



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

SUBJECT: SEE BELOW

DATE: September 18, 2018

Approved D. D. S. L.

Date 9/20/18

COUNCIL DISTRICT: 4

SUBJECT: AUTHORIZING THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY TO NEGOTIATE WITH THE CITY AND COUNTY OF SAN FRANCISCO TO AMEND THE WATER SUPPLY AGREEMENT AND, FURTHER, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE AGREEMENT

RECOMMENDATION

Adopt a resolution delegating authority to the Bay Area Water Supply and Conservation Agency to negotiate to amend the Water Supply Agreement (WSA) with the City and County of San Francisco (San Francisco), and, further, authorizing the City Manager to negotiate and execute an Amendment to the Agreement to extend the date for completion of the Water System Improvement Program capital project, the deadlines for a decision by San Francisco to make the cities of San José and Santa Clara permanent customers of the Regional Water Systems, extend increased water supply to the other permanent Wholesale Customers, and address other issue issues arising from the implementation of the WSA.

OUTCOME

An amendment to the Water Supply Agreement will assist in the implementation of the terms and conditions upon which San Francisco furnishes water to customers, including the City of San José.

BACKGROUND

San José's Municipal Water System (Muni Water) serves approximately 12% of City residents, including Alviso and a portion of North San Jose. The City purchases water from the San

Francisco Public Utilities Commission (SFPUC) regional water system to serve North San Jose and Alviso, and is a member of the Bay Area Water Supply and Conservation Agency (BAWSCA), which is an agency formed under State law. BAWSCA represents the interests of 26 member agencies including cities, water districts, all of which purchase water from the SFPUC (“Wholesale Customers”).

The Water Supply Agreement (WSA) is the overall master agreement that sets forth the terms and conditions under which San Francisco furnishes water to the Wholesale Customers. BAWSCA acts as the agent for the WSA contract administration on behalf of all Wholesale Customers, and historically has negotiated the WSA on their behalf. For example, in 2009, BAWSCA negotiated, and the City approved, the current WSA on behalf of the Wholesale Customers. In 2013, BAWSCA negotiated, and the City approved, Amendment No. 1 to the WSA, which prohibited changes to Hetch Hetchy Reservoir unless by negotiated amendment to the agreement. In 2014, the City again delegated authority to BAWSCA to initiate, defend and settle arbitration related to the WSA.

BAWSCA now seeks authority to negotiate with San Francisco to amend the WSA to address substantive and important issues that have arisen during the WSA’s implementation; however, these amendments do not diverge from the existing policies and spirit of the WSA. The final amendments must be approved by each member agency and by San Francisco. BAWSCA asks that the delegation of authority be in place by October 1, 2018.

ANALYSIS

The WSA contemplates that a majority of Wholesale Customers may delegate additional authority to BAWSCA by resolution without amending the WSA. However, initial discussions between BAWSCA and San Francisco narrowed negotiation points to terms for which BAWSCA believes it is prudent to amend the WSA. The negotiations relate to the areas and topics:

- Modify the process to reconcile the fund balance of the wholesale revenue funded capital to ensure fair cost allocation;
- Update the wholesale debt-coverage ratio for the rate-setting process to be consistent with SFPUC policy;
- Extend the completion date for the Water System Improvement Program to improve system reliability such that it matches the revised date recently approved by the SFPUC;
- Amend the description of the Regional Groundwater Storage and Recovery Project that is under construction by San Francisco as part of the Water System Improvement Program to better detail how it will be operated and monitored once built;

- Modify BAWSCA's oversight role to increase monitoring and tracking over the San Francisco 10-year Capital Improvement Program;
- Modify the procedure to divide available water between the San Francisco and its Wholesale Customers during droughts such that a more equitable proportion of supply is provided to Wholesale Customers;
- Extension of the deadline for a decision by San Francisco to make the cities of San José and Santa Clara permanent customers of the RWS and extend increased water supply to the other permanent Wholesale Customers; and
- Clarify Regional Water System asset classification (between power generation and water supply).

BAWSCA Agency staff and its civil engineering, water supply planning, finance, economics, accounting, and legal consultants can capably conduct the negotiations, and represent the City and other member agencies at no additional cost beyond annual BAWSCA membership dues. In addition, BAWSCA's CEO/General Manager advises member agencies of the matters at issue in this negotiation. BAWSCA anticipates that it can reach agreement with San Francisco on all of the negotiating points by December 2018. The City Manager would have the delegated authority to approve the Amendment to the WSA after the San Francisco approval.

EVALUATION AND FOLLOW-UP

Throughout the negotiation process, staff will continue collaboration with BAWSCA, and update City Council as necessary on the status of the negotiations.

PUBLIC OUTREACH

This recommendation will be posted on the City's website for the October 2, 2018 City Council meeting agenda.

COORDINATION

This memo was coordinated with the City Attorney's Office and City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

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Subject: Authorizing BAWSCA to Negotiate to Amend the WSA

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CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

KERRIE ROMANOW

Director, Environmental Services

For questions please contact Jeff Provenzano, Deputy Director of Environmental Services, at (408) 277-3671.