TO: HONORABLE CITY COUNCIL
FROM: CITY MANAGER DEPARTMENT: UTILITIES
DATE: SEPTEMBER 11, 2006 CMR:341:06
SUBJECT: RESOLUTION APPOINTING THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY AS AUTHORIZED REPRESENTATIVE OF THE CITY OF PALO ALTO IN DISCUSSIONS AND NEGOTIATIONS WITH SAN FRANCISCO

RECOMMENDATION
Staff recommends that the Council approve the resolution authorizing the Bay Area Water Supply and Conservation Agency (BAWSCA) to negotiate on behalf of the City of Palo Alto for a water services agreement with the City and County of San Francisco.

BACKGROUND
Palo Alto's water supply consisted entirely of groundwater provided by the wells it owned and operated until 1937, when the City contracted with San Francisco for a supplemental supply of water. In 1962, after a survey was conducted to determine the water softening cost to Palo Alto water users, the Council decided to purchase all of its water supplies from San Francisco. At that time, a 20-year water supply contract was signed with San Francisco and Palo Alto's wells were placed in standby status. Since then, the wells were used for several extremely hot days in the 1960's, for two weeks during the San Francisco employees' strike of 1976, and as supplemental supply in 1988 and 1991 during an extended drought.

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 (City of Palo Alto et al. v. City and County of San Francisco), 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 purchase water from San Francisco on a wholesale basis.

Each wholesale agency, including Palo Alto, has an individual water supply contract entered into at the same time as the Master Contract. Palo Alto's individual water supply contract describes the service territory, points of connection with San Francisco's regional water system, interties with neighboring systems, and billing and payment details.

**DISCUSSION**

The term of the Master Contract and Palo Alto's individual water supply contract is 25 years, and expires on June 30, 2009. It is time to prepare for negotiations for a new agreement with San Francisco.

The Bay Area Water Supply and Conservation Agency (BAWSCA) was formed in 2003 and is BAWUA's successor organization. BAWSCA member agencies are the same agencies that were members of BAWUA and include all agencies that purchase water from the regional water system owned by the City and County of San Francisco and operated by the San Francisco Public Utilities Commission (SFPUC).

The attached letter from Palo Alto City Council Member Bern Beecham, BAWSCA's chair, to Mayor Kleinberg indicates that BAWSCA is ready and able to negotiate a new water service agreement on behalf of its member agencies. This is the same role that BAWUA performed for its member agencies in the 1974 to 1984 negotiation period for the existing Master Contract.

The attachment to the letter describes the environment under which negotiations for a new water service agreement will take place. A key factor is the fact that the SFPUC has adopted a $4.3 billion Water System Improvement Program (WSIP) to upgrade and repair the regional water system that Palo Alto relies on. The Program Environmental Impact Report (PEIR) for the WSIP is underway and provides a venue for public scrutiny.

The existing 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 have been expressed by the BAWSCA member agencies can be distilled into BAWSCA's overall goal of ensuring a reliable supply of high quality water at a fair price. The attachment to the letter lists more specific elements of that overarching goal.

BAWSCA's, and previously BAWUA's, role continues to be one of coordinating and advocating for the joint interests of its member agencies in their relationship to San Francisco and the regional water system. BAWSCA is not a party to the Master Contract – it is between the individual agencies and the City and County of San Francisco. However, it makes sense for BAWSCA to coordinate the negotiations and act on its member agencies' behalf for several reasons. The power of the group of agencies in such a negotiation is much greater than that of a single agency negotiating on its own behalf. In addition, the pooling of member agency
resources at BAWSCA enables experts in many areas to be available to assist in the negotiations. The resources BAWSCA has gathered include expertise in accounting, economics, engineering, municipal finance, legal counsel, and strategic counsel.

Council’s grant of grant of authority to negotiate on the City's behalf to BAWSCA still leaves the final decision of whether to enter into any agreement with the Council. In addition, the Council may withdraw the authority given to BAWSCA at any time. BAWSCA has committed to providing quarterly reports on the progress of the negotiations. Staff will communicate these reports to the Council as they are received.

**RESOURCE IMPACT**

The costs of negotiating a new water services agreement are included in the BAWSCA budget that is allocated to its member agencies. Palo Alto's allocation is included in its water budget. Staff time for monitoring this work is also already incorporated into the budget.

Prior to committing to a potential new agreement, any adjustments to the cost of the water contract will be analyzed and reported to the Council.

**POLICY IMPLICATIONS**

The underlying goal for the negotiations for a new water services agreement is to ensure a reliable supply of high quality water at a fair price. The Council has supported this goal by its approval of the Water Integrated Resources Plan Guidelines in December 2003 [CMR:547:03].

**ENVIRONMENTAL REVIEW**

A decision as to whether renewal of the water services contract will require environmental review will be made at a later date. This work would likely be coordinated by the City and County of San Francisco as the lead agency.

**NEXT STEPS**

BAWSCA is currently in the process of collecting the authorizations for those member agencies that wish to join in the coordinated negotiations. BAWSCA expects to begin the negotiations with San Francisco this fall. Quarterly reports on progress and status of the negotiations will be forthcoming as the negotiations proceed.

**ATTACHMENTS**

1. Resolution Appointing the Bay Area Water Supply and Conservation Agency as Authorized Representative of the City of Palo Alto in Discussions and Negotiations with San Francisco for an Agreement To Provide a Reliable Supply of High Quality Water at a Fair Price

2. Letter dated July 31, 2006 from Bern Beecham, Chair of BAWSCA, to Mayor July Kleinberg regarding: Negotiations of Agreement with San Francisco to Provide Its Regional Customers a Reliable Supply of High Quality Water at a Fair Price