



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 05-27-08

Approved

Date

5-29-08

COUNCIL DISTRICT: City-wide

SUBJECT: MEMORANDUM OF AGREEMENT AMONG CITIES OF SAN JOSÉ, PALO ALTO AND REDWOOD CITY, DELTA DIABLO SANITATION DISTRICT, NORTH COAST WATER DISTRICT, SANTA CLARA VALLEY WATER DISTRICT AND BAY AREA CLEAN WATER AGENCIES WITH RESPECT TO FEDERAL FUNDING FOR WATER RECYCLING PROJECTS

RECOMMENDATION

Adopt a resolution authorizing the City Manager to execute a Memorandum of Agreement among the cities of San José, Mountain View, Palo Alto and Redwood City, Delta Diablo Sanitation District, North Coast Water District, Santa Clara Valley Water District and the Bay Area Clean Water Agencies to implement a regional approach to obtaining and allocating federal funding for water recycling projects, at a cost for FY 2008-09 not-to-exceed \$30,000, with future year funding to be subject to appropriation by Council.

OUTCOME

The City, as administering agency for South Bay Water Recycling and the San José/Santa Clara Water Pollution Control Plant, will enter into an agreement with three other cities, two water districts, a sanitation district (the Participating Agencies) and Bay Area Clean Water Agencies (BACWA) (a regional joint powers authority of which the City is already a member) to implement the "Bay Area Recycled Water Coalition" (BARWC), for the purpose of pursuing a regional approach to obtaining and allocating federal funding for recycled water projects. The City's participation with other agencies on a regional basis through approval of the proposed Memorandum of Agreement (MOA) is expected to enhance its ability to obtain future grant funding.

BACKGROUND

South Bay Water Recycling (SBWR) is a multi-agency water recycling program administered by the City as lead agency for the San José/Santa Clara Water Pollution Control Plant. The project was included in Title XVI of PL102-575, the "1992 Central Valley Project Improvement Act" (Section 1607) which authorized the US Bureau of Reclamation to reimburse the City for up to 25% of eligible costs. In 1995, the City entered into an agreement with Reclamation to receive reimbursement of up to \$35 million for Phase 1 construction, estimated at \$140 million, out of a total project cost of \$436 million for all anticipated water recycling projects. The Phase 1 project was completed and placed in operation in 1998; however, only \$27 million had been received from Reclamation for reimbursement by January 2008.

In 2007, Senator Dianne Feinstein wrote to a number of California agencies urging them to adopt a regional approach to coordinate their requests for federal support for water recycling projects. Senator Feinstein's request was consistent with state funding policy, which recently required agencies to demonstrate a regional approach to water projects proposed for funding through Propositions 50 and 84. In response, staff from a number of cities and agencies in the Bay Area actively developing recycled water projects formed the Bay Area Water Recycling Coalition BARWC to develop a regional platform for developing and coordinating projects in order to improve their ability to obtain federal funding.

Specifically, the objective of the BARWC agencies was first to obtain Congressional authorization for federal funding for new recycled water projects in the Bay area, and then to obtain an appropriation of federal funds adequate to fund the authorized projects. On March 14, 2007, Congressman George Miller introduced the "Bay Area Regional Water Recycling Program Authorization Act of 2007" on behalf of the BARWC agencies to amend the Reclamation Projects Authorization and Adjustment Act of 1992 (PL102-575) to authorize federal participation for seven new recycled water projects benefiting multiple jurisdictions (see list below). On May 24, 2007, Senators Dianne Feinstein and Boxer introduced a companion to the House Bill, (S.1475) which was subsequently incorporated into S.2739 that passed the Senate on April 10, 2008 and the House on April 29, 2008. The bill was signed into law on May 8, 2008 and became PL110-229, "Consolidated Natural Resources Act of 2008." PL110-229 includes authorization for the following projects (by sponsoring agency):

- (1) Moffett Area Water Reuse Project (Palo Alto, Mountain View)
- (2) Pittsburgh Recycled Water Project (Pittsburgh, Delta Diablo Sanitation District)
- (3) Antioch Recycled Water Project (Antioch, Delta Diablo Sanitation District)
- (4) North Coast County Recycled Water Project (North Coast County Water District)
- (5) Redwood City Recycled Water Project (Redwood City)
- (6) South Santa Clara County Recycled Water Project (South County Regional Wastewater Authority, Santa Clara Valley Water District)
- (7) South Bay Advanced Recycled Water Treatment Facility (Santa Clara Valley Water District).

In addition, the bill identified the need for further support for the San José Area Water Reclamation and Reuse Program, now known as South Bay Water Recycling. During its passage through Congress, the bill was supported by all members of the Bay area delegation, including both Senators and Representatives Miller (D-Contra Costa), Eshoo (D-Atherton), Tauscher (D-Alamo), McNerney (D-Pleasanton), Lantos (D-San Mateo), Honda (D-San José), Lofgren (D-San José), and Stark (D-Fremont). The Bay Area delegation has also supported a recent \$20.9 million appropriation request to fund the federal share of the above authorized projects in FY2009, plus \$8 million for the previously authorized South Bay Water Recycling.

ANALYSIS

Under the MOA, the City would no longer advocate exclusively for federal funding for SBWR, but rather would request federal support for the entire regional request, designating BACWA as the entity to represent the South Bay Water Recycling Program in pursuit of Title XVI recycled water grants under...Public Law 102-575." City participation on behalf of SBWR in this MOA is recommended specifically in order to maximize the local share of federal recycled water funding by aligning San José's interests with the entire Bay Area region. Under the proposed MOA agreement, should Congress appropriate less than the total requested amount for federal fiscal year 2009-10, SBWR will receive a prorated amount of approximately 38% of all funds received. The proposed MOA also provides that any future federal funding for authorized recycled water projects will be subject to a similar pro rata allocation (total request/total appropriation).

The MOA also addresses coordination and cost sharing for federal legislative efforts. It provides that one of the participating agencies will be responsible for managing outside consultant legislative advocacy services, and designates Delta Diablo Sanitation District as the initial outside consultant. Finally, the MOA provides for the parties to share BACWA administrative and outside consultant costs on the basis of the ratio of the number of agency projects to total projects. San José's share of BACWA outside agency costs is estimated to be 1/8 for calendar year 2009, an amount not expected to exceed \$30,000.

The MOA allows any agency to unilaterally withdraw from the BARWC on or before October 31st of each year, effective the following January 1, if an agency should determine that its interests are no longer served by participation with the other regional entities. If sufficient funds are not appropriated for participation in future years, the City Manager can terminate the city's participation. Further, if the City's share of costs for any calendar year should exceed the City Manager's contract authority, which is not anticipated, then the City Manager will seek Council authorization.

EVALUATION AND FOLLOW-UP

An annual accounting of federal support for San José area water recycling projects will be compared to recent year appropriations. If at any time it appears that the City would be more likely to receive significantly more funding by independently advocating for federal support, staff will recommend that the City consider terminating its agreement with BACWA and the other Coalition members.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum will be posted on the City's website for the June 17, 2008 City Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the Office of Intergovernmental Relations. This item is scheduled to be heard at the June 12, 2008 meeting of the Treatment Plant Advisory Committee.

COST IMPLICATIONS

Participation in the Bay Area Water Recycling Coalition (BARWC) is expected to enhance the City's ability to obtain up to \$8 million in authorized federal funding for South Bay Water Recycling. Based on past experience, annual contributions to the Bay Area Water Recycling Coalition costs are not expected to exceed \$30,000 per year. If the City's share of cost for any calendar year should exceed the City Manager's contract authority, which is not anticipated, then the City Manager will seek Council authorization.

HONORABLE MAYOR AND CITY COUNCIL

05-27-08

Subject: Memorandum of Agreement with BACWA

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BUDGET REFERENCE

Fund: 513-76-600-465-4052

Amount: \$30,000

Budget Document: 2007-2008 Operating Budget



John Stufflebean

Director, Environmental Services

For questions please contact Mansour Nasser, Deputy Director, at 277-4218.