case similar to the second Lejins lawsuit

Measure M Background (2)

- 2020 (January)- Superior Court rules in favor of Lejins but did not rule whether transfers and expenditure of the transfers could continue pending City's appeal
- 2020 (February) – City appeals to Appellate Court
- 2020 – The Superior Court issued a ruling that transfers could be temporarily continued and expended, but required increasing escrows of the amount collected
- In FY 20 (ending 9/30/20), \$3 m of the transfer had to be escrowed; in FY 21, \$6 m of the transfer must be escrowed; and from FY 22 on, all transfers not supported by a nexus study (showing costs incurred) need to be escrowed – estimated at approximately \$9 m a year

Measure M Background (3)

- November 2020 – Appellate Court reversed Sacramento Superior Court decision, supporting Sacramento's position and making it much more likely that Long Beach will prevail in the 2nd Lejins litigation
- December 2021 – Appellate Court decision expected
- The loser of the Appellate Court decision is considered likely to appeal to the California Supreme Court
- A future revised ballot question is unlikely to be able to resolve an adverse decision – revenue will likely be lost if adverse decision
- Water Commission authorized an FY 21 transfer of \$2 m less than the City budgeted in FY 21. Expected to be only a one-year reduction

The Appeal

- Better than a 50% chance of City prevailing in the appeal process
- Appellate Court decision likely by end of 2021 - not in time for FY 22 budget adoption
- Supreme Court decision likely 12-18 months after Appellate Court decision (if Supreme Court takes the case) – by mid 2023 – in time for FY 24 budget

Status

- \$9 m a year in revenue from the Water/Sewer Funds is at risk
- \$3 m in General Fund transfer revenues escrowed in FY 20
- \$6 m in General Fund revenues will be escrowed in FY 21
 - Escrow was factored into the FY 21 budget (not a structurally solved budget)
- \$9 m required to be escrowed in FY 22 on (per Superior Court ruling)
 - FY 22 proposed budget will assume that Judge will vacate that ruling and that the net transfer will be available to support operations
- The FY 22 and out-year projections assume the City will prevail (although no final decision is expected until Supreme Court rules sometime in 2023)

Outcome Scenarios and Their Fiscal Impacts

- #1. City Prevails at Appellate Court and Supreme Court
 - City will have \$9 m in escrowed funds to be expended on one-times
 - No change in out-year budget projections (already assumes City prevails)
- #2. City Loses at Appellate Court but (Later) Prevails at Supreme Court
 - City will have a \$9 m shortfall in FY 22 at mid-year
 - The FY 23 projected shortfall will be worse by \$9 m (approx. \$46 m), if the \$9 m FY 22 shortfall is not structurally resolved in FY 22
 - For FY 24, City will potentially have \$27 m (FY 20 through FY 23 escrows) in one-time funds after Supreme Court decision
 - Will reverse the FY 23 shortfall increase and have a positive impact on FY 24 updated projection if Supreme Court decision issued in time

Outcome Scenarios and Their Fiscal Impacts (2)

- #3. City Loses at Appellate and Supreme Court
 - City will have a \$9 m shortfall in FY 22 at mid-year
 - The FY 23 projected shortfall will be worse by \$9 m - approx. \$46 m - if the FY 22 \$9 m shortfall is not structurally resolved in FY 22
 - City will potentially have to repay \$25 m in spent but un-escrowed funds (FY 18 through FY 21 – assumes City escrows \$9 m in FY 22)
 - Judgment bonds are a likely solution increasing structural costs in difficult years by about \$2 m (20 year term) to \$3.5 m a year (10 year term)

Outcome Scenarios and Their Fiscal Impacts (3)

- #4 City Prevails at Appellate Court and Loses at Supreme Court
 - City will have \$9 m in escrowed funds (from FY 20 and FY 21) in FY 22 that could be spent, but is assumed to be held until Supreme Court decision
 - Budget projections for FY 24 will become worse by \$9 million
 - City will potentially have to repay \$42 m in spent but un-escrowed funds
 - Judgment bonds are a likely solution increasing structural costs in difficult years by about \$3.5 m (20 year term) to \$6 m a year (10 year term)

Conclusions

- The Measure M (Lejins) litigation is a major financial issue
- The Budget Office is relying on the Appellate Court Sacramento decision and a City Attorney assessment of a “better than 50/50 chance of prevailing” in not budgeting for an escrow or structural revenue losses in FY 22 or beyond
- Liability for City if it ultimately loses could be \$25 m to \$42 m resulting in new structural revenue losses and costs of \$11 m to \$15 m a year (lost revenue plus debt service on judgment bonds)
- Assuming the City will prevail and not setting aside the escrow revenue in the FY 22/FY 23 budgets is a reasonable, but not a conservative, action
- Will have contingency plans, e.g., reduction options for mid-year FY 22