



# City of Palo Alto

## City Council Staff Report

(ID # 9477)

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**Report Type: Consent Calendar**

**Meeting Date: 9/10/2018**

**Summary Title: Resolution Authorizing BAWSCA to Negotiate**

**Title: Adoption of a Resolution Authorizing the Bay Area Water Supply and Conservation Agency to Negotiate with the City and County of San Francisco to Amend the 2009 Water Supply Agreement**

**From: City Manager**

**Lead Department: Utilities**

### **Recommended Motion**

Staff recommends that the City Council consider the following motion: Adopt a resolution authorizing the Bay Area Water Supply and Conservation Agency (BAWSCA) to negotiate with the City and County of San Francisco to amend the Water Supply Agreement (WSA).

### **Recommendation**

Staff recommends that the City Council adopt a resolution authorizing BAWSCA to negotiate with the City and County of San Francisco to amend the WSA.

### **Executive Summary**

The WSA is an agreement for San Francisco to supply water from its Hetch Hetchy water system to the BAWSCA-member wholesale customers. Delegating to the BAWSCA Board the authority to negotiate with the City and County of San Francisco to amend the WSA will allow BAWSCA to negotiate amendments related to discrete but important items. Delegation of this authority was specifically anticipated in the WSA, but must be authorized by the adoption of a resolution by a majority of BAWSCA members. This resolution confers no authority on BAWSCA to enter into a contract with San Francisco or to make any commitments legally binding on the City of Palo Alto (City).

### **Background**

BAWSCA is a special district formed in 2003 as authorized by the California legislature (see Water Code Section 81300 *et seq.*). The California Legislature concluded at that time that

residents in Alameda, San Mateo and Santa Clara counties that rely upon the water from the San Francisco Regional Water System (Regional Water System) have no right to vote in elections in the City and County of San Francisco and were not represented on the San Francisco commission that oversees the operation of the Regional Water System. One of the resulting laws, Assembly Bill 2058, enabled the creation of BAWSCA to represent cities, districts and public utilities that distribute water in portions of the Bay Area served by the Regional Water System (wholesale customers). BAWSCA provides regional water supply planning, resource development, and conservation program services. Its goals are to ensure the member agencies get a reliable supply of high quality water at a fair price. The City purchases water from the Regional Water System and is one of the 26 members of BAWSCA, also known as the "Wholesale Customers. The City is represented on the BAWSCA Board of Directors.

BAWSCA replaced the previous unincorporated association of Wholesale Customers called the Bay Area Water Users Association (BAWUA). In 1977, BAWUA was successful via a lawsuit in affirming that the Wholesale Customers should not receive a higher rate increase relative to San Francisco retail customers. Additionally, the City brought a lawsuit against San Francisco which resulted in the negotiation and adoption of a master water sales contract between San Francisco and Wholesale Customers in 1984, to ensure Wholesale Customers pay no more in water rates than their fair share of the wholesale water system. This 1984 agreement was the predecessor to the WSA of 2009, an agreement among the 26 Wholesale Customers, including the City of Palo Alto, and the City and County of San Francisco.

In 2009, the City approved the WSA between San Francisco and the Wholesale Customers (CMR:252:09). In 2013, the City approved Amendment No. 1 to the WSA, which prohibited changes to Hetch Hetchy Reservoir unless there is an amendment to the WSA (Staff Report 3578). Additionally, in 2014, the City Council approved a resolution authorizing BAWSCA to initiate, defend and settle arbitration related to the WSA to protect Palo Alto's financial interests (Resolution Number 9445).

Under the WSA, contract administration is 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 responsibility to act as agent for contract administration on behalf of the Wholesale Customers. BAWSCA's predecessor 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 2003 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 decisions each year. The WSA specifically assigned a number of administrative tasks to BAWSCA, most of which were previously handled by the Suburban Representatives.

## **Discussion**

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. The WSA specifically assigned a number of administrative tasks to BAWSCA; any 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 San Francisco's decision related to San Jose and Santa Clara, BAWSCA determined that it is prudent to obtain authorization from the members to negotiate all of the amendments currently at issue.

The requested delegation of authority will allow BAWSCA to negotiate amendments related to eight discrete but important items. The following items are of interest to San Francisco: 1) the process for reviewing the Wholesale Capital Fund; 2) the wholesale debt-coverage ratio for the rate-setting process; 3) the extension of the Water System Improvement Program (WSIP) completion date; and 4) the 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 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 Regional Water System and extend increased water supply to the other permanent Wholesale Customers; and 4) resolution of disputed SFPUC Regional Water System asset classifications.

BAWSCA will keep water management representatives (staff from each agency that attends monthly BAWSCA water management meetings) informed about negotiation positions and developments. Throughout the process staff will have multiple opportunities to confirm BAWSCA's positions or recommend new ones. The final negotiated amendments to the WSA will be subject to council approval.

## **Resource Impact**

There is no impact to the FY2019 budget associated with the adoption of a resolution authorizing BAWSCA to negotiate with the City and County of San Francisco to amend the WSA.

## **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 of the Council of the City of Palo Alto Authorizing BAWSCA to negotiate with the City and County of San Francisco to Amend the Water Supply Agreement

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

Resolution of the Council of the City of Palo Alto Authorizing the Bay Area Water Supply And Conservation Agency to Negotiate with the City and County of San Francisco to Amend the 2009 Water Supply Agreement

RECITALS

A. In April 2003, the City of Palo Alto (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).

B. The City is represented on the BAWSCA Board of Directors.

C. The City Council has previously approved the 2009 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).

D. 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.

E. 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.

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

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

SECTION 1. The City Council 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.

SECTION 2. BAWSCA, through its CEO/General Manager, shall confer with and keep the City informed on the status of these discussions and negotiations.

SECTION 3. This appointment shall continue unless and until revoked by the City Council.

SECTION 4. This resolution confers no authority on BAWSCA to enter into a contract with San Francisco or to make any commitments legally binding on the City. The authority to enter into any contracts is expressly reserved to the City Council.

SECTION 5. Council’s adoption of this resolution does not meet the definition of a project, under Public Resources Code 21065, therefore California Environmental Quality Act review is not required.

INTRODUCED AND PASSED: September 10, 2018

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

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

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

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Utilities General Manager

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Director of Administrative Services