



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Mayor Sam Liccardo
Vice Mayor Chappie Jones
Councilmember Sergio Jimenez

SUBJECT: Santa Clara Valley Water Districts
Efforts to Develop Purified Water
Projects in Santa Clara County

DATE: April 9, 2021

Approved

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RECOMMENDATION

Accept staff's recommendation to accept the report regarding the status of the Santa Clara Valley Water District's (Valley Water) Purified Water Project in Santa Clara County and direct the Administration to:

1. Negotiate an amended or new Master Agreement between Valley Water and the City of San José relating to Valley Water's Payment for City's support services to the expedited purified water program for an amount adequate to fund all costs incurred by the City to support negotiation of new agreements including legal services and a facilitator.
2. Coordinate with Valley Water to negotiate and enter into a three-party agreement with a mutually agreed upon consultant to facilitate negotiation meetings between the City and Valley Water for six months; and establish the executive steering committee comprised of representatives from the San José City Council, the Valley Water Board, and staff from each agency, only if the negotiation with the facilitator requires additional guidance.
3. Negotiate with Valley Water an agreement to fund the reservation of wastewater effluent for potential water reuse projects with terms and conditions substantially similar to the Partnership Agreement to Advance Resilient Water Reuse Programs in Santa Clara County between Valley Water and the cities of Palo Alto and Mountain View dated December 10, 2019.
4. Return to the San José City Council on June 15, 2021 with an update regarding the status of the negotiations.
5. Return to the San José City Council in December 2021 for action/consideration on a reservation of wastewater effluent agreement with Valley Water.
6. Following the reservation of wastewater effluent, engage Valley Water to negotiate an amended or new Ground Lease and Property Use Agreement for the existing Advanced Water Treatment Facility, concurrently with an amended or new Recycled Water Facilities and Programs Integration Agreement.
7. Direct the administration to continue prior Council direction on negotiating the expanded use of recycled water with Valley Water to increase a local, drought-resilient water supply and reduce reliance on imported water.

BACKGROUND

In January of 2020, after an initial meeting with Valley Water, the Office of Vice Mayor Jones committed to working with city staff and Valley Water in an effort to reach an agreement to advance the strategic expansion of water reuse in San José. Through collaborative efforts, Valley Water, the City of San José, and the City of Santa Clara established a negotiation team to develop and expand programs and partnerships for water reuse, including both recycled water and potable reuse. Despite setting an aggressive timeline, the efforts were hindered by COVID-19. As staff continued to navigate through the unprecedented pandemic, the meetings were resumed via Zoom and the timeline was extended.

On September 1, 2020, the San José City Council directed the City Manager to prioritize the pursuit of expanded recycled water use with Valley Water to increase local, drought-resilient supply and reduce reliance on imported water. Since that time, Valley Water, the City of San José, and the City of Santa Clara have been continuing in negotiations in an effort to reach an agreement.

ANALYSIS

The initial scope of this effort was to reach a Palo Alto/Mountain View style agreement giving Valley Water an option to reserve 9 MGD of wastewater effluent for future use. During the negotiation process, the anticipated scope was expanded to include additional points of interest for Valley Water and city staff, such as revisions to the 2010 Integration Agreement. However, to effectively reach an agreement in a timely manner, we recommend that we continue on in our efforts towards a Palo Alto/Mountain View style agreement with long-term negotiation efforts on additional issues such as the long-term ground lease of RWF land, revisions to the 2010 Integration Agreement, and discussion regarding reverse osmosis concentrate. City staff has voiced interest in continuing these negotiations but has made clear that intertwining these three issues with the current negotiations will impede on their ability to come to an agreement quickly, given the imminent legal and political barriers that will arise from these discussions.

Members of the City Council and City staff recognize the complexities surrounding the current negotiations and completing a deal with Valley Water. For this reason, we recommend that the administration work directly with Valley Water to include a mediator in existing negotiations to work through the remaining terms of difference in order to come to an agreement. If efforts do not result in a draft agreement by November 2021, we recommend that the City work with Valley Water to hold an elected official review meeting with two representatives from the San José City Council and two representatives from the Valley Water Board, as well as technical and legal staff, for a formal meeting in order to attempt to come to an agreement. These efforts are intended to expedite the negotiation process for this project.

Additionally, we recommend that the City of San José and Valley Water enter into a Master Agreement, given that Valley Water has suggested the inclusion of a mediator in negotiations. The agreement would cover costs incurred by the mediator and staff participation including but not limited to attending meetings, reviewing studies pertaining to reverse osmosis concentrate management, reviewing District request for additional land adjacent to SVAWPC, providing water quality data and record drawings to evaluate water connection options, and participating in developing strategies to respond to regulatory requirements. In the agreement Valley Water

would agree to remit funds to reimburse the City for all costs incurred to provide the support services, as described in the Master Agreement.

Finally, we recommend extending the project deadline to December 2021 to give members of the negotiation team enough time to ensure that the agreement is financially feasible and legally sound before it is presented to each respective City Council (San José and Santa Clara) and the relevant committees. In addition to continuing negotiations regarding purified water efforts, the final recommendation directs staff continue prior council direction to negotiate the expansion of recycled water to increase a local, drought-resilient water supply and reduce reliance on imported water.

Although conversations are still ongoing and several items need to be worked through, the project is consistent with the South Bay Water Recycling (SBWR) strategic and master plan and Climate Smart San José goals to further strategic expansion of recycled water to increase supply and reduce reliance on imported water. The time for decisions is here, and San José should be positioned to proceed forward and ensure a viable project that is cost effective for our community to ensure a sustainable water supply for our residents.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.