



# City of Palo Alto

## City Council Staff Report

(ID # 9510)

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**Report Type: Consent Calendar**

**Meeting Date: 8/20/2018**

**Summary Title: Resolution Supporting a Bay Delta Plan Negotiated Settlement**

**Title: Adoption of a Resolution Supporting the Objective of the State Water Resources Control Board's Bay Delta Plan and a Negotiated Voluntary Settlement of Water Issues on the Tuolumne River**

**From: City Manager**

**Lead Department: Utilities**

### **Recommended Motion**

Staff recommends that the City Council consider the following motion: Adopt the proposed resolution (Attachment A - Resolution).

### **Recommendation**

Staff recommends that the City Council adopt a resolution supporting the objectives of the State Water Resources Control Board's (SWRCB) Bay Delta Plan and favoring a negotiated and voluntary settlement process.

### **Executive Summary**

On July 6, 2018, the SWRCB issued a Draft Final Bay Delta Plan Update (Bay Delta Plan) calling for increased flows on the Tuolumne River to 40% of unimpaired flow between the months of February and June, regardless of water supply conditions. While the City of Palo Alto supports the objectives of the Bay Delta Plan to improve conditions on the Tuolumne River, the City favors resolving these complex water issues via a negotiated settlement process. Alternatives, such as the one proposed by the San Francisco Public Utilities Commission (SFPUC), the City's potable water supplier, combine target functional flows with non-flow improvements that will result in a better outcome for the fisheries as well as urban and agricultural water users. The status quo on the Tuolumne River is unsustainable; a joint settlement will avoid lengthy and costly legal proceedings and allow science-based solutions to be applied in a more timely fashion. The SFPUC's proposed alternative can be seen <https://sfwater.org>. The Bay Area Water Supply & Conservation Agency (BAWSCA) also supports the objective of Bay Delta Plan,

but opposes SWRCB's proposed unilateral plan, and strongly favors the idea of a negotiated settlement (Attachment B – BAWSCA statement).

## **Background**

### Palo Alto Water Supply

Palo Alto receives 100% of its potable water from the City and County of San Francisco's Regional Water System (RWS), operated by the SFPUC. This supply is predominantly from the Sierra Nevada, delivered through the Hetch Hetchy aqueducts, but also includes treated water produced by the SFPUC from its local watersheds and facilities in Alameda and San Mateo Counties. About 85% of the supply on the RWS is from the Tuolumne River.

The amount of imported water available to the SFPUC's retail and wholesale customers is constrained by hydrology, physical facilities and the institutional limitations that allocate the water supply of the Tuolumne River. The SFPUC operates its system to manage an 8.5 year "design drought" with the objective to limit system-wide water use reductions to 20% in a dry year. This "design drought" matches the severity of the 1987-1992 drought followed by the 1976-1977 drought. Recognizing the reality of drought cycles in California and the expectation that droughts will become more severe and more frequent with climate change, planning for dry cycles by using storage and conservation are critical tools for all of the customers relying on the RWS.

### BAWSCA

The Bay Area Water Supply and Conservation Agency (BAWSCA) is a special district enabled by an act of the California Legislature and formed by its member agencies in 2003. BAWSCA members are the 16 cities, 8 water districts, and 2 private water providers that receive water from the SFPUC RWS. BAWSCA agencies provide water to over 1.8 million people and 40,000 commercial, industrial and institutional accounts in Alameda, San Mateo and Santa Clara Counties. BAWSCA provides regional water supply planning, resource development, and conservation program services. Its goal is to ensure the member agencies get a reliable supply of high quality water at a fair price. The City is represented on the BAWSCA Board of Directors.

### ACWA

BAWSCA is a member of the Association of California Water Agencies (ACWA). ACWA is the largest statewide coalition of public water agencies in the country made up of more than 430 public agency members collectively responsible for 90% of the water delivered to cities, farms and businesses in California. ACWA's mission is to help members promote the development, management and use of good quality water at the lowest practical cost and in an environmentally responsible manner. ACWA serves the water industry and the public by promoting local agencies as the most efficient means of providing water service, sharing reliable scientific and technical information, tracking and shaping state and federal water

policy, advocating for sound legislation and regulation, and facilitating cooperation and consensus among all interest groups.

### SWRCB

The SWRCB is charged with setting water quality objectives to protect beneficial uses of water in the Bay Delta through its Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay Delta Plan). The SWRCB is proposing to update two elements of the 2006 Bay Delta Plan: The San Joaquin River flow objectives to protect fish and wildlife and the Southern Delta salinity objectives.

### Water Conservation and Alternative Resources

BAWSCA agencies and the SFPUC are committed to water conservation and projects that reduce the dependence on imported water. The average water use for residents in the three counties during the height of the drought was 56 gallons per day, one of the lowest levels in California. While agencies continue to promote additional water use efficiency and conservation, there are limits to what can be achieved. BAWSCA agencies and the SFPUC have dedicated resources to projects that reduce the demand for imported water, including recycled water distribution expansion, a groundwater recovery project, water transfer agreements, and preliminary work on a potential advanced treated water project.

### Bay Delta Plan

On July 6, 2018, the SWRCB released the Bay Delta Plan update requiring flows of 40% of unimpaired flow from February through June every year, whether it is wet or dry, on the San Joaquin River and its tributaries - the Stanislaus, Tuolumne and Merced Rivers. At the same time, the SWRCB is working on a similar proposal for the Sacramento River.

BAWSCA, ACWA, and the SFPUC support the objectives of the Bay Delta Plan but oppose the SWRCB's proposal. Comments stating this position were submitted to the SWRCB in March 2017 by the SFPUC, BAWSCA, ACWA, and the City of Palo Alto. Key features of the SWRCB's proposed Bay Delta Plan have not changed in the July 6, 2018 version.

On July 9, 2018, ACWA released the following statement:

"ACWA recognizes that the State Water Board is wrestling with an enormously difficult problem that has bedeviled California resource managers for decades. ACWA and several water suppliers from throughout California previously urged the State to move in a new direction, embracing comprehensive, integrated strategies for fishery management that we believe would be better for fisheries and water supply. However, the substance of the latest draft is the same as the original proposal that raised so much controversy. If we don't find a way to better implement the state's core value of advancing both the environment and water supply, California will be missing a critically important opportunity."

The California Department of Fish and Wildlife (CDFW) submitted a joint letter with the California Department of Water Resources (DWR) that specifically asks for (1) a negotiated

settlement and (2) expresses CDFW's agreement that functional flows are critical to restore the viability of anadromous fisheries. The appropriateness of a settlement process approach is the central theme of DWR/CDFW's comments.

## **Discussion**

If implemented, the SWRCB's proposed Bay Delta Plan would result in drastically reduced available water supply during the next drought forcing severe water restrictions for the City's residents and businesses. Under the Bay Delta Plan, at normal water demand levels, 40-50% rationing could be necessary during dry years. Even at current depressed water usage levels, 20-30% rationing would be required in a dry year. The number of dry year shortages would double or triple from the existing projected number of 1 in every 10 years to 2 or 3 in every 10 years. Reductions of this magnitude and frequency will threaten the economic health of the region, community development, and new housing. Maintaining Palo Alto's urban canopy will be a challenge; many trees were lost in the most recent drought and many more were stressed.

The SFPUC has developed an alternative to the proposed Bay Delta Plan that could provide adequate water for people and businesses, as well as for wildlife and the environment without draconian reduction measures. This alternative, based on the findings of multiple credible Tuolumne River studies, includes reasonable, functional flows with a commitment to other non-flow measures such as habitat restoration and predator control.

Finding a solution that addresses the sustainability issues on the Tuolumne River and strikes a balance between the competing needs of water uses can be achieved through a negotiated settlement. From the beginning, Governor Brown has supported a settlement process. The parties included in the settlement meetings have been determined by the Governor's office and have included the SFPUC along with agricultural interests and environmental non-governmental organizations. BAWSCA is privy to the information resulting from the discussions although it is not one of the parties invited to the meetings. A voluntary settlement agreement would permit the interested parties to negotiate a reasonable alternative to the SWRCB's proposed Bay Delta Plan, avoiding potentially lengthy and costly litigation and providing benefits for fisheries as well as agricultural and urban water users.

The SFPUC, with the full support of BAWSCA agencies including Palo Alto, fills an important role in the negotiation process, and may increase the probability that a settlement will be achieved. The support of the coalition, formed by the SFPUC and BAWSCA as well as the state's Department of Water Resources, for the negotiated settlement process described in the attached resolution sends a clear message to the governor and to the SWRCB that the settlement process can be successful.

As a result, staff recommends that the Council express its support for the objectives of the State Board's Bay Delta Plan, along with support for a negotiated settlement process.

### **Resource Impact**

The financial impact of the proposed Bay Delta Plan could be significant. More expensive water supply alternatives will need to be developed. Local businesses, community development, and new housing could be impacted. A required 40-50% reduction in water use would significantly impact the SFPUC rates charged to BAWSCA agencies because fixed costs associated with the RWS would be collected over fewer units of water sold.

### **Policy Implications**

The adoption of the proposed resolution supports the 2018 Utilities Strategic Plan which calls for managing our finances optimally and using resources efficiently to meet our customers' service priorities.

### **Environmental Review**

Council's adoption of the proposed resolution does not meet the definition of a project, under Public Resources Code section 21065, therefore California Environmental Quality Act (CEQA) review is not required.

#### **Attachments:**

- Attachment A: Resolution Supporting a Bay Delta Plan Negotiated Settlement
- Attachment B - BAWSCA Statement

Resolution No. \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Supporting the Objective of the State Water Resources Control Board’s Bay Delta Plan and a Negotiated and Voluntary Settlement of Water Issues on the Tuolumne River

RECITALS

A. The City of Palo Alto (City) purchases 100% of its potable water supply from the San Francisco Public Utilities Commission (SFPUC), of which approximately 85% is sourced from the Tuolumne River.

B. The Bay Area Water Supply and Conservation Agency (BAWSCA) is a special district that provides regional water supply planning, resource development, and conservation program services to enhance the reliability of the 16 cities, 8 water districts, and 2 private water providers that provide water to over 1.8 million people and 40,000 commercial, industrial and institutional accounts in Alameda, San Mateo and Santa Clara Counties.

C. BAWSCA was enabled by a special act of the California Legislature and was formed by its member agencies in 2003.

D. The City is a BAWSCA member and is represented on the BAWSCA Board of Directors.

E. The SFPUC operates the Regional Water Supply System in accordance with an 8.5 year “design drought”; climate change is expected to result in more frequent and more severe droughts in the future.

F. BAWSCA agencies and the SFPUC are committing resources to reduce the need for imported water, including recycled water, groundwater recovery, and water transfer agreements.

G. On July 6, 2018, the State Water Resources Control Board (SWRCB) issued a Draft Final Bay Delta Plan Update (Bay Delta Plan) calling for increased flows on the Tuolumne River to 40% of unimpaired flows between the months of February and June, regardless of water supply conditions.

H. The proposed Bay Delta Plan could drastically reduce available water supply during the next drought forcing severe water restrictions for the City’s residents and businesses.

I. The SFPUC has been participating in settlement discussions with agricultural interests and environmental non-governmental organizations.

J. The SFPUC proposed, and BAWSCA supports, an alternative to the Bay Delta Plan based on multiple credible scientific studies of the Tuolumne River, that includes habitat restoration, predatory species control and target flow increases.

The Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The City supports the objectives of the Bay Delta Plan to improve conditions on the Tuolumne River.

SECTION 2. The City supports a negotiated and voluntary settlement process of water issues on the Tuolumne River that will provide adequate water for people and businesses as well as for wildlife and the environment.

SECTION 3. Council’s adoption of this resolution does not meet the definition of a project, under Public Resources Code section 21065, therefore California Environmental Quality Act review is not required.

INTRODUCED AND PASSED: XXX, 2018

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
City Manager

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Director of Utilities

\_\_\_\_\_  
Director of Administrative Services



**Statement from Nicole Sandkulla, Chief Executive Officer, About the State Water Resources Control Board (State Board)'s "Draft Final Bay-Delta Plan Update," Which Could Severely Reduce the Water Supply for Residents and Businesses in Alameda, San Mateo, and Santa Clara Counties**

July 18, 2018

Released on July 6th, the State Board's "Draft Final Bay-Delta Plan Update" could seriously reduce water supply during the next drought; forcing severe water reductions for the 1.8 million residents, many of the 30,000 businesses and thousands of community agencies in Alameda, San Mateo, and Santa Clara counties; to provide more water for the environment, including fish.

BAWSCA's analysis of this plan indicates that, if implemented, water users could be required to reduce their average per person water use to 41 gallons a day during a drought, from the recent pre-drought level of 79 gallons per day, and for some water users, to 25 gallons per day or less.

This severe water cutback could also threaten jobs as business activity might be reduced or prevented, and some businesses might have to move elsewhere. Community development might be delayed, and new housing might not be built. A community without enough water for job growth and fully operational businesses, hospitals and public institutions is unsustainable.

The average water use of residents in the three counties at the height of the most-recent drought was 56 gallons per day, one of the lowest levels in California. Obviously, the opportunity for these residents to conserve more water is very limited.

In earlier comments to the State Board on the prior draft plan, 11 of the 26 BAWSCA agencies, which distribute water to users in the three counties specifically cited health and safety concerns from mandated reductions in their water supply. The State Board indicated that it believes this vital water for residents and businesses can be easily replaced. But no replacement supply exists or can be identified for this amount of water.

Fortunately, there is a good, reasonable alternative to the State Board's plan that could provide adequate water for people and businesses, as well as for wildlife and the environment without draconian reduction measures. That alternative is a negotiated settlement of the water issues. This alternative has been recommended to the State Board by the San Francisco Public Utilities Commission, which operates the Bay Area Regional Water System, and by other water providers in the area.

From the beginning of the State Board's process, Governor Brown also has supported a negotiated settlement to resolve the issues. A voluntary settlement agreement would be the most logical, helpful, and responsible way to proceed, rather than a unilateral order from the State Board.

BAWSCA supports the objective of the State Board's Bay-Delta Plan, opposes the Board's proposed unilateral Plan for the Tuolumne River, and strongly favors the idea of a negotiated settlement.

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