

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council, City of Brisbane
President and Board of Directors, GVMID

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Amendment No. 1 to Water Supply Contract with City & County of San Francisco (CCSF)

DATE: March 4, 2013

City Council Goals:

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

Purpose:

To obtain Council's approval of a proposed amendment to the City's and GVMID's water contracts with CCSF; this action is consistent with the community's value of ensuring the highest level of water quality.

Recommendation: Approve the following:

1. City of Brisbane Resolution No. 2013-04 "Approving an Amendment to the Water Supply Contract with the City and County of San Francisco."
2. GVMID Resolution No. 2013-01 "Approving an Amendment to the Water Supply Contract with the City and County of San Francisco."

Background:

The City of Brisbane and GVMID receive 100% of their water supply from the CCSF via the Water Enterprise of the San Francisco Public Utilities commission (SFPUC). The attached staff report from 6/5/09 provides additional detail on the nature of the underlying water contract between CCSF and the city's two water districts. Both districts are members of the Bay Area Water Supply & Conservation Agency (BAWSCA), and are referred to as one of SFPUC's "Wholesale Customers".

As noted in the above referenced staff report, in June 2009, the City's districts entered into a Water Supply Agreement with the CCSF and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County (WSA). The WSA sets forth the terms by which the twenty six Wholesale Customers will purchase water from the San Francisco Regional Water System (System), which includes the Hetch Hetchy Reservoir (Reservoir).

During the 2012 election cycle, a group named Restore Hetch Hetchy placed an initiative before San Francisco voters that would have required CCSF to develop plans to drain the Reservoir and restore Hetch Hetchy Valley. The initiative was defeated, but the organization announced that it will continue to pursue these goals. The Wholesale Customers use two-thirds of the water provided by the System and pay two-thirds of the costs of building, operating and maintaining the System. However, none of these water customers may vote on San Francisco ballot measures. As a result, there is uncertainty as to how the parties would address changes to the System in the event of a future abandonment or decommissioning of O'Shaughnessy Dam, which forms the Reservoir, or a draining of the Reservoir.

In order to provide long-term protection for the Wholesale Customers, BAWSCA and San Francisco have developed an administrative solution, an Amendment to the WSA, which addresses water-supply reliability, water quality and cost-allocation. This Amendment will assure that the existing condition of the Reservoir is maintained unless the parties agree to a further amendment to the WSA that meets certain conditions. Notably, the Amendment provides that if the parties do not agree on any such amendment, San Francisco may not drain the Reservoir or abandon or decommission O'Shaughnessy Dam.

CCSF, acting by and through its Public Utilities Commission, approved the Amendment on January 22, 2013 and authorized its General Manager to execute the Amendment, pending approval by the requisite number of the Wholesale Customers. (See attached 2/5/13 letter.)

Discussion:

The proposed Amendment to the WSA represents a significant step forward in the relationship between BAWSCA member agencies and CCSF, as it provides our elected officials the opportunity to directly influence the decision-making of a wholesale water system that provides water to 100% of the residents and employees of the City of Brisbane.

Declining to pass the attached Resolution is therefore not recommended. Note that per existing section 2.03.A of the WSA, the new section proposed by the amendment will be effective if approved by Wholesale Customers representing 75% of the quantity of water delivered by SFPUC to Wholesale Customers during the immediately preceding fiscal year.

Fiscal Impact:

There is no direct cost impact envisioned to the City or GVMID as a result of taking the recommended action. Not approving the Resolutions could conceivably result in significant costs to all BAWSCA member agencies if the SFPUC were required to decommission O'Shaughnessy Dam and commission a new storage facility of equivalent capacity.

Measure of Success

A continuing reliable supply of high-quality potable water provided at a fair price.

Attachments:

City of Brisbane Resolution No. 2013-04

GVMID Resolution No. 2013-01

2/5/13 letter from SFPUC General Manager to BAWSCA General Manager

6/5/09 City of Brisbane/GVMID staff report on Water Supply Contracts



Director of Public Works/City Engineer



City Manager

A copy of supporting materials provided to the City Manager and Council Persons in connection with this agenda item is available for public inspection and copying at 50 Park Place, City of Brisbane Department of Public Works, Brisbane, CA, 94005, Telephone: (415) 508-2130.

RESOLUTION NO. 2013-04

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
APPROVING AN AMENDMENT TO THE WATER SUPPLY AGREEMENT
WITH THE CITY AND COUNTY OF SAN FRANCISCO**

WHEREAS, the City and County of San Francisco, acting by and through its Public Utilities Commission, entered into a Water Supply Agreement with Wholesale Customers in Alameda County, San Mateo County and Santa Clara County in June 2009 (WSA); and

WHEREAS, Proposition F, the "Water Sustainability and Environmental Restoration Act" appeared on the November, 2012 ballot and, if enacted, would have required the City of San Francisco to evaluate how to drain Hetch Hetchy Reservoir; and

WHEREAS, the San Francisco Charter acknowledges that the Hetch Hetchy Water System, including O'Shaughnessy Dam, is an irreplaceable asset such that San Francisco could not drain Hetch Hetchy Reservoir or abandon or decommission O'Shaughnessy Dam absent a Charter amendment as well as additional regulatory and administrative approvals; and

WHEREAS, the parties, at the time of entering into the WSA, contemplated that Hetch Hetchy Reservoir and O'Shaughnessy Dam were both integral parts of the Regional Water System and were considered Existing Assets as that term is used in the WSA, and were included in the calculation of the Wholesale Revenue Requirement; and

WHEREAS, the parties, at the time of entering into the WSA, also contemplated that the reliability and quality of the water to be delivered was premised on the shared assumption of the continued use of Hetch Hetchy Reservoir and O'Shaughnessy Dam as integral components of the Regional Water System; and

WHEREAS, the parties, at the time of entering into the WSA, did not contemplate that an alternate water delivery system created as a result of draining Hetch Hetchy Reservoir, or abandoning or decommissioning O'Shaughnessy Dam, would be considered part of a New Regional Assets described by the WSA; and

WHEREAS, the parties now desire to amend the WSA to reaffirm the water reliability and quality requirements set forth therein, and to acknowledge that Hetch Hetchy Reservoir and O'Shaughnessy Dam will continue to be used as integral components of the Regional Water

System, unless both San Francisco and the Wholesale Customers approve any alternate water storage and delivery system to be used for delivery of water under the WSA; and

WHEREAS, said amendment to the WSA was approved by the San Francisco Public Utilities Commission on January 22, 2013 and its General Manager was authorized to execute it, provided the amendment is approved by the Wholesale Customers; and

WHEREAS, the amendment is not subject to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) (CEQA) pursuant to Section 15378(b)(5) (the activity is not a project as it involves an administrative activity that will not result in direct or indirect physical changes in the environment) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane as follows:

1. The attached Amendment No. 1 to 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 (Amendment) is approved.
2. The Mayor is authorized and directed to execute the Amendment, in the form attached hereto, on behalf of the City.

Raymond C. Miller, Mayor

I hereby certify that the foregoing Resolution No. 2013-04, was duly and regularly adopted at a regular meeting of the Brisbane City Council on March 4, 2013 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

Harold S. Toppel, City Attorney

WATER SUPPLY AGREEMENT
between
THE CITY AND COUNTY OF SAN FRANCISCO
and
WHOLESALE CUSTOMERS
in
ALAMEDA COUNTY, SAN MATEO COUNTY AND
SANTA CLARA COUNTY

AMENDMENT NO. 1

THIS AMENDMENT modifies 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 ("Water Supply Agreement"), which is dated July, 2009.

WHEREAS, the Parties desire to amend the Water Supply Agreement to assure that the existing condition of Hetch Hetchy Reservoir is maintained unless the Parties agree to a further amendment to the Water Supply Agreement that meets certain conditions; and

WHEREAS, except for those changes expressly specified in this First Amendment, all other provisions, requirements, conditions, and sections of the Water Supply Agreement shall remain in full force and effect.

THE PARTIES AGREE to amend the Water Supply Agreement by adding a new Section 3.18 to Article 3, Water Supply.

Section 3.18 Water Supply Agreement Amendment Required

San Francisco may not change the existing condition of the Hetch Hetchy Reservoir by:

- (1) abandoning or decommissioning O'Shaughnessy Dam; or
- (2) draining Hetch Hetchy Reservoir, except for purposes of (i) repair, rehabilitation, maintenance, improvement, or reconstruction of O'Shaughnessy Dam or appurtenances, (ii) supplying water to the Bay Area during drought, or (iii) meeting water release requirements under the Raker Act, or federal or state law,

unless the parties enter into an amendment to the Water Supply Agreement, in full force and effect, adopted in accordance with Section 2.03.

The amendment shall state, or restate, as the case may be:

- A. The level of service goals for seismic reliability and delivery reliability adopted by the Commission in conjunction with such proposed changes to the Regional Water System, provided such goals are at least as protective of the Wholesale Customers as the level of service goals adopted by the Commission on October 30, 2008 in conjunction with the WSIP;
- B. The level of water quality to be delivered, which is currently provided for in Section 3.08, and
- C. The specific cost allocation procedures, written as an amendment to Article 5, which apply to (1) the abandonment or decommissioning of O'Shaughnessy Dam, or (2) the draining of Hetch Hetchy Reservoir, and (3) the development, operation and maintenance of New Regional Assets that may be required to replace water supplied by Hetch Hetchy Reservoir and delivered to the Bay Area.

In the event that the parties are not able to agree upon and approve an amendment to the Water Supply Agreement as set forth above, San Francisco may not abandon or decommission O'Shaughnessy Dam or drain Hetch Hetchy Reservoir.

IN WITNESS WHEREOF the parties have executed this Amendment by their duly authorized officers.

CITY AND COUNTY OF SAN FRANCISCO
Acting by and through its Public Utilities
Commission

CITY OF BRISBANE
A Municipal Corporation

By: _____
Harlan L. Kelly, Jr.
General Manager

By: _____
Raymond C. Miller
Mayor

Date: _____, 2013

Date: _____, 2013

Approved by Commission Resolution
No. 13-0022, adopted January 22, 2013

ATTEST:

Donna Hood
Secretary to Commission

Sheri Marie Spediacci
City Clerk

Approved as to form:

Approved as to form:

DENNIS J. HERRERA
City Attorney

By: _____
Donn W. Furman
Deputy City Attorney

Harold S. Toppel
City Attorney

IN WITNESS WHEREOF the parties have executed this Amendment by their duly authorized officers.

CITY AND COUNTY OF SAN FRANCISCO
Acting by and through its Public Utilities
Commission

CITY OF BRISBANE
A Municipal Corporation

By: _____
Harlan L. Kelly, Jr.
General Manager

By: _____
Raymond C. Miller
Mayor

Date: _____, 2013

Date: _____, 2013

Approved by Commission Resolution
No. 13-0022, adopted January 22, 2013

ATTEST:

Donna Hood
Secretary to Commission

Sheri Marie Spediacci
City Clerk

Approved as to form:

Approved as to form:

DENNIS J. HERRERA
City Attorney

By: _____
Donn W. Furman
Deputy City Attorney

Harold S. Toppel
City Attorney

RESOLUTION NO. 2013-01

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE GUADALUPE VALLEY MUNICIPAL IMPROVEMENT DISTRICT
APPROVING AN AMENDMENT TO THE WATER SUPPLY AGREEMENT WITH THE
CITY AND COUNTY OF SAN FRANCISCO**

WHEREAS, the City and County of San Francisco, acting by and through its Public Utilities Commission, entered into a Water Supply Agreement with Wholesale Customers in Alameda County, San Mateo County and Santa Clara County in June 2009 (WSA); and

WHEREAS, Proposition F, the "Water Sustainability and Environmental Restoration Act" appeared on the November, 2012 ballot and, if enacted, would have required the City of San Francisco to evaluate how to drain Hetch Hetchy Reservoir; and

WHEREAS, the San Francisco Charter acknowledges that the Hetch Hetchy Water System, including O'Shaughnessy Dam, is an irreplaceable asset such that San Francisco could not drain Hetch Hetchy Reservoir or abandon or decommission O'Shaughnessy Dam absent a Charter amendment as well as additional regulatory and administrative approvals; and

WHEREAS, the parties, at the time of entering into the WSA, contemplated that Hetch Hetchy Reservoir and O'Shaughnessy Dam were both integral parts of the Regional Water System and were considered Existing Assets as that term is used in the WSA, and were included in the calculation of the Wholesale Revenue Requirement; and

WHEREAS, the parties, at the time of entering into the WSA, also contemplated that the reliability and quality of the water to be delivered was premised on the shared assumption of the continued use of Hetch Hetchy Reservoir and O'Shaughnessy Dam as integral components of the Regional Water System; and

WHEREAS, the parties, at the time of entering into the WSA, did not contemplate that an alternate water delivery system created as a result of draining Hetch Hetchy Reservoir, or abandoning or decommissioning O'Shaughnessy Dam, would be considered part of a New Regional Assets described by the WSA; and

WHEREAS, the parties now desire to amend the WSA to reaffirm the water reliability and quality requirements set forth therein, and to acknowledge that Hetch Hetchy Reservoir and

O'Shaughnessy Dam will continue to be used as integral components of the Regional Water System, unless both San Francisco and the Wholesale Customers approve any alternate water storage and delivery system to be used for delivery of water under the WSA; and

WHEREAS, said amendment to the WSA was approved by the San Francisco Public Utilities Commission on January 22, 2013 and its General Manager was authorized to execute it, provided the amendment is approved by the Wholesale Customers; and

WHEREAS, the amendment is not subject to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) (CEQA) pursuant to Section 15378(b)(5) (the activity is not a project as it involves an administrative activity that will not result in direct or indirect physical changes in the environment) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter.

NOW, THEREFORE, BE IT RESOLVED by the Guadalupe Valley Municipal Improvement District Board of Directors as follows:

1. The attached Amendment No. 1 to 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 (Amendment) is approved.

2. The President is authorized and directed to execute the Amendment, in the form attached hereto, on behalf of the District.

Raymond C. Miller, President

I hereby certify that the foregoing Resolution No. 2013-01, was duly and regularly adopted at a regular meeting of the Guadalupe Valley Municipal Improvement District on March 4, 2013 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sheri Marie Spediacci, District Secretary

APPROVED AS TO FORM:

Harold S. Toppel, District Counsel

WATER SUPPLY AGREEMENT
between
THE CITY AND COUNTY OF SAN FRANCISCO
and
WHOLESALE CUSTOMERS
in
ALAMEDA COUNTY, SAN MATEO COUNTY AND
SANTA CLARA COUNTY

AMENDMENT NO. 1

THIS AMENDMENT modifies 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 ("Water Supply Agreement"), which is dated July, 2009.

WHEREAS, the Parties desire to amend the Water Supply Agreement to assure that the existing condition of Hetch Hetchy Reservoir is maintained unless the Parties agree to a further amendment to the Water Supply Agreement that meets certain conditions; and

WHEREAS, except for those changes expressly specified in this First Amendment, all other provisions, requirements, conditions, and sections of the Water Supply Agreement shall remain in full force and effect.

THE PARTIES AGREE to amend the Water Supply Agreement by adding a new Section 3.18 to Article 3, Water Supply.

Section 3.18 Water Supply Agreement Amendment Required

San Francisco may not change the existing condition of the Hetch Hetchy Reservoir by:

- (1) abandoning or decommissioning O'Shaughnessy Dam; or
- (2) draining Hetch Hetchy Reservoir, except for purposes of (i) repair, rehabilitation, maintenance, improvement, or reconstruction of O'Shaughnessy Dam or appurtenances, (ii) supplying water to the Bay Area during drought, or (iii) meeting water release requirements under the Raker Act, or federal or state law,

unless the parties enter into an amendment to the Water Supply Agreement, in full force and effect, adopted in accordance with Section 2.03.

The amendment shall state, or restate, as the case may be:

- A. The level of service goals for seismic reliability and delivery reliability adopted by the Commission in conjunction with such proposed changes to the Regional Water System, provided such goals are at least as protective of the Wholesale Customers as the level of service goals adopted by the Commission on October 30, 2008 in conjunction with the WSIP;
- B. The level of water quality to be delivered, which is currently provided for in Section 3.08, and
- C. The specific cost allocation procedures, written as an amendment to Article 5, which apply to (1) the abandonment or decommissioning of O'Shaughnessy Dam, or (2) the draining of Hetch Hetchy Reservoir, and (3) the development, operation and maintenance of New Regional Assets that may be required to replace water supplied by Hetch Hetchy Reservoir and delivered to the Bay Area.

In the event that the parties are not able to agree upon and approve an amendment to the Water Supply Agreement as set forth above, San Francisco may not abandon or decommission O'Shaughnessy Dam or drain Hetch Hetchy Reservoir.

IN WITNESS WHEREOF the parties have executed this Amendment by their duly authorized officers.

CITY AND COUNTY OF SAN FRANCISCO
Acting by and through its Public Utilities
Commission

**GUADALUPE VALLEY MUNICIPAL
IMPROVEMENT DISTRICT**
A Public Utility District

By: _____
Harlan L. Kelly, Jr.
General Manager

By: _____
Raymond C. Miller
President

Date: _____, 2013

Date: _____, 2013

Approved by Commission Resolution
No. 13-0022, adopted January 22, 2013

ATTEST:

Donna Hood
Secretary to Commission

Sheri Marie Spediacci
District Secretary

Approved as to form:

Approved as to form:

DENNIS J. HERRERA
City Attorney

By: _____
Donn W. Furman
Deputy City Attorney

Harold S. Toppel
District Counsel

IN WITNESS WHEREOF the parties have executed this Amendment by their duly authorized officers.

CITY AND COUNTY OF SAN FRANCISCO
Acting by and through its Public Utilities
Commission

**GUADALUPE VALLEY MUNICIPAL
IMPROVEMENT DISTRICT**
A Public Utility District

By: _____
Harlan L. Kelly, Jr.
General Manager

By: _____
Raymond C. Miller
President

Date: _____, 2013

Date: _____, 2013

Approved by Commission Resolution
No. 13-0022, adopted January 22, 2013

ATTEST:

Donna Hood
Secretary to Commission

Sheri Marie Spediacci
District Secretary

Approved as to form:

Approved as to form:

DENNIS J. HERRERA
City Attorney

By: _____
Donn W. Furman
Deputy City Attorney

Harold S. Toppel
District Counsel



San Francisco
Water Power Sewer

Operator of the Hetch Hetchy Regional Water System

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

February 5, 2013

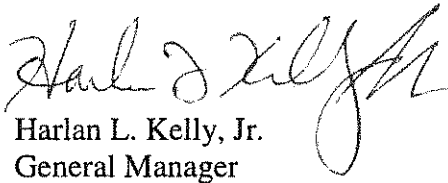
Mr. Arthur Jensen
Bay Area Water Supply and Conservation Agency
155 Bovet Road, Suite 650
San Mateo, CA 94402

Dear Mr. Jensen:

Enclosed are two documents. First is a copy of Resolution No. 13-0022 adopted by the San Francisco Public Utilities Commission on January 22, 2013 authorizing "the General Manager to negotiate and execute an Amendment to the Water Supply Agreement on behalf of the SFPUC in substantially the form set forth in this Resolution, provided that the amendment is approved by the wholesale customers pursuant to Water Supply Agreement Section 2.03." Second is a copy of the language we have negotiated for Section 3.18 Water Supply Agreement Amendment Required. This copy includes the formatting changes we have discussed and approved following the Commission action. The SFPUC is in full agreement with this language and is prepared to execute the Amendment to add Section 3.18 to the Water Supply Agreement. I understand that your counsel is preparing individual, personalized signature pages for each wholesale customer. I am prepared to sign the signature pages upon approval by the wholesale customers pursuant to Water Supply Agreement Section 2.03, as noted above.

We are prepared to assist you, if needed, in obtaining the requisite wholesale customers approval. It was a pleasure working with you and your team in developing this amendment.

Sincerely,


Harlan L. Kelly, Jr.
General Manager

Enclosures

Edwin M. Lee
Mayor

Art Torres
President

Vince Courtney
Vice President

Ann Moller Caen
Commissioner

Francesca Vietor
Commissioner

Anson Moran
Commissioner

Harlan L. Kelly, Jr.
General Manager



PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 13-0022

WHEREAS, in Resolution 09-0069 the Commission approved 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 ("Water Supply Agreement"); and

WHEREAS, on April 28, 2009, the Wholesale Customers approved the Water Supply Agreement pursuant to Section 2.03; and

WHEREAS, the Water Supply Agreement sets forth the terms by which the SFPUC will produce, and the Wholesale Customers will purchase, water from the Hetch Hetchy Regional Water System for a term of 25-years beginning on July 1, 2009; and

WHEREAS, Hetch Hetchy Reservoir is the source for 85% of the water produced on average by the Regional Water System and delivered to 2.6 million water users in San Francisco, San Mateo, Santa Clara and Alameda counties; and

WHEREAS, the Water Supply Agreement requires that the Regional Water System be kept in good working order and repair consistent with prudent utility practice and that the SFPUC will collaborate with the Wholesale Customers on how best to address possible impacts to water supply; and

WHEREAS, on November 6, 2012, San Francisco voters considered and rejected an initiative ordinance, Proposition F, that would have required the City to prepare a two-phase plan evaluating how to drain the Hetch Hetchy Reservoir and identifying replacement water sources; and

WHEREAS, the parties have determined that there is uncertainty as to how the parties would address changes to the Regional Water System in the event of future abandonment or decommissioning of O'Shaughnessy Dam or draining of Hetch Hetchy Reservoir; and

WHEREAS, the parties have negotiated an amendment to the Water Supply Agreement to assure existing condition of Hetch Hetchy Reservoir is maintained unless the parties agree to a further amendment to the Water Supply Agreement that meets certain conditions; now, therefore, be it

RESOLVED, the amendment to the Water Supply Agreement serves a substantial public interest and it is in the interest of the SFPUC to amend the Water Supply Agreement with the Wholesale Customers; and, be it further

RESOLVED, the Commission hereby authorizes the General Manager to negotiate and execute an Amendment to the Water Supply Agreement on behalf of the SFPUC in substantially the form set forth in this Resolution, provided that the amendment is approved by the Wholesale Customers pursuant to Water Supply Agreement Section 2.03; and be it further

RESOLVED, the Commission directs staff to take all steps necessary to secure the approval of the Amendment to the Agreement by the Wholesale Customers; and recommends that the Wholesale Customers approve the amendment to the Agreement.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of January 22, 2013.



Secretary, Public Utilities Commission

Section 3.18 Water Supply Agreement Amendment Required

San Francisco may not change the existing condition of the Hetch Hetchy Reservoir by:

- (1) abandoning or decommissioning O'Shaughnessy Dam; or
- (2) draining Hetch Hetchy Reservoir, except for purposes of (i) repair, rehabilitation, maintenance, improvement, or reconstruction of O'Shaughnessy Dam or appurtenances, (ii) supplying water to the Bay Area during drought, or (iii) meeting water release requirements under the Raker Act, or federal or state law,

unless the parties enter into an amendment to the Water Supply Agreement, in full force and effect, adopted in accordance with Section 2.03.

The amendment shall state, or restate, as the case may be:

- A. The level of service goals for seismic reliability and delivery reliability adopted by the Commission in conjunction with such proposed changes to the Regional Water System, provided such goals are at least as protective of the Wholesale Customers as the level of service goals adopted by the Commission on October 30, 2008 in conjunction with the WSIP;
- B. The level of water quality to be delivered, which is currently provided for in Section 3.08, and
- C. The specific cost allocation procedures, written as an amendment to Article 5, which apply to (1) the abandonment or decommissioning of O'Shaughnessy Dam, or (2) the draining of Hetch Hetchy Reservoir, and (3) the development, operation and maintenance of New Regional Assets that may be required to replace water supplied by Hetch Hetchy Reservoir and delivered to the Bay Area.

In the event that the parties are not able to agree upon and approve an amendment to the Water Supply Agreement as set forth above, San Francisco may not abandon or decommission O'Shaughnessy Dam or drain Hetch Hetchy Reservoir.

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council, City of Brisbane
President and Board of Directors, GVMID

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Water Supply Contracts with the City & County of San Francisco

DATE: June 15, 2009

City Council Goals: To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

Purpose: To extend the existing water supply contracts with the City & County of San Francisco for a twenty-five year period.

Recommendation: Approve the following:

- 1) City of Brisbane Resolution No. 2009-27 "Adopting Findings for Purposes of the California Environmental Quality Act in Connection with Approval of a Water Supply Agreement with the City and County of San Francisco."
- 2) GVMID Resolution No. 2009-02 "Adopting Findings for Purposes of the California Environmental Quality Act in Connection with Approval of a Water Supply Agreement with the City and County of San Francisco."
- 3) City of Brisbane Resolution No. 2009-28 "Approving Water Supply Agreement with the City and County of San Francisco."
- 4) GVMID Resolution No. 2009-03 "Approving Water Supply Agreement with the City and County of San Francisco."
- 5) City of Brisbane Resolution No. 2009-29 "Approving Individual Water Sales Contract with the City and County of San Francisco."
- 6) GVMID Resolution No. 2009-04 "Approving Individual Water Sales Contract with the City and County of San Francisco."

Background:

The City of Brisbane and Guadalupe Valley Municipal Improvement District receive 100% of their water supply from the City & County of San Francisco (CCSF) via the water enterprise of the San Francisco Public Utilities Commission (SFPUC). (Attachment A provides a detailed historical background relative to the current contract terms between the city/district and CCSF.)

The city/district existing contracts expire June 30, 2009. On October 11, 2006, the Council/Board authorized the Bay Area Water Supply and Conservation Agency (BAWSCA) to negotiate on behalf of

the city systems for a Water Supply Agreement (WSA) with the City and County of San Francisco (City Council Resolution No. 2006-48, GVMID Board Resolution No. 2006-02). The governing board of each BAWSCA agency likewise authorized BAWSCA to negotiate on their behalf.

On February 23, 2009, BAWSCA CEO Art Jensen provided an update on the status of the negotiations to the Water & Sewer Subcommittee, City Manager, Administrative Services Director, and Director of Public Works/City Engineer. At that time, there were a few outstanding issues, which have now been resolved and incorporated into the final WSA.

On April 28, 2009, the SFPUC voted to approve the WSA; to authorize the General Manager of the SFPUC to execute the WSA with the Wholesale Customers; and to negotiate and approve the Individual Water Sales Contracts with the Wholesale Customers substantially in the form attached to the WSA.

A city staff summary of the highlights of the WSA is provided as Attachment B. A more detailed summary report prepared by Hanson Bridgett for BAWSCA is provided as Attachment C. There are three items which may be most important for the Council/Board to note:

- 1) Water Supply Guarantee. The City/District's existing supply guarantees remain intact; however, previously approved developments (i.e., NER, HCP at Sierra Point) will require nearly all current excess water availability. Future development will have to conduct unusually rigorous searches for additional water. BAWSCA is in the process of developing a Water Conservation Implementation Plan to provide reliable water supplies through 2018 while accounting for expected growth. As part of next year's workplan, BAWSCA also intends to develop a long-term water reliability plan, and may also be involved in facilitating the transfer of conserved water between agencies. At this point in time it is unclear if these efforts will be adequate to provide a reliable water supply for the Baylands development.
- 2) Water Shortage Allocation Plan. The 2009 WSA does not include a formal change to the 2001 Interim Water Shortage Allocation Plan; however, it does allow BAWSCA and its member agencies to develop a new allocation plan/agreement among themselves. This effort is also a workplan for BAWSCA in the next year.
- 3) The reduced rate water delivery quantities and prices are preserved.

The City and County of San Francisco is the "lead agency" under the California Environmental Quality Act (CEQA) with respect both to the Water System Improvement Program (WSIP) and the water supply elements incorporated into the new Water Supply Agreement. In that capacity, San Francisco has prepared and certified a seven-volume Program Environmental Impact Report (Final PEIR), and adopted detailed findings related to the environmental effects of the "Phased WSIP" approved by the SFPUC in October 2008, mitigation measures, and overriding considerations. The PEIR can be reviewed and downloaded at: http://www.sfgov.org/site/planning_index.asp?id=80530. SFPUC's Resolution No. 08-0200 (CEQA findings), their Statement of Overriding Considerations, and the Mitigation, Monitoring and Reporting Program can be found at: http://sfwater.org/detail.cfm/MC_ID/18/MSC_ID/113/MTO_ID/340/C_ID/4189.

The City/Board, along with the other wholesale customers that are cities or districts may be considered "responsible agencies" under CEQA with respect to approval of the long term Water Supply Agreement. Pursuant to CEQA Guidelines Section 15381, a responsible agency has discretionary approval power

over a project for which a lead agency has prepared an EIR. The Council/Board finds, via the attached resolution that the Final PEIR is adequate and that approval of the Water Supply Agreement is within the scope of the WSIP and Final PEIR.

Discussion:

While not perfect, the proposed Agreement is significantly better than the 1984 Agreement, and provides known parameters for the delivery of Hetch Hetchy water to the Brisbane systems through June 30, 2034. If the Council/Board chose to not approve the Agreement and Water Sales Contract, the City/District would be required to begin the process of attempting to unilaterally negotiate new agreements and contracts with CCSF.

Fiscal Impact:

Signing these contracts does not in and of itself increase the cost of water. Changes in the cost of wholesale water are calculated annually pursuant to the methodology in the Agreement. It is expected that all users of Hetch Hetchy water will see significant rate increases as the multi-billion dollar WSIP projects are constructed. This new agreement does change the manner in which the portion of the rates to repay CCSF for funds paid to construct capital projects is calculated. In the 1984 Agreement, capital costs were paid under the “utility method” wherein the wholesale customers paid depreciation and a rate of return on projects once they were completed. As this method resulted in occasional severe spikes to rates, the 2009 Agreement collects future capital costs based on the “cash method” wherein the wholesale customers pay their proportionate share of SFPUC’s annual debt service.

Measure of Success: Signed contracts with CCSF and the continued delivery of adequate supplies of potable water.

Attachments:

- A. Historical Background
- B. City staff summary highlights of WSA
- C. Hanson Bridgett Summary Report (April 2009) on New WSA
- D. Water Supply Agreement – July 2009 (identical for each agency-only 1 provided herein)
- E. Brisbane Water Sales Contract
- F. GVMID Water Sales Contract
- G. Brisbane Resolution No. 2009-27
- H. GVMID Resolution No. 2009-02
- I. Brisbane Resolution No. 2009-28
- J. GVMID Resolution No. 2009-03
- K. Brisbane Resolution No. 2009-29
- L. GVMID Resolution No. 2009-04

Not provided w/attachment to 3/4/13 staff report.

Director of Public Works/City Engineer

City Manager

A copy of supporting materials provided to the City Manager and Council Persons in connection with this agenda item is available for public inspection and copying at 50 Park Place, City of Brisbane Department of Public Works, Brisbane, CA, 94005, Telephone: (415) 508-2130.

Attachment A

Historical Background

In 1974, San Francisco raised water rates to its wholesale customers by 20.5 percent, but increased San Francisco retail rates by only 14.5 percent. In response, the wholesale customers sought and obtained a Preliminary Injunction and Temporary Restraining Order barring the rate increase. This decision was affirmed, upon appeal, in 1977. In 1978, plaintiffs filed an Amended and Supplemental Complaint in the action, which broadened the scope of the complaint into an attack upon the method San Francisco used to charge its wholesale customers for water.

After the lawsuit was filed, at the urging of the trial judge, the parties engaged in negotiations to resolve their differences and develop a framework for a new relationship. The Settlement Agreement and Master Water Sales Contract (Master Contract) was signed by all parties in 1984. The lengthy negotiations that extended from the time of the initial action to the successful conclusion was led by the Bay Area Water Users Association (BAWUA), an organization comprising the 28 cities, water districts, and private water utilities that purchased water from San Francisco on a wholesale basis.

Each wholesale agency, including Brisbane and GVMID, has an individual water supply contract entered into at the same time as the Master Contract. The city's individual water supply contracts describe the service territory, points of connection with San Francisco's regional water system, interties with neighboring systems, and billing and payment details. The term of the Master Contract and the city's individual water supply contracts is 25 years, and expires on June 30, 2009.

The Bay Area Water Supply and Conservation Agency (BAWSCA) was formed in 2003 and is BAWUA's successor organization. BAWSCA member agencies are generally the same agencies that were members of BAWUA.

On October 11, 2006, the Council/Board authorized the Bay Area Water Supply and Conservation Agency (BAWSCA) to negotiate on behalf of the city systems for a water supply agreement with the City and County of San Francisco (City Council Resolution No. 2006-48, GVMID Board Resolution No. 2006-02). The governing board of each BAWSCA agency likewise authorized BAWSCA to negotiate on their behalf.

The current Master Contract settled the issues of its time, which were primarily related to cost allocation and the restriction of costs allocated to wholesale agencies to those facilities and services that benefit them. Many other issues were either not settled or not addressed in the Master Contract. The goals that were established by the BAWSCA member agencies for the new Agreement can be summarized in BAWSCA's overall goal of ensuring a reliable supply of high quality water at a fair price.

Attachment B

City Staff Summary Highlights of WSA

Article 1. Parties, Effective Date, and Defined Terms

- The parties to the WSA are the City and County of San Francisco and the wholesale agencies.

Article 2. Term; Amendments During Term

- The WSA will be in effect, unless it is extended, for 25 years from July 1, 2009 to June 30, 2034.

Article 3. Water Supply

- Reconfirms the wholesale agencies collective supply assurance of 184 million gallons per day (MGD) as well as the agencies' individual "supply guarantees." The supply guarantees are transferable between agencies.
- Commits the Wholesale Customers to implement water efficiency programs and practices to ensure that the SFPUC is eligible to receive state and federal grants. San Francisco and the Wholesale Customers agree to explore support for water conservation and recycling outside the Bay Area to benefit the Tuolumne River.
- San Francisco agrees to deliver water that meets all applicable drinking water standards. This has been the practice historically, but is now in the WSA.
- San Francisco agrees to complete the Water System Improvement Program (WSIP) by 2015 and requires the SFPUC to maintain the regional water system and submit reports on the status of the system.
- San Francisco agrees to operate the regional water system to give priority to water supply over electric power generation. This has been the practice since the 1987-1992 drought, but is now part of the WSA.
- In water shortages, the available water will be divided between San Francisco and the Wholesale Customers as agreed to in the Interim Water Shortage Allocation Plan (IWSAP). How to divide the water allocated to the Wholesale Customers among them is not part of the WSA; the Wholesale Customers will need to continue the methodology in the IWSAP, or negotiate an alternate mechanism.
- Allows BAWSCA or individual Wholesale Customers to transport, or "wheel" water through the regional water system during water shortage periods subject to water quality considerations.

Article 4. Implementation of Interim Supply Limitation.

- Implements the decision made by the SFPUC when it adopted the WSIP in conjunction with San Francisco's approval of the Program Environmental Impact Report (PEIR) for the WSIP, with respect to the Interim Supply Limitation in effect until December 31, 2018. The Interim Supply Limitation limits water sales from San Francisco's watersheds to 81 MGD for San Francisco and 184 MGD for the Wholesale Customers for a total limitation of 265 MGD. The WSA requires San Francisco to decide if it will increase the 184 MGD supply assurance by December 31, 2009.
- San Francisco must decide how to divide up the Wholesale Customers' 184 MGD Interim Supply Limitation among the Wholesale Customers by December 2010. These allocations

are separate and distinct from the 184 MGD supply assurance and the individual supply guarantees discussed in Article 3.

- If water usage for the regional water system exceeds the 265 MGD Interim Supply Limitation, then an “environmental enhancement surcharge” will be levied on those agencies (including San Francisco) that exceed their individual limitations. Receipts from the surcharge will be used for environmental restoration or enhancement projects on San Francisco watersheds.

Article 5. Wholesale Revenue Requirement

- Describes the basis for determination of the Wholesale Revenue Requirement, the amount of money the Wholesale Customers are required to pay to the SFPUC for ownership, operation, and maintenance of the regional water system. In general, the provisions in this section are the same as those in the current Master Contract, which relate to appropriate allocation of costs for facilities and programs of the regional water system.
- Establishes the methodology to allocate capital costs for the regional water system. In the current Master Contract, the “utility method” of recovering capital costs is used. This method requires the Wholesale Customers to pay depreciation and a rate of return on the net book value of the assets. The WSA discontinues this method and replaces it with the “cash method” for new assets. The cash method requires the wholesale customers to pay their proportionate share of SFPUC’s annual debt service for WSIP projects. In addition, the Wholesale Customers will pay their remaining share of existing assets built and in service as of June 30, 2009, through a series of level payments over 25 years.

Article 6. Integration of Wholesale Revenue Requirement with SFPUC Budget Development and Rate Adjustments

- Requires the SFPUC to send its proposed annual budget to BAWSCA. This is similar to the requirements in the current Master Contract.
- Allows SFPUC to establish wholesale rates to recover the Wholesale Revenue Requirement. This is similar to provisions in the current Master Contract, but includes more coordination and consultation with BAWSCA.
- Requires the use of a balancing account for the difference between the amounts charged to Wholesale Customers and the total amount that the Wholesale Customers are required to pay. This is similar to provisions in the current Master Contract, but adds more flexibility so that rates do not fluctuate greatly.

Article 7. Accounting Procedures; Compliance Audit

- Requires maintenance of a rigorous accounting system for SFPUC to implement the calculation of the Wholesale Revenue Requirement and rate setting, similar to the requirements in the current Master Contract.
- Provides for an annual compliance audit of the calculation of the Wholesale Revenue Requirement, similar to the requirements in the current Master Contract.

Article 8. Other Agreements of the Parties

- Delegates administrative tasks to BAWSCA, the representative for the Wholesale Customers.
- Commits SFPUC to meet annually with the Wholesale Customers. This is also a provision of the current Master Contract.

- Requires that disputes be resolved by mandatory binding arbitration as in the current Master Contract.

Article 9. Implementation and Special Provisions Affecting Certain Wholesale Customers

- Preserves the deliveries of specific quantities of water at specific rates to Brisbane and GVMID. (The quantities and rates are listed in the individual Water Sales Contracts for each of the agencies.).