



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Adopt a Resolution Appointing the Bay Area Water Supply & Conservation Agency as the City's Authorized Representative to Negotiate Amendments to the 2009 Water Supply Agreement with San Francisco Public Utilities Commission

BACKGROUND

The City of Sunnyvale purchases approximately 50% of its water supply from the San Francisco Public Utilities Commission's (SFPUC) Hetch Hetchy System under the terms of the 2009 Water Supply Agreement (WSA). The WSA was approved by the City Council on June 9, 2009 (RTC No. 09-154) and is set to expire in 2034. The WSA delineates the terms under which the City purchases water, including water supply quantity and water quality, and all aspects of the SFPUC rate-setting process.

The City is a member of the Bay Area Water Supply & Conservation Agency (BAWSCA), a special district that represents the interests of the 26 water agencies that purchase water from SFPUC. In 2006, the member agencies delegated authority to BAWSCA to negotiate the WSA. On April 9, 2013, the Council approved Amendment No. 1 to the WSA (RTC No. 13-083), which prohibited changes to the Hetch Hetchy Reservoir unless there is an amendment to the WSA. On August 12, 2014 (RTC No. 14-0728), the City Council delegated authority to BAWSCA to initiate, defend and settle arbitration related to the WSA.

Currently some sections of the WSA require an amendment to address substantive and important issues that have arisen during implementation of the Agreement; however, these amendments do not diverge from the existing policies and spirit of the WSA. BAWSCA has requested that Sunnyvale along with the other member agencies consider delegating to BAWSCA the authority to negotiate amendments to the WSA with the SFPUC. Any such amendments will return to Council for consideration and approval before being enacted. The amendments must be approved by at least 18 of the 26 member agencies, and further these agencies must have purchased a minimum of 75% of the water sold by the SFPUC in FY 2017/18. Sunnyvale on average purchases 9% of the water from the SFPUC. It is still possible for the amendments to be enacted if 8 or fewer agencies reject the amendments, and these agencies when combined purchased less than 25% of the water. As an example, if 7 agencies reject the amendments and these agencies have a combined purchase of 24%, the amendments as approved by the other 19 agencies will apply to the 7 agencies. However, if the 7 agencies have a combined purchase of 26% then the amendments will not be enacted and will not be included as part of the WSA. The SFPUC must also approve the amendments to go into effect. BAWSCA is requesting that the delegation of authority be in place by October 1, 2018.

The action the Council is being requested to take was contemplated in Section 8.04(B) of the WSA, which provides "[a] majority of Wholesale Customers may, without amending this Agreement, delegate additional administrative functions to BAWSCA. To be effective, such expanded delegation

must be evidenced by resolutions adopted by the governing bodies of a majority of the Wholesale Customers." To facilitate this action, the proposed Resolution of the City Council of the City of Sunnyvale Authorizing BAWSCA to Negotiate with the SFPUC has been attached for Council's consideration (see Attachment 1).

EXISTING POLICY

City of Sunnyvale General Plan-Environmental Management, Chapter 7.

GOAL EM-1 Adequate Water Supplies - Acquire and manage water supplies so that existing and future reasonable demands for water, as projected in the 20-year forecast, are reliably met.

Policy EM-1.1 Water Supply - Manage water supply to meet demands for potable water through the effective use of water supply agreements.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

DISCUSSION

With BAWSCA's formation in 2002 and the adoption of the new WSA in 2009, the Wholesale Customers now have an agency in place that can attend to the many technical but important matters related to the contract administration, which continues to require oversight and decision each year. The WSA specifically assigned several administrative tasks to BAWSCA, most of which were previously handled by the Suburban Representatives. The 2009 Water Supply Agreement and its attachments are shown in Attachment 2.

Some of the contemplated amendments fall within the authority delegated to BAWSCA in the WSA. Through initial discussions, the amendments have been narrowed to eight discrete items summarized below and provided in more detail in the Proposed WSA Amendments (Attachment 3). Since one potential amendment addresses the allocation of water during a drought and another the extension of the decision related to whether to grant San Jose and Santa Clara permanent customer status, BAWSCA determined that it is prudent to obtain authorization from the members to negotiate.

The requested delegation of authority will allow BAWSCA to negotiate amendments related to the following items that are of interest to San Francisco:

1. Process for reviewing the Wholesale Capital Fund;
2. Wholesale debt-coverage ratio for the rate-setting process to be revised from 1.25 to 1.35. San Francisco is asking to negotiate an increase in the debt service coverage reserve requirement from 25% to 35%;
3. Extension of the Water Supply Improvement Program (WSIP) completion date from December 31, 2015 to December 31, 2021. BAWSCA agencies have not been harmed due to the December 2015 already having lapsed. However, the date in the WSA requires it to be updated to reflect the current timeline to complete the WSIP; and

4. Description of the Regional Groundwater Storage and Recovery Project that is being built by San Francisco as part of the Water System Improvement Program.

Additionally, the following four proposed WSA amendments are of interest to BAWSCA:

1. Establishing a BAWSCA oversight role over the SFPUC's 10-year Capital Improvement Program;
2. Revising the procedure to divide available water between the SFPUC and its Wholesale Customers during droughts;
3. Extending the deadline for a decision by San Francisco to make San Jose and Santa Clara permanent customers of the SFPUC and extend increased water supply to the other permanent Wholesale Customers; and
4. Resolving disputed SFPUC Regional Water System asset classifications.

Today's Council action only authorizes BAWSCA to negotiate with the SFPUC. City staff has not taken a position on any of the amendments pending review of the outcome. The negotiated amendments will be brought back for Council's consideration and approval in the winter of 2019. A majority of BAWSCA agencies will be required to approve the amendments. A majority requires a minimum of 18 out of the 26 BAWSCA agencies approve, and further that those 18 (or more) purchase, when combined, 75% (or greater) of the total amount of water sold by the SFPUC in the prior fiscal year. In addition, the SFPUC must approve the amendments before any of the BAWSCA agencies' governing bodies take any action. Any amendment that does not garner such approval will not go into effect.

FISCAL IMPACT

There is no additional fiscal impact associated with approving the attached Resolution and authorizing BAWSCA to negotiate the WSA amendments on behalf of the City. BAWSCA will be securing the services of outside counsel and any related charges are already included in the fees that the 26 member agencies pay BAWSCA annually.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Adopt the Resolution appointing the Bay Area Water Supply & Conservation Agency (BAWSCA) as the City's authorized representative to negotiate amendments to the 2009 Water Supply Agreement with the SFPUC.
2. Do not adopt the Resolution appointing BAWSCA as the City's authorized representative to negotiate amendments to the 2009 Water Supply Agreement with the SFPUC.
3. Take other action as directed by Council.

STAFF RECOMMENDATION

Alternative 1: Adopt the Resolution appointing the Bay Area Water Supply & Conservation Agency

(BAWSCA) as the City's authorized representative to negotiate amendments to the 2009 Water Supply Agreement with the SFPUC.

Prepared by: Mansour Nasser, Water & Sewer Systems Division Manager

Reviewed by: Ramana Chinnakotla, Director of Environmental Services

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Resolution of the City Council of Sunnyvale Authorizing the BAWSCA to Negotiate with SFPUC to Amend the WSA
2. 2009 Water Supply Agreement
3. Proposed WSA Amendments