

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Randy Breault, Director of Public Works/City Engineer via City Manager

SUBJECT: Granting BAWSCA Authority to Negotiate Amendments to the Water Supply Agreement with the City and County of San Francisco

DATE: September 6, 2018

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 resolutions that would authorize the Bay Area and Water Supply Conservation Agency (BAWSCA) to represent the City and the Guadalupe Valley Municipal Improvement District (GVMID) in matters related to the Water Supply Agreement with the City and County of San Francisco (CCSF).

Recommendation:

That the City Council acting on behalf of itself and in its capacity as the Board of Directors of the Guadalupe Valley Municipal Improvement District approve City Resolution No. 2018-64 and GVMID Resolution No. 2018-02 authorizing the Bay Area Water Supply and Conservation Agency to negotiate amendments to the Water Supply Agreement 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). Both districts are members of BAWSCA, and are referred to as one of SFPUC's "Wholesale Customers".

The requested authorization and BAWSCA's willingness to negotiate on behalf of the wholesale customers is consistent with previous authorizations for extension of the WSA, and also for settlement of arbitration related to the WSA.

Discussion:

The issues under consideration for amendment were discussed between BAWSCA staff and the Brisbane City Manager and Public Works Director on August 16, 2018.

BAWSCA staff and consultants clearly have the expertise to fulfill the authority which they are requesting. City and GVMID staff do not have this capability; therefore, no analysis has been made regarding the impacts of a no vote on the attached resolutions.

Fiscal Impact:

There is no direct immediate fiscal impact anticipated as a result of the requested action.

Measure of Success

Effective administrative oversight of the Water Supply Agreement with the City and County of San Francisco.

Attachments:

- July 17, 2018 letter from BAWSCA to City Manager Clayton Holstine
- City of Brisbane Resolution No. 2018-64
- GVMID Resolution No. 2018-02



Director of Public Works/City Engineer



City Manager



July 17, 2018

By Electronic and Regular Mail

Clayton L. Holstine, City Manager
City of Brisbane/Guadalupe Valley MID
50 Park Place
Brisbane, CA 94005

Re: Negotiation with San Francisco to Amend the Water Supply Agreement with the Wholesale Customers

Dear Mr. Holstine:

The City of Brisbane and Guadalupe Valley MID (GVMID) purchases water from the San Francisco Regional Water System (RWS) and is one of the 26 members of the Bay Area Water Supply and Conservation Agency (BAWSCA). In 2006, the BAWSCA member agencies delegated authority to BAWSCA to negotiate the Water Supply Agreement between San Francisco and the Wholesale Customers (WSA). The WSA was subsequently approved by the City of Brisbane and GVMID. The City of Brisbane and GVMID also approved Amendment No. 1 to the WSA, in Spring of 2013, which prohibited changes to Hetch Hetchy Reservoir unless there is an amendment to the WSA. In 2014, the City of Brisbane and GVMID delegated authority to BAWSCA to initiate, defend and settle arbitration related to the WSA.

At this time, some sections of the WSA require 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. As CEO/General Manager of BAWSCA, the agency that represents your interests and administers the WSA, **I am writing you today to request that your agency now consider delegating to BAWSCA the authority to negotiate with San Francisco to amend the WSA.** Any such amendments must be approved by each member agency and by San Francisco. BAWSCA asks that the delegation of authority be in place by October 1, 2018.

This action 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, enclosed is a sample resolution prepared by BAWSCA's Legal Counsel.

Scope of Authority to Negotiate.

The requested delegation of authority will allow BAWSCA to negotiate amendments related to discrete but important items. The following items are of interest to San Francisco: 1) process for reviewing the Wholesale Capital Fund; 2) wholesale debt-coverage ratio for the rate-setting process; 3) extension of the WSIP completion date; 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 items are of interest to BAWSCA: 1) BAWSCA's oversight role over the San Francisco Public Utility Commission's (SFPUC) 10-year Capital Improvement Program; 2) the procedure to divide available water

Clayton L. Holstine, City Manager
July 17, 2018
Page 2

between the SFPUC and its Wholesale Customers during droughts; 3) extension of the deadline for a decision by San Francisco to make San Jose and Santa Clara permanent customers of the RWS and extend increased water supply to the other permanent Wholesale Customers; and 4) resolution of disputed SFPUC Regional Water System asset classifications.

Contract Administration Already Delegated to BAWSCA.

When the prior agreement, the 1984 Master Contract and Settlement Agreement (1984 Agreement) was negotiated, there was no durable, representative organization that could be delegated the responsibility to act as the agent for contract administration on behalf of the Wholesale Customers. BAWSCA's predecessor, the Bay Area Water Users Association (BAWUA) was, at that point, simply an unincorporated association governed entirely by city and water agency staff. For that reason, the 1984 Agreement provided for initiation of arbitration as well as a variety of administrative decisions to be made by five "Suburban Representatives" -- agencies to be chosen by all BAWUA members or, absent a selection, the five largest agencies. Annually, through the term of the 1984 Agreement, the Suburban Representatives were required to make such administrative decisions and, several times, to initiate arbitration.

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 continue to require oversight and decision each year. The WSA specifically assigned a number of administrative tasks to BAWSCA, most of which were previously handled by the Suburban Representatives.

Many 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. Since one potential amendment addresses the allocation of water during a drought and another the extension of the decision related to San Jose and Santa Clara, BAWSCA determined that it is prudent to obtain authorization from the members to negotiate.

Request to Adopt Attached Resolution.

I respectfully ask that your agency adopt a resolution delegating authority to BAWSCA to negotiate with San Francisco to amend the WSA. The accompanying resolution has been drafted to assist your agency. However, your agency is free to modify the resolution as necessary for consistency with your agency's preferred format. In particular, the heading of the draft resolution and the layout of the material following the last "Resolved" clause may need to be tailored to match your traditional practice.

Please submit this resolution to your agency's governing body as soon as possible. It would be most helpful to have the resolution adopted **at your September meeting**. Once adopted, please forward the resolution to me and Allison Schutte, BAWSCA's Legal Counsel.

If your legal counsel has any questions about the attached draft resolution, they are welcome to contact BAWSCA Legal Counsel at the address provided in this letter:

Allison Schutte, Esq.
Hanson Bridgett, LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Email: aschutte@hansonbridgett.com
Tel: 415-995-5823

Clayton L. Holstine, City Manager
July 17, 2018
Page 3

If you have any non-legal questions related to this issue, please contact me at nsandkulla@bawsca.org or at 650-349-3000.

Sincerely,



Nicole Sandkulla
CEO/General Manager

Enclosure: Sample Agency resolution

CC: *(Via Electronic Mail Only)*
Randy Breault, Water Management Representative
Jerry Flanagan, Water Management Representative
Allison Schutte, BAWSCA Legal Counsel

RESOLUTION NO. 2018-64

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
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

WHEREAS, in April 2003, the City of Brisbane (City) and other water suppliers in Alameda, San Mateo and Santa Clara counties established the Bay Area Water Supply and Conservation Agency (BAWSCA), as authorized by Water Code Section 81300 *et seq.* pursuant to State legislation enacted in 2002 (AB 2058); and

WHEREAS, the City is represented on the BAWSCA Board of Directors; and

WHEREAS, the City Council has previously 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 (Agreement); and

WHEREAS, BAWSCA has proposed to serve as the representative of its members in discussions and negotiations with San Francisco leading toward the resolution of a number of discrete, but important amendments to address substantive issues that have arisen during implementation of the Agreement; and

WHEREAS, BAWSCA has the capabilities required to serve in this capacity by virtue of Agency staff and consultants in relevant disciplines including civil engineering, water supply planning, finance, economics, accounting, and law; and

WHEREAS, BAWSCA's CEO/General Manager has met with the City's representatives to update them on the matters at issue in this negotiation.

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

1. City appoints BAWSCA as its authorized representative in discussions and negotiations with San Francisco to amend the Agreement to address issues arising from implementation of the Agreement.

2. BAWSCA, through its CEO/General Manager, shall confer with and keep City informed on the status of these discussions and negotiations.
3. This appointment shall continue unless and until revoked by the City Council.
4. This resolution confers no authority on BAWSCA to enter into a contract with San Francisco or to make any commitments legally binding on City. The authority to enter into any contracts is expressly reserved to the City Council.

W. Clarke Conway, Mayor

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the ___ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

RESOLUTION NO. 2018-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GUADALUPE VALLEY
MUNICIPAL IMPROVEMENT DISTRICT
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

WHEREAS, in April 2003, the Guadalupe Valley Municipal Improvement District (District) and other water suppliers in Alameda, San Mateo and Santa Clara counties established the Bay Area Water Supply and Conservation Agency (BAWSCA), as authorized by Water Code Section 81300 *et seq.* pursuant to State legislation enacted in 2002 (AB 2058); and

WHEREAS, the District is represented on the BAWSCA Board of Directors; and

WHEREAS, the District's Board of Directors has previously 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 (Agreement); and

WHEREAS, BAWSCA has proposed to serve as the representative of its members in discussions and negotiations with San Francisco leading toward the resolution of a number of discrete, but important amendments to address substantive issues that have arisen during implementation of the Agreement; and

WHEREAS, BAWSCA has the capabilities required to serve in this capacity by virtue of Agency staff and consultants in relevant disciplines including civil engineering, water supply planning, finance, economics, accounting, and law; and

WHEREAS, BAWSCA's CEO/General Manager has met with the District's representatives to update them on the matters at issue in this negotiation.

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

1. District appoints BAWSCA as its authorized representative in discussions and negotiations with San Francisco to amend the Agreement to address issues arising from implementation of the Agreement.
2. BAWSCA, through its CEO/General Manager, shall confer with and keep District informed on the status of these discussions and negotiations.
3. This appointment shall continue unless and until revoked by the Board of Directors.
4. This resolution confers no authority on BAWSCA to enter into a contract with San Francisco or to make any commitments legally binding on District. The authority to enter into any contracts is expressly reserved to the Board of Directors.

W. Clarke Conway, President

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PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Guadalupe Valley Municipal Improvement District held on the ___ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Ingrid Padilla, District Secretary