



DATE: September 11, 2018

CATEGORY: Consent

DEPT.: Public Works

TITLE: **Authorize BAWSCA to Negotiate Water Supply Agreement Amendments**

RECOMMENDATION

Adopt a Resolution 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, to be read in title only, further reading waved (Attachment 1 to the Council report).

BACKGROUND

The City of Mountain View purchases approximately 87 percent of its potable water supply from the San Francisco Public Utilities Commission (SFPUC) Regional Water System under the terms of the *Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County* (Agreement). The Agreement was signed in 2009, expires in 2034, and delineates the terms under which the City purchases water, including aspects of water supply, water quality, and the SFPUC rate-setting process.

The City is a member of the Bay Area Water Supply and Conservation Agency (BAWSCA), a special district that represents the interests of the 26 water agencies that purchase water wholesale from SFPUC. A primary responsibility of BAWSCA is to represent its members in discussions and negotiations with San Francisco. BAWSCA and SFPUC have been discussing several amendments to the Agreement over the past year, and BAWSCA is now seeking authority to negotiate and finalize these amendments on behalf of its member agencies.

ANALYSIS

The proposed action would delegate authority to BAWSCA as the City's representative to negotiate amendments to the Agreement. BAWSCA and SFPUC wish to amend the Agreement to address several issues that have arisen since the Agreement was

approved in 2009. Pursuant to the Agreement, amendments must be adopted by San Francisco and at least two-thirds of the BAWSCA member agencies representing 75 percent of the SFPUC water deliveries.

Currently Proposed Amendments

BAWSCA has proposed amendments updating or clarifying the following:

1. BAWSCA's role in overseeing the SFPUC's 10-year Capital Improvement Program;
2. Drought allocations between SFPUC and the BAWSCA agencies, collectively;
3. SFPUC's deadline for deciding whether to make San Jose and Santa Clara permanent customers; and
4. Classification of certain Regional Water System assets.

San Francisco has similarly proposed four amendments to the Agreement updating or clarifying the following:

1. The review process for SFPUC's Wholesale Capital Fund;
2. The debt-coverage ratio specified in the Agreement;
3. The Water System Improvement Program completion schedule; and
4. Language related to the Regional Groundwater Storage and Recovery Project.

To negotiate these amendments on behalf of its member agencies, BAWSCA requests the governing body of each agency adopt a resolution designating BAWSCA as its authorized representative in negotiations with San Francisco. BAWSCA hopes to have all member agency resolutions adopted by September 30, 2018. Negotiations with SFPUC are scheduled for completion by the end of December 2018, and BAWSCA hopes the final amendments will be adopted by the member agencies in early 2019.

Minimum Purchase Requirement

In addition to the eight currently proposed amendments, staff has had numerous conversations with BAWSCA seeking to address the City's minimum purchase requirement, which obliges the City to pay for a specified amount of water even if the

water is not used. Although the original intent of the minimum purchase requirement was to prevent agencies from shifting to alternative imported supplies, recent years of drought, long-term conservation, and increased recycled water use has caused the City's total water use to drop below its SFPUC minimum—a scenario that was not considered when the Agreement was approved in 2009. SFPUC waived penalties during the drought, but now staff estimates the City will be charged approximately \$10 million for unused water over the next five years, due to SFPUC's minimum purchase requirement. The charge for Fiscal Year 2017-18 is \$2.96 million.

Though sympathetic to the City's situation, BAWSCA declined to include a minimum purchase amendment in the current package because the City's minimum purchase liability is not in the mutual financial interest of all member agencies. Any charges not paid by Mountain View would be borne, at least in part, by the other BAWSCA members. In contrast, BAWSCA believes the eight currently proposed amendments are in the collective interest of the member agencies. Consequently, staff secured an agreement from BAWSCA to actively explore options for a minimum purchase amendment separately and add wording to the resolution when these amendments come forward to that affect.

To date, staff has suggested two possible adjustments to the minimum purchase requirements. The first suggestion was to phase-in the minimum purchases following the recent multiple-year drought (as opposed to reinstating them immediately). This was a collaborative suggestion by all four of the minimum purchase agencies (Mountain View, Milpitas, Sunnyvale, and the Alameda County Water District). The second suggestion was to reduce Mountain View's minimum purchase by 1 million gallons per day (MGD), in recognition of the recent 1 MGD transfer to the City of East Palo Alto. Both of these proposals will be evaluated in the forthcoming negotiations with fellow BAWSCA member agencies and SFPUC. Staff believes a collaborative approach to the minimum purchase problem that considers the interests of all member agencies, and San Francisco, is most likely to be successful. Other interests previously stated for a possible minimum purchase amendment include incentivizing water supply transfers and maintaining cost-neutrality. Staff will keep Council informed of any progress made toward negotiating an adjustment to the City's minimum purchase.

Following detailed discussions with staff from BAWSCA, its member agencies, and SFPUC, staff concurs it is in the City's interest to authorize BAWSCA to negotiate the eight proposed amendments and recommends that Council approve this action. The City reserves the right to vote against the amendments when they come back for final approval.

FISCAL IMPACT

There is no fiscal impact associated with delegating authority for BAWSCA to negotiate amendments to the Agreement.

The fiscal impacts from implementation of the final amendments are unknown at this time, but are expected to be positive. As part of the forthcoming negotiations, BAWSCA will complete an analysis of the fiscal impacts of the amendments. This analysis will be an important component in Council's future decision regarding adoption of the amendments, currently scheduled for January 2019.

ALTERNATIVE

Do not delegate authority to BAWSCA to negotiate with San Francisco on the City's behalf.

PUBLIC NOTICING – Agenda posting.

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Attachment: 1. Resolution