



**RESOURCE MANAGEMENT  
AGENCY  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

ALLEN ISHIDA  
District One  
PETE VANDER POEL  
District Two  
PHILLIP A. COX  
District Three  
J. STEVEN WORTHLEY  
District Four  
MIKE ENNIS  
District Five

**AGENDA DATE:** September 29, 2009

Public Hearing Required	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Resolution, Ordinance or Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
CONTACT PERSON: Celeste Perez PHONE: (559) 733-6291			

**SUBJECT:** Rate Adjustment for the Tonyville Zone of Benefit in County Service Area 1

**REQUEST(S):**

That the Board of Supervisors:

1. Receive a report regarding the protest letters received protesting the user fee increase proposed for the Tonyville sewer zone of benefit in County Service Area 1;
2. Acknowledge that a written protest against the proposed user fee increase was not received from a majority of the owners/tenants of the properties affected by the proposed user fee increase in the Tonyville sewer zone of benefit; and
3. Approve the user fees identified in Exhibit A increasing the user fee for Tonyville sewer zone of benefit effective retroactively to September 1, 2009.

**SUMMARY:**

On August 11, 2009, the Board of Supervisors held a public hearing to consider a user fee increase for the El Rancho, Delft Colony, Seville, Tonyville, Tooleville, Traver, Yetter, and Wells Tract sewer systems, as well as the Delft Colony, Yetter, and Wells Tract water distribution systems within County Service Area 1 and 2. During the public hearing, residents of the Seville, Tonyville and Tooleville sewer zones of benefit presented to the Board letters of protest to the rate increase proposed in these three (3) zones of benefit. The Board approved the user fee increase proposed for the El Rancho, Delft Colony, Yetter and Wells Tract sewer systems and Delft Colony and Yetter water systems (no user fee adjustment was

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proposed for the Wells Tract water system as it has adequate fund balance). The Board continued the public hearing (after closing the comment period) for the Seville, Tonyville and Tooleville sewer zones of benefit so that staff could review and report back on the protest letters received.

In November 1996, the California electorate approved Proposition 218, Right to Vote on Taxes Act, adding Article XIII C and D to the California Constitution. Implementation statues found at Government Code Section 53755(b) state "One written protest per parcel, filed by an owner or tenant of the parcel, shall be counted in calculating a majority protest to a proposed new or increased fee or charge subject to the requirements of Section 6 of Article XIII D of the California Constitution". Neither Proposition 218 nor state statues provide a provision for the Board to override the majority protest.

On August 18, 2009, the Board received a report regarding the protest letters submitted in response to the proposed user fee increase for Tonyville, Tooleville and Seville zones of benefit. The Board found that the protest against the user fee in Tooleville was valid; found that the protest against the user fee in Seville as not valid; and directed staff to further review the protest letters for Tonyville to make sure they met the requirements for a valid protest.

Below is a table that identifies the results of the review of the protest letters for Tonyville.

Zone of Benefit	No. of Affected Parcels	Threshold for Valid Protest	No. of Protest Letters Received	Valid Protest Letters	
				Number	Threshold for Valid Protest Met?
Tonyville	55	28	32	26	No

The Board received a total of 32 protest letters. A first review of the protest letters identified protest letters that were submitted representing the same parcel. Government Code Section 53755(b) only allows for one written protest per parcel. This reduced the number of protest letters to 29. Twenty-four (24) of the protest letters were submitted by property owners; these were easy to validate as staff only needed to compare the name on the protest letter with the property ownership list. Five (5) of the letters were submitted by others which needed to be validated as tenants; Government Code Section 53755(b) allows the owner or tenant to file a protest.

Staff first attempted to contact the property owner by phone to identify the tenant on their property. Staff was successful in reaching two (2) of the five (5) property owners by phone and did validate that the person identified on the protest letter as a tenant on the property. Staff did not have valid phone numbers for the remaining

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three (3) parcels. Letters were sent by certified mail to the address of record for these three (3) property owners. At the time of initial delivery nobody was available to accept and sign for the letter so the letters were returned to the post office and a notice was left for the recipient to pick up the letter. One party picked up the certified letter; the other two were not picked up and the letters were ultimately returned to the County.

The letters to the property owners included a form to be completed by the property owner identifying the tenant at the time the protest letter was signed. To further simplify the process, a self addressed and stamped envelop was also provided.

On Tuesday, September 22, 2009, staff made a site visit to the mailing addresses of the property owners (which happen to also be the situs address of the property) in an effort to personally contact the owners. Staff found that no one was home. In one case mail was observed stacked on the porch indicating that the property may be vacant. Staff spoke with a neighbor who provided a phone number to call. Staff made several attempts to call the phone number (both during the day and in the evening) and was not able to reach anyone.

Since the property owners were non-responsive to our request for information regarding the tenants on their property, staff considers the protest letters invalid. This left the number of valid protest letters at 26, two (2) below the necessary 28 to have a valid protest.

Staff recommends that the Board deny the protest submitted by the property owners/tenants within the Tonyville zone of benefit and approve the user fee adjustment identified on August 11 to become effective retroactively to September 1, 2009 (the original effective date of the user fee increase).

**FISCAL IMPACT/FINANCING:**

Staff identified on August 11, 2009 that with the user fee increase proposed there would be a need for \$123,410 loan from the revolving loan fund for fiscal year 2009/10. As a result of not increasing the user fees for the Tooleville sewer zone of benefit (reference the August 18, 2009 Board action), the estimated loan amount increased by \$4,718 to \$128,128 assuming no change to the planned expenditures.

**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

By providing adequate and safe sanitary sewer collection and disposal systems the County is able to provide for the safety and security of the general public.

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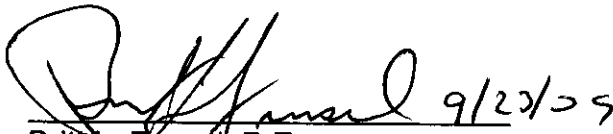
**ALTERNATIVES:**

The California Constitution does not allow for a user fee increase if a written majority protest is received. Even though a majority protest was not received in the Tonyville sewer zone of benefit, the Board could decide not to increase the user fees. This would result in a further increase in the revolving loan fund balance of \$3,955 to a total loan need for fiscal year 2009/10 of \$132,083. Staff does not recommend this alternative.

**INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:**

None.

**ADMINISTRATIVE SIGN-OFF:**

  
Britt L. Fussel, P.E.  
Assistant Director—Engineering  
County Surveyor

cc: Auditor/Controller  
County Counsel  
County Administrative Office (2)

Attachment(s)

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF RATE )  
ADJUSTMENT FOR THE TONYVILLE ) RESOLUTION NO. \_\_\_\_\_  
ZONE OF BENEFIT IN COUNTY )  
SERVICE AREA 1 )

UPON MOTION OF SUPERVISOR \_\_\_\_\_, SECONDED BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD SEPTEMBER 29,  
2009, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST: JEAN M. ROUSSEAU  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

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1. Received a report regarding the protest letters received protesting the user fee increase proposed for the Tonyville sewer zone of benefit in County Service Area 1;
2. Acknowledged that a written protest against the proposed user fee increase was not received from a majority of the owners/tenants of the properties affected by the proposed user fee increase in the Tonyville sewer zone of benefit; and
3. Approved the user fees identified in Exhibit A increasing the user fee for Tonyville sewer zone of benefit effective retroactively to September 1, 2009.

# EXHIBIT A

## 2009/2010 FEES

### For Sewer And Water Systems in Tulare County CSA Zones 1 & 2

**Basis of Fees:** The fees are determined by calculating the total expense of operation and maintenance of each system. The expense is divided by the number of dwellings in each service area, which determines the actual recovery cost per dwelling. The present fees are compared to the recovery costs and adjusted within the guidelines to establish the proposed fees. The proposed fees contribute proportionally to the total expense of each system.

Description of Fee	Current Fees	Proposed Fees	Description of Fee	Current Fees	Proposed Fees
<b>SEWER</b>			<b>WATER</b>		
Z60 Tonyville					
Monthly Residential Service	\$ 49.50	\$ 54.50			