



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL and AGENCY CHAIR AND BOARD

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL/AGENCY CHAIR
AND BOARD

DATE: July 7, 2009

SUBJECT: Joint Resolution Regarding State Seizure of Highway Users Tax and
Redevelopment Agency Funds

Report in Brief

The most recent deliberations on the California budget include two considerations that are absolutely unfavorable to Woodland and other local governments. The first consideration involves the seizure of up to two years and perhaps longer of the City of Woodland's Highway Users Tax Account (HUTA), also known as Gas Tax funds. These funds are used to support the City's annual maintenance of local streets and roads and represent a loss of approximately \$1,000,000 annually. The second consideration involves the loss of Redevelopment Agency funds at a minimum amount estimated at \$140,000. Staff believes these seizures violate the California constitution and are entirely inconsistent with the will of the people of California. Therefore, staff believes that Woodland should join the League of California Cities, California Redevelopment Association and other local governments to formally express opposition to this seizure. A joint resolution of the City Council and Redevelopment Agency Board has been prepared for this purpose.

Staff recommends that the City Council/Redevelopment Agency Board adopt Joint Resolution No. _____ authorizing the City Attorney/Redevelopment Agency General Counsel to cooperate with the League of California Cities, the California Redevelopment Association, other cities and counties in litigation challenging the constitutionality of any seizure by State Government of the City's street maintenance and redevelopment funds.

Background

In mid-June the Legislative Budget Conference Committee approved two seizures of local revenues to fund the state budget. In a memo to local officials issued June 12, the League of California Cities provided details on the first seizure involving the Governor's proposal to take almost \$1 billion in city and county shares of revenues in the Highway Users Tax Account (HUTA) from the motor fuel tax (or gas tax) in FY 10 and \$700 million in FY 11 to fund past and future highway bond debt service payments out of the general fund. The second seizure, approved on June 15, would possess

\$350 million in redevelopment tax increment from local RDAs over the current and the next two fiscal years.

Both the League and California Redevelopment Association (CRA) have retained legal counsel to contest these seizures. It is clear to attorneys retained by the League and CRA that these actions, if enacted into law, would be unconstitutional. The attached legal opinion from the Sacramento law firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, sets forth the legal analysis and conclusion concerning the invalidity of the gas tax raid. In addition, a recent Sacramento Superior Court decision, now on appeal, found that last year's attempted diversion of the redevelopment tax increment violated Article XVI, Section 16 of the California Constitution. The same result is expected in any future lawsuit to challenge the recently approved raid.

The League and CRA have asked cities and redevelopment agencies to join with them in formally expressing opposition to this irresponsible, unreasonable and potentially unconstitutional seizure of local government funds. To facilitate the broad base and consistent support to oppose this seizure, the League and CRA have asked cities and redevelopment agencies to recommend that city councils/redevelopment agency boards adopt a joint resolution condemning this action. Staff has prepared the attached joint resolution for the City Council/Redevelopment Agency Board's consideration.

Discussion

In presenting information that would facilitate the City Council's/Redevelopment Agency Board's consideration of the joint resolution, it is critical to review the impact on Woodland. As the Council/Board is aware, Woodland has been diligent in developing resources to maintain local streets and roads and redevelop its downtown core. These actions include the 2000 and 2006 voter approval of sales tax measures (Measures H and E) which established amounts to fund the annual road maintenance program and major roadway reconstruction and the financing of a major redevelopment bond that will be used to support and leverage public reinvestment in downtown projects. Unfortunately, the potential loss of HUTA/Gas Tax funds and redevelopment funds would have significant impacts on these activities.

As the Council is aware, the Mayor, City Manager and Assistant City Manager recently met with Senator Lois Wolk and Assembly member Mariko Yamada. This meeting included elected officials and key staff from the other Yolo cities and a manager representing the County. The Governor's original proposal developed by the Department of Finance was to permanently take the funds and use them to pay the debt service on the Prop 1B bonds. Senator Wolk and Assembly member Yamada stated that the legislature favors a two year take of these funds which was the proposal approved by the Legislative Budget Committee. For Woodland, the two year loss of Gas Tax funds would be \$2 million. These funds are used for road maintenance and preparation for the annual road repair projects. If these funds were lost, the City would be forced to look at options to backfill, possibly with Measure E funds in order to maintain local streets and roads at current levels. Backfilling with Measure E could have negative impacts on the capital program and require high

priority projects to be delayed or cancelled. If a backfill source was not available, road maintenance would be reduced and approximately eleven positions could be at risk.

Senator Wolk and Assembly member Yamada also stated that the outright possession of redevelopment funds for a three-year period is also gaining momentum with legislators. This tactic was tried last year and the Woodland RDA was scheduled to lose \$140,000 in FY 09 until the League and California Redevelopment Association mounted a successful legal challenge that stopped this take before funds were sent to Sacramento. The legislators stated that legislation is being crafted to work around the legal premise that stopped the FY 09 seizure. Senator Wolk indicated that redevelopment is regarded as “suspect” local government revenue since many agencies tend to misuse the funds and not reinvest them in the manner they were intended by State redevelopment law. Local officials attending the meeting expressed concern that the loss of redevelopment funds will delay or cancel major projects in Yolo cities and impair the issuance of bonds necessary to pursue capital projects. The precise impact to Woodland is unknown at this time although an educated estimate would be \$140,000, similar to the amount for FY 09. Given the fact that the Redevelopment Agency is in the process of assembling land for the Yolo Superior Court Modernization and Expansion Project, a loss of redevelopment funds would be significant. If the seizure is permanent, the loss could impair the Agency’s ability to pay the debt service on the June 2007 bond or significantly reduce operational programs such as the façade program. A continuous seizure of redevelopment funds could also prevent the Agency from issuing future debt and stop future redevelopment projects.

Staff believes the consideration of these actions by the legislature are inconsistent with the desires of Californians who supported previous ballot measures that established the Highway Users Tax Account and businesses seeking public/private partnerships to improve redevelopment areas and create jobs. For Woodland, the loss of Gas Tax funds would take away a funding source that is currently leveraged with Measure E, transportation grants and roadway development impact fees to maintain and/or reconstruct local streets and roads. If Measure E funds are used to backfill the annual roadway maintenance program, several capital project would be impacted and the entire 10-year CIP would need to be reevaluated and rebalanced. The loss of RDA funds would cause cash flow challenges in the short term as the annual \$589,000 debt service payment would become a larger percentage of the annual operating expenditures. If the seizure is long term, the impact would delay or perhaps cancel several major future projects that would limit growth of the tax increment and eventually result in a stagnant redevelopment program.

Fiscal Impact

As stated herein, the state’s seizure of the annual Highway Users Tax Account would cause a loss of approximately \$1,000,000 annually to the transportation program. The seizure of redevelopment funds is projected to cause a minimum annual loss of \$140,000 to the Redevelopment Agency.

Public Contact

Posting of the City Council agenda. A copy of the joint resolution and staff report will be sent to the League of California Cities and the California Redevelopment Agency if the City Council/Agency Board approves the staff recommendation.

Recommendation for Action

Staff recommends that the City Council/Redevelopment Agency Board adopt Joint Resolution No. _____ authorizing the City Attorney/Redevelopment Agency General Counsel to cooperate with the League of California Cities, the California Redevelopment Association, other cities and counties in litigation challenging the constitutionality of any seizure by State Government of the City's street maintenance and redevelopment funds.

Mark G. Deven
City Manager/Executive Director

Attachments: Joint Resolution No. _____
League Analysis and Legal Opinion

**JOINT RESOLUTION NO. _____ OF THE CITY AND REDEVELOPMENT
AGENCY OF WOODLAND AUTHORIZING THE CITY
ATTORNEY/REDEVELOPMENT AGENCY GENERAL COUNSEL TO
COOPERATE WITH THE LEAGUE OF CALIFORNIA CITIES, THE
CALIFORNIA REDEVELOPMENT ASSOCIATION, OTHER CITIES AND
COUNTIES IN LITIGATION CHALLENGING THE CONSTITUTIONALITY
OF ANY SEIZURE BY STATE GOVERNMENT OF THE CITY'S STREET
MAINTENANCE AND REDEVELOPMENT FUNDS**

WHEREAS, the current economic crisis has placed cities under incredible financial pressure and caused them to make painful budget cuts, including layoffs and furloughs of City workers, decreasing maintenance and operations of public facilities, and reductions in direct services to keep spending in line with declining revenues; and

WHEREAS, since the early 1990s the state government of California has seized over **\$10 billion** of city property tax revenues statewide, now amounting to over \$900 million each year to fund the state budget even after deducting public safety program payments to cities by the state; and

WHEREAS, since the early 1990s the state government also has seized \$ 1.04 billion of redevelopment tax increment statewide, and the Governor and Legislature are now considering seizing \$350 million each year for three years, beginning in the current fiscal year; and

WHEREAS, on April 30, 2009, in the case of *CRA v. Genest*, the Sacramento Superior Court found similar efforts by the State to seize redevelopment tax increment for the state general fund to be in direct violation of Article XVI, Section 16 of the State Constitution, added by the voters in 1952 as Proposition 18, which requires that tax increment be used exclusively for the benefit of redevelopment project areas; and

WHEREAS, in his proposed FY 2009-10 budget the Governor has proposed transferring \$1 billion of local gas taxes and weight fees to the state general fund to balance the state budget, and over \$700 million in local gas taxes permanently in future years, immediately jeopardizing the ability of the City to maintain the City's streets, bridges, traffic signals, streetlights, sidewalks and related traffic safety facilities for the use of the motoring public; and

WHEREAS, the loss of almost all of cities' gas tax funds will seriously compromise cities' ability to perform critical traffic safety related street maintenance, possibly including, but not limited to, drastically curtailing patching, resurfacing, street lighting/traffic signal maintenance, payment of electricity costs for street lights and signals, bridge maintenance and repair, sidewalk and curb ramp maintenance and repair, and more; and

WHEREAS, cities and counties maintain 81% of the state road network while the state directly maintains just 8%, and according to a recent statewide needs assessment¹ on a scale of zero (failed) to 100 (excellent), the statewide average pavement condition index (PCI) is 68, or “at risk.”

WHEREAS, in both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of our state overwhelmingly imposed restrictions on the state’s ability to do what the Governor has proposed and the Legislature is considering, and any effort to permanently divert the local share of the gas tax would violate the state constitution and the will of the voters.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL AND THE REDEVELOPMENT AGENCY BOARD OF THE CITY OF WOODLAND hereby directs the City Attorney/Redevelopment Agency General Counsel to take all necessary steps to cooperate with the League of California Cities, California Redevelopment Association, other cities, counties and redevelopment agencies in supporting litigation against the state of California if the legislature enacts and the governor signs into law legislation that unconstitutionally diverts the redevelopment tax increment and the City’s share of funding from the Highway Users Tax Account (HUTA), also known as the “gas tax,” to fund the state general fund; and

RESOLVED FURTHER, that the city manager/agency executive director or clerk shall send this resolution with an accompanying letter from the mayor/agency chair to the Governor and each of the city’s state legislators, informing them in the clearest of terms of the City’s adamant resolve to oppose any effort to frustrate the will of the electorate as expressed in Proposition 18 (1952), Proposition 5 (1974) and Proposition 2 (1998) concerning the proper use and allocation of the redevelopment tax increment and the gas tax; and

RESOLVED FURTHER, that a copy of this Resolution shall be sent by the city manager/agency executive director or clerk to the League of California Cities, the California Redevelopment Association, the local chamber of commerce, and other community groups whose members are affected by this proposal to divert funds from vital local services and projects.

ADOPTED this _____ day of _____, 2009.

¹ *California Statewide Local Streets and Roads Needs Assessment*, Nichols Consulting Engineers, Chtd. (2008), sponsored by the League of California Cities, California State Association of Counties and County Engineers Association of California.

**NIELSEN, MERKSAMER,
PARRINELLO, MUELLER & NAYLOR, LLP**
ATTORNEYS AT LAW
1415 L STREET, SUITE 1200
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 446-6752 FAX (916) 446-6106

June 12, 2009

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

TO: Chris McKenzie, Executive Director
League of California Cities

FROM: Richard D. Martland

RE: Highway Users Tax Account

You have asked that we review the Governor's proposal to allocate 25% of the revenues in the Highway Users Tax Account (HUTA) to the state for payment of current debt service and reimbursement of the State for the payment of prior debt service on voter approved transportation-related state issued bonds. The entire 25% is to come from HUTA funds allocable to cities and counties. While one cannot predict how the courts might rule, for the reasons stated below, it is our opinion that the most reasonable interpretation of the relevant constitutional provisions is that reallocation to the state of the cities' and counties' allocation under HUTA would violate Article XIX, sections 3, 5 and 6 of the California Constitution.

Proposition 5, placed on the June Primary 1974 election ballot by the Legislature, amended then Article XXVI of the California Constitution (since renumbered Article XIX) to provide cities and counties greater control over their allocation of funds from the Highway Users Tax Account (HUTA). For the first time, authorization was granted to use HUTA funds for the payment of debt service on voter approved transportation-related bonds. (*City of Costa Mesa v. Connell* (1999) 74 Cal.App.4th 188, 195.) Section

5 of Article XIX provides that the state and cities and counties may use up to 25% of their respective allocations of HUTA funds for the payment of debt service on voter-approved bonds for research, construction, improvement, maintenance and operation of public streets and highways. Specifically:

The Legislature may authorize up to 25% of the revenue available for expenditure by any city or county, or by the State, for the purposes specified in subdivision (a) of Section 1 of this article to be pledged or used for the payment of principal and interest on voter approved bonds issued for such purpose.

The Legislature has provided such authority to cities and counties in Streets and Highway Code section 2107.4 and to the State in Government Code section 16965. Neither sections 2107.4 and 16965, nor Article XIX section 5, provide that the State may use the cities' and counties' allocation of HUTA funds to fund the State's debt service on voter approved transportation-related state issued bonds. The Governor's proposal, in essence, reallocates HUTA funds otherwise allocable to cities and counties to the State to meet the State's General Fund obligations for current debt service and to reimburse the General Fund for payments of prior debt service on voter approved transportation-related state issued bonds.

The manner in which HUTA funds are allocated to cities and counties is governed by statute (See Streets and Highways Code sections 2100 to 2128.1). Proposition 5 restricted the power of the Legislature to amend these provisions, as they existed when Proposition 5 was adopted. Article XIX, section 3 provides:

"The Legislature shall provide for the allocation of the revenues to be used for the purposes specified in Section 1 of this Article in a manner which ensures the continuance of existing statutory allocation formulas for cities, counties, and areas of the State, until it determines that another basis for an equitable, geographical, and jurisdictional

distribution exists; provided that, until such determination is made, any use of such revenues for purposes specified in subdivision (b) of Section 1 of this article by or in a city, county, or area of the State shall be included within the existing statutory allocations to, or for expenditure in, that city, county, or area. *Any future statutory revisions shall provide for the allocation of these revenues, together with similar revenues, in a manner which gives equal consideration to the transportation needs of all areas of the State and all segments of the population consistent with the orderly achievement of the adopted local, regional, and statewide goals for ground transportation in local general plans, regional transportation plans, and the California Transportation Plan.*" (Emphasis added.)

Reallocation to the State of 25% of the cities' and counties' total allocation from HUTA is inconsistent with the italicized language, above, and section 5. In effect, the Governor is treating HUTA as a general revenue source which the State may tap to meet its own debt service obligations. The Governor's proposal is not only inconsistent with sections 3 and 5, but with section 6, added by the Legislature to Article XIX in 1998 as part of Proposition 2 on the November election ballot. Section 6 permits the State to borrow funds from HUTA for one fiscal year, three if the Governor proclaims a fiscal emergency or the estimated revenues for the current fiscal year are less than the aggregate revenues of the preceding year, adjusted for changes in cost of living and population.

In the official ballot pamphlet for the November 1998 General Election, the Legislative Analyst, in describing Proposition 2, set forth the general background of transportation funding, stating in part:

Currently, revenues derived from the gas tax on motor vehicle fuel used in vehicles on public roads and revenues from fees and taxes on motor vehicles are restricted to specified transportation purposes by the California Constitution. The State Constitution, however, permits these revenues to be loaned temporarily to the

state General Fund with the condition that the loaned amount must be repaid. The state General Fund supports non-transportation activities such as education, corrections, and health and social services programs.

The Analyst then described the changes that would be made by Proposition 2 by stating in part:

This measure amends the California Constitution to restrict the conditions under which state transportation funds, including gas tax revenues, revenues from fees and taxes of motor vehicles and their use, and funds in the Public Transportation Account, can be loaned to the state General Fund. Specifically, loans to the state General Fund in any fiscal year must be repaid within that fiscal year, except the repayment may be delayed up to 30 days after a state budget is enacted for the subsequent fiscal year. Loans extending over the fiscal year may be made only if the Governor declares a state of emergency which would result in a significant negative impact to the General Fund, or if there is a decrease in General Fund revenues from the previous year's level. Loans extending over the fiscal year must be repaid in full within three fiscal years.

The Attorney General's title and summary for Proposition 2 stated in part:

Requires loans of transportation related revenues to the General Fund be repaid the same fiscal year, or within three fiscal years if the Governor declares an emergency significantly impacting the General Fund or General Fund revenues are less than the previous fiscal year's adjusted revenues.

There was no argument in the ballot pamphlet opposing Proposition 2. The argument in support of Proposition 2 stated in part:

Proposition 2 will prevent the Governor and the Legislature from borrowing transportation funds for other purposes except in specified economic emergencies. And it requires a prompt payback when they borrow. PROPOSITION 2 WILL RESTORE CALIFORNIA'S TRANSPORTATION TRUST FUNDS.

The reasonable interpretation of Proposition 2 is that it permits funds from HUTA to be used for General Fund purposes *only* if borrowed and repaid within the specified periods. To suggest that because Proposition 2 does not expressly prevent an outright diversion of HUTA funds for General Fund purposes, such diversion is authorized, would ascribe to the Legislature and the Legislative Analyst an intent to deceive the voters. In *Giles v. Horn* (2002) 100 Cal.App.4th 206, 220 the court stated: "We must select the construction that comports most with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences."

The potential ramifications of the Governor's action on the cities' and counties' allocation of HUTA funds is significant. Reimbursement of the State for payment of prior debt service is merely a means of placing revenues in the General Fund for General Fund purposes not for the payment of existing debt. Thus, under the guise of reimbursing the state for prior payment of debt service, the Governor could determine the aggregate amount paid over time for debt service on transportation-related state-issued bonds, and each year reallocate a portion of the cities and counties allocation of HUTA funds to the General Fund until all prior debt service has been reimbursed.

For the reasons stated above, it is our opinion that the most reasonable interpretation of Propositions 5 and 2 is that they do not permit reallocation to the State of the cities' and counties' allocation of HUTA funds through any mechanism other than borrowing in accordance with Article XIX section 6.