



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** 05-24-10

Approved

Date

6-2-10

**COUNCIL DISTRICTS:** City-wide

**SUBJECT: GRANT AGREEMENT WITH RECLAMATION FOR REIMBURSEMENT OF SOUTH BAY WATER RECYCLING PHASE 1B COSTS**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a Grant Agreement with the U.S. Bureau of Reclamation (Reclamation) to receive up to \$260,000 upon execution of the agreement, and up to an additional \$20.44 million subject to appropriation of federal funds, in reimbursement for up to twenty-five percent (25%) of eligible costs incurred in the Phase 1B expansion of the South Bay Water Recycling facilities.

## OUTCOME

Approval of the proposed Grant Agreement with Reclamation will allow the City of San José as administering agency of the San José /Santa Clara Water Pollution Control Plant (Plant) to receive the maximum authorized federal share of in eligible local funds previously expended (\$82.8 million) on South Bay Water Recycling (SBWR) Phase 1B costs, or approximately \$20.7 million, if all federal funding for the Agreement is appropriated.

## BACKGROUND

In September 1995, the City and Reclamation executed Cooperative Agreement 5-FG-20-12650 allowing Reclamation to reimburse the City up to \$35 million of the \$140 million cost of South Bay Water Recycling—Phase 1A, a project to divert up to 15 million gallons per day of Plant effluent for irrigation and industrial use. Federal reimbursement of up to 25% of eligible project costs was authorized by Section 1607, “San José Area Reclamation and Reuse Program of Title XVI of the federal “Reclamation Projects Authorization and Adjustment Act of 1992” (PL102-575). Originally funded by a \$1.75 million appropriation, the Agreement was modified annually through 2009 as Congress appropriated between \$0.4 and \$3.8 million for a total reimbursement

of \$31.65 million. In April 2010 Council approved a new Cooperative Agreement R10AC20R43, which included an additional \$3.35 million in federal reimbursement for new projects (over and above the 25% authorized limit) in lieu of reimbursement of remaining Phase 1A costs.

In June 2000, the Council approved an additional \$100 million for the "Revised South Bay Action Plan," with \$82.5 million included in the 2001-2005 Capital Budget for the Phase 1B project to expand the SBWR system and increase its reliability. Since these projects were also authorized under PL102-575, the City sought reimbursement for the 25% federal share of eligible Phase 1B costs through the Title XVI program. However, since Congress had not yet appropriated sufficient funds to reimburse the City for Phase 1A costs, Reclamation declined to modify Agreement 5-FG-20-12650 to include Phase 1B costs and refused to serve as lead agency to certify compliance of Phase 1B projects with the National Environmental Policy Act (NEPA), a prerequisite for receiving federal funds.

Nevertheless, between 2000 and 2009 the City expended \$82,855,553 on Phase 1B facilities including more than 40 miles of recycled water pipeline, two reservoirs and various reliability improvements. The Phase 1B projects are listed below: projects:

<b><u>Project</u></b>	<b><u>Cost</u></b>
SBWR Phase 1B Implementation	\$9.4 million
Santa Clara Pipelines	\$7.4 million
Milpitas Pipelines	\$10.7 million
Silver Creek Pipeline	\$21.0 million
Zone 3 Reservoir and Pipelines	\$21.3 million
Remote Pump Stations Reliability Improvements	\$5.2 million
Transmission Pump Station Reliability Improvements	\$0.6 million
SJ10 Recycled Water Main	\$1.4 million
Coleman Avenue Connector	\$0.7 million
San José -Santa Clara Intertie	\$2.2 million
<u>Recycled Water Retrofits</u>	<u>\$3.0 million</u>
<b>Total Phase 1B Project Costs</b>	<b>\$82.9 million</b>

After further discussion with Reclamation Mid-Pacific Region Title XVI Program staff, on January 28, 2009, the City formally asked Reclamation to review the Phase 1B environmental documentation and to make a determination about its eligibility for federal funding. On March 19, 2009 Reclamation issued a Categorical Exclusion certifying that "providing Federal funding for these [projects] would not create any impacts" thereby allowing the City to seek federal reimbursement for Phase 1B costs. On February 11, 2010 the City Manager submitted Form 424 "Application for Federal Assistance" to the Reclamation and subsequently provided additional details validating the City's financial accounting system and verifying the eligibility of Phase 1B project costs.

## ANALYSIS

In response to the City's request for federal assistance, Reclamation has agreed to obligate the Congressional FY10 appropriation of \$260,000 in a new Grant Agreement that will allow them to reimburse the City for the federal share of Phase 1B costs, up to \$20.7 million. In doing so, Reclamation confirms the importance of recycled water as both a sustainable water supply and a means of protecting the south Bay environment.

After executing the proposed Grant Agreement, the City will be able to invoice Reclamation for reimbursement of the obligated amount (\$260,000) and to seek further Congressional appropriation on an annual basis, up to a total of \$20.7 million. Under the Plant Master Agreements for Wastewater Treatment, all grant amounts received will be credited to the Treatment Plant Tributary Agencies for capital projects on the basis of the agencies' participation in the Phase 1B program for which the grant is being received. In lieu of appropriating additional Phase 1B reimbursement funds, Reclamation may offer to provide additional federal funding for new recycled water projects - up to 100% of authorized project costs -if the City agrees to accept the additional funds in lieu of reimbursement for past project costs.

## EVALUATION AND FOLLOWUP

Having prepared and organized the Phase 1B invoices by project, staff will monitor the availability of reimbursement funds to ensure that invoices are submitted in a timely manner and the City receives the maximum amount to which it is entitled. In addition, staff will be meeting to determine which new SBWR extensions or system improvements should be proposed for construction in advance of the announcement of a new Reclamation Water Reuse Program.

## POLICY ALTERNATIVES

**Alternative #1:** Do not execute a Grant Agreement for reimbursement of Phase 1B expenditures.

**Pros:** No effort will be made to seek additional Congressional appropriation.

**Cons:** The City will lose up to \$20.7 million in reimbursement funds that can be used to pay for future capital projects.

**Reason for not recommending:** Federal funds are needed to help pay for renovation of the San José /Santa Clara Water Pollution Control Plant and expand the South Bay Water Recycling system which can increase revenues by reaching additional customers.

## PUBLIC OUTREACH



**Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)

- ✓ **Criteria 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)**
- Criteria 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)**

During 1998 and 1999 a Citizens' Advisory Committee including representatives of the Sierra Club, the League of Women Voters, the Silicon Valley Chamber of Commerce and other stakeholders met regularly to evaluate extensions to the recycled water systems. Also, in 2000 the cities of San José, Santa Clara, and Milpitas held public meetings on the use of recycled water. In addition, staff members from the cities of San José (San José Municipal Water), Santa Clara and Milpitas, and San José Water Company have attended monthly meetings to review South Bay Water Recycling planning and operations.

### **COORDINATION**

This memo was coordinated with Planning, the City Attorney's Office, and the City Manager's Budget Office. This item is scheduled to be heard by the Treatment Plant Advisory Committee (TPAC) on June 10, 2010.

### **COST IMPLICATIONS**

Once the proposed Grant Agreement is executed and the City provides Reclamation with \$1.04 million in reimbursable Phase 1B invoices the Plant can receive up to \$260,000 in obligated funds. The remaining funds, up to \$20.7 million, can be obtained by submitting eligible invoices in future years as Congress earmarks additional funds to the Title XVI program. Alternatively, if Reclamation makes additional funds available through a process similar to its 2009 American Recovery and Reinvestment Act (ARRA) Water Reclamation and Reuse Program, the City may receive up to 100% federal funding to construct new recycled water facilities in lieu of receiving equivalent reimbursement for Phase 1B costs. Budget appropriation actions to recognize the \$20.7 million grant will be brought forward at a later date as funds are received.

### **BUDGET REFERENCE**

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

05-24-10

**Subject: Grant Agreement with Reclamation For Reimbursement of SBWR Phase 1B Costs**

Page 5

**CEQA**

Final EIR for the *San Jose Nonpotable Reclamation Project*, Resolution No. 64667 (File No. PP-91-090; SCH# 1992013071) and Addenda thereto and Negative Declaration for *South Bay Water Recycling Program-Phase 1B*, File No. PP00-072.

**NEPA**

Final Environmental Assessment/Finding of No Significant Impact, for *Revised South Bay Water Recycling Program Phase 1B* (FONSI #97-03-MP) and Categorical Exclusion for South Bay Water Recycling Phase 1B (March 19, 2009).

/s/

JOHN STUFFLEBEAN

Director, Environmental Services

For questions please contact Mansour Nasser, Deputy Director, at (408) 277-4218.