



PUBLIC WORKS DEPARTMENT

Council Meeting Date: May 19, 2009
Staff Report #: 09-068

Agenda Item #: F1

REGULAR BUSINESS: Adoption of Resolutions: 1) 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) Approving Water Supply Agreement with the City and County of San Francisco; and 3) Approving Individual Sales Contract with the City and County of San Francisco.

RECOMMENDATION

Staff recommends that City Council adopt the following resolutions: 1) 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) Approving Water Supply Agreement with the City and County of San Francisco; and 3) Approving Individual Sales Contract with the City and County of San Francisco

BACKGROUND

Water purchased from the Hetch-Hetchy system provides 100 percent of the water provided by the Menlo Park Municipal Water District. Water is transported from the Hetch-Hetchy Valley in Yosemite National Park through a network of reservoirs, pipelines and pumping stations to the Bay Area and remains one of the purest urban water supplies in the United States. The Hetch-Hetchy system is managed and operated by the San Francisco Public Utilities Commission (SFPUC). Entitlements for the Hetch-Hetchy system go back almost a century and were granted to San Francisco through Federal legislation known as the Raker Act in 1913.

The City of Menlo Park is a member of the Bay Area Water Supply and Conservation Agency (BAWSCA), created by the State Legislature to represent the collective interests of the 27 agencies, commonly referred to as the "Wholesale Customers," that purchase water from the San Francisco regional water system operated by the SFPUC. Before the formation of BAWSCA, the Wholesale Customers were represented by an organization called Bay Area Water Users Association (BAWUA). In 1984, these agencies joined together to negotiate a "Settlement Agreement and Master Water Sales Contract" with the City and County of San Francisco for the delivery of water from the Hetch-Hetchy system. The 1984 contract settled a Federal lawsuit brought on behalf of the Wholesale Customers challenging the legality of water rates charged by San Francisco. Since then, BAWSCA and its predecessor BAUWA have overseen the San Francisco contract on behalf of its member agencies.

The 1984 contract with San Francisco will expire on June 30, 2009. On September 19, 2006, the City Council adopted a resolution authorizing BAWSCA to negotiate a Master Water Contract with San Francisco. All of the other BAWSCA agencies also adopted similar resolutions. Since then, the BAWSCA negotiating team has been working with San Francisco to ensure a new contract is in place by July 1, 2009. The Public Works Director was designated by the City Manager to represent Menlo Park throughout the negotiation process.

ANALYSIS

The overarching goal of the BAWSCA agencies has been to assure a reliable supply of high-quality water at a fair price. After three years of effort, a new Water Supply Agreement is ready for approval. The agreement was approved by the SFPUC on April 29, 2009. The following provides a summary of important terms contained within the proposed agreement.

Article 2. Term; Amendments During Term

- The Water Supply Agreement 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 agrees to deliver water that meets all applicable drinking water standards. This has been the practice historically, but is now included in the Water Sales Agreement.
- San Francisco agrees to complete the Water System Improvement Program (WSIP) by 2015 and to properly 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 Water Sales Agreement.
- In water shortages, the amount of available water that will be divided between San Francisco and the collective wholesale customers (BAWSCA Members) is established as agreed to in the Interim Water Shortage Allocation Plan, which was previously approved by the City of Menlo Park. How to divide the water allocation between BAWSCA members is not part of the Water Supply Agreement so BAWSCA members will need to continue the methodology in the existing Water Shortage Allocation Plan, or negotiate an alternate mechanism. BAWSCA has included resources in its 2009-10 budget proposal to work with members to re-evaluate the current Water Shortage Allocation Plan.

Article 4. Implementation of Interim Supply Limitation.

- Implements the decision made by the SFPUC when it adopted the Water System Improvement Program in conjunction with San Francisco's approval of the Program Environmental Impact Report (PEIR) with respect to the Interim Supply Limitation in effect until December 31, 2018. The Interim Supply Limitation provision limits water sales from San Francisco's watersheds to 81 million gallons per day (MGD) for San Francisco and 184 MGD for the wholesale customers for a total limitation of 265 MGD. The Water Supply Agreement requires San Francisco to decide if it will increase the 184 MGD supply assurance by December 31, 2018.
- 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. 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. The cash method requires wholesale customers to pay their share of debt service payments and capital improvements funded from reserves.

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.

As with any negotiation, many, but not all, of the BAWSCA agency objectives were achieved in the negotiation process. Overall, the Agreement sets appropriate parameters for a sound ongoing relationship with San Francisco into the future. Staff recommends approval by adopting the resolution contained in Attachment D.

Individual Water Sales Contract

In addition to the Water Sales Agreement that applies to all of the SFPUC wholesale customers, Attachment B is an Individual Water Sales Contract with the City and County of San Francisco that includes provisions specific to the Menlo Park Municipal Water District. It documents the specific service area for the Menlo Park Municipal Water District and limits the delivery of water to within its boundaries. The Individual Water Sales Contract also documents the number and locations of existing connection points to the SFPUC system as well as emergency connections to neighboring water systems.

The Individual Water Sales Contract has been updated to reflect the current boundaries and configuration of the City's water system but represents no changes in the current agreement regarding water sales with the SFPUC. Staff recommends approval by adopting the resolution contained in Attachment E.

IMPACT ON CITY RESOURCES

Approval of the Water Supply Agreement has no direct impact on City Resources. The proposed Agreement sets forth the methods and criteria for calculating future water rates but does not set rates. Costs related to water supply are part of the revenue requirement for the Water Enterprise Fund and are generally recovered from retail water rates set by the Council. There will be no impact to the General Fund from approval of the Water Supply Agreement.

POLICY ISSUES

The recommendation does not represent any change to existing City policy.

ENVIRONMENTAL REVIEW

Approval of the new Water Supply Agreement is considered an action subject to the California Environmental Quality Act (CEQA). In accordance with CEQA Guidelines when more than one public agency takes action on a project, one agency becomes the Lead Agency under CEQA and other agencies considering the project become Responsible Agencies. For this action, the SFPUC is the Lead Agency and Menlo Park is a Responsible Agency. As a Responsible Agency, Menlo Park is required to consider the environmental document prepared and certified by the Lead Agency when considering its action.

The SFPUC completed an extensive environmental review process for its Water System Improvement Program which included an evaluation of future water supplies which have now become a part of this proposed Water Supply Agreement. The SFPUC certified its Final Programmatic Environmental Impact Report for the Water System Improvement Program on October 30, 2008. The environmental review process associated with the Water System Improvement Program forms the basis for Menlo Park to consider and act on the Water Supply Agreement.

Attachment C is a resolution which contains the findings necessary to properly consider approving the Water Supply Agreement. Staff recommends approval of this resolution.

Kent Steffens
Director of Public Works

PUBLIC NOTICE: Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS:

- A. [Water Supply Agreement](#)
- B. [Individual Water Sales Contract](#)
- C. [Resolution Adopting CEQA Findings](#)
- D. [Resolution Approving Water Supply Agreement](#)
- E. [Resolution Approving Individual Water Sales Contract](#)