

**Council Meeting: November 20, 2012****SUBJECT: Approve a Resolution Authorizing Participation in the Bay Area Water Supply and Conservation Agency's Bond Issuance to Prepay Capital Debt Owed to San Francisco****BACKGROUND**

The City of Sunnyvale contracts with the City and County of San Francisco for the purchase of water from the Hetch Hetchy System operated by the San Francisco Public Utilities Commission (SFPUC). Sunnyvale is also a member of the Bay Area Water Supply and Conservation Agency (BAWSCA) which represents the interests of all the 24 cities and water districts, as well as two private utilities, that purchase wholesale water from the SFPUC. Councilmember Griffith is Sunnyvale's appointee to the BAWSCA Board of Directors.

In 2009 the City entered into a new 25 year agreement with the SFPUC. One of the ways that the new agreement differs from the old is in how facilities constructed by the SFPUC that benefit the regional customers are treated from a rate and financial perspective. Under the old agreement, facilities were built, capitalized, and added to the rate base with a rate of return (interest), and then paid for over their useful lives through wholesale rates. Under the new agreement, the SFPUC issues revenue bonds and the debt service (which also includes an interest component) is paid for through rates over the life of the bonds (this is the approach Sunnyvale also takes with its rate payers).

During the transition from the old to the new contracts, one of the issues addressed was how to deal with the \$370 million in assets that were still being paid for by the wholesale customers under the old agreement. The assets were transferred to the new agreement, assigned a life with an agreed upon rate of return of 5.13%. Also negotiated was a provision to allow the wholesale customers to prepay any remaining existing assets' unpaid principal balance without penalty or premium. This prepayment can be executed through the issuance of bonds by BAWSCA which will provide a better interest rate given the favorable rate environment.

EXISTING POLICY

Council Policy 7.1Ib.1: Capital improvements associated with the existing infrastructure of a utility should be primarily funded from two sources: rate revenue and debt financing.

Council Policy 7.1Ib.5: Bonded debt financing should be used for capital improvements as appropriate to:

- Make cost recovery of an asset more consistent with its useful life
- Equitably assign cost over multiple generations of customers who use the assets
- Smooth near-term rate impacts of the project

DISCUSSION

The objective of BAWSCA's potential bond issuance to prepay the capital debt is to save BAWSCA's member agencies money. The total cost and savings from this debt issue will be shared by all BAWSCA members who choose to participate in proportion to each member's respective water purchases. The bonds will not be a debt obligation of any member, and BAWSCA's failure to pay its bonds will not constitute a default by any member.

In order to carry out this bond issuance, each participating agency must adopt a Participant Resolution (Attachment A). Adoption of the resolution documents that the City is electing to participate in the prepayment of the prior debt, makes certifications relating to Sunnyvale's existing Series 2010 Water Revenue Bonds, and delegates authority to the City Manager to execute the transaction with BAWSCA. The City's bond counsel has reviewed the resolution and the overall transaction and confirmed that the City can make the required certifications.

Any member agency, including Sunnyvale, may choose not to participate in this issuance. This simply shrinks the size of the issuance. The members choosing not to participate would continue to pay off their share of the capital debt at the current rate and forgo any savings. Staff is not aware of any members who are considering opting out at this time, however approvals are running in parallel to Sunnyvale so it is not possible to tell if all members will be participating.

Should any participating member fail to pay its share, BAWSCA will rely on a debt service reserve and will pursue all legal remedies to collect the shortfall from the delinquent member. In the interim, other members may have their portion adjusted to insure the continued payment of the debt service. The risk of bearing the debt service expense of a defaulting member is not significantly different than the risk each member assumes currently. Under the current agreement, San Francisco maintains a balancing account. If revenues collected are less than needed (due to either a member's default or lower than expected water consumption), San Francisco uses the balancing account to fund the revenue deficiency, and increases the wholesale water rate in the subsequent year to make up for the prior year shortfall and reimburse the balancing account. Also, given that each participating agency's governing body is adopting a resolution, and that taking this action will result in reduced expenditures for each agency, default is generally very unlikely.

FISCAL IMPACT

Savings to each member can only be estimated at this time. Actual savings will depend on the ratings of the bonds and market rates at the time of issuance. Currently it is anticipated that the bonds will be rated A or better. BAWSCA estimates the net present value of savings for Sunnyvale will range from \$1.25 million to 2.12 million, with annual savings that range from approximately \$58,000 to \$98,000. Because each participant's savings is proportional to the amount of water purchased, and Sunnyvale's water demands have been flat or declining, it is likely that Sunnyvale's share of savings will increase as growth occurs system wide and other agencies pick up a larger share of the debt service.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Adopt a resolution authorizing the Bay Area Water Supply and Conservation Agency to prepay the City's portion of capital debt owed by BAWSCA members to the City and County of San Francisco.
2. Do not adopt the resolution and option not to participate in the prepayment of the City's portion of capital debt. Sunnyvale would continue to repay its outstanding share of prior debt as it has in the past and not realize any savings.

RECOMMENDATION

Staff recommends Alternative 1, adopt a resolution authorizing the Bay Area Water Supply and Conservation Agency to prepay the City's portion of capital debt owed by BAWSCA members to the City and County of San Francisco.

Reviewed by:

Grace K. Leung, Director, Finance
Prepared by: Timothy J. Kirby, Utility Billing Manager

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Resolution

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AUTHORIZING THE MAKING OF A PREPAYMENT UNDER A WATER SUPPLY AGREEMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO AND RELATED MATTERS

WHEREAS, the City and County of San Francisco (“San Francisco”) and wholesale water customers of San Francisco in Alameda County, San Mateo County and Santa Clara County (the “Wholesale Customers”), including the City of Sunnyvale (the “City”), have entered into a Water Supply Agreement, dated July 2009 (the “WSA”), providing for the sale of water by San Francisco to the Wholesale Customers;

WHEREAS, the City and other Wholesale Customers are members of the Bay Area Water Supply and Conservation Agency (“BAWSCA”);

WHEREAS, pursuant to the terms of the WSA, the cost of water paid by the Wholesale Customers (including the City) includes a component designed to provide San Francisco capital cost recovery for existing regional assets (“ERA Payments”);

WHEREAS, the existing regional assets of San Francisco to be paid for by the Program Participants from the ERA Payments are an essential part of San Francisco’s water system, and enable San Francisco to deliver water to the Program Participants; and

WHEREAS, the ERA Payments have been identified by San Francisco as a capital cost recovery for existing regional assets solely for the purposes of recovering those costs from the Program Participants as part of the cost of supplying water to the Program Participants; and

WHEREAS, the ERA Payments are an integral part of the cost of water purchased by the City from San Francisco for delivery to the City’s water customers; and

WHEREAS, the WSA provides that the Wholesale Customers, acting through BAWSCA, may prepay the remaining principal balance of the ERA Payments, in whole or in part;

WHEREAS, substantial savings over the term of the WSA may be achievable through the prepayment through BAWSCA (the “Prepayment”) of the ERA Payments to be made by Wholesale Customers participating in such Prepayment (the “Prepayment Participants”);

WHEREAS, BAWSCA proposes to finance the Prepayment through an issuance of revenue bonds (the “Bonds”) by BAWSCA;

WHEREAS, to pay debt service on the Bonds, to maintain required reserves and to satisfy BAWSCA’s other obligations related to the Bonds, BAWSCA will impose charges on Prepayment Participants, which may be in the form of surcharges on water sold by San Francisco to Prepayment Participants under the WSA (the “Surcharge”);

WHEREAS, the Surcharge is expected to be payable by the Prepayment Participants to San Francisco (for delivery to BAWSCA) together with the Prepayment Participants' other payments to San Francisco under the WSA;

WHEREAS, the issuance of the Bonds and the making of the Prepayment are subject to a variety of conditions, including a determination by BAWSCA that savings for Prepayment Participants can be achieved thereby;

WHEREAS, this City Council has determined that it is in the best interests of the City for the City to be a Prepayment Participant;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE AS FOLLOWS:

Section 1. The City hereby elects to be a Prepayment Participant and hereby authorizes BAWSCA to make the Prepayment on behalf of the City.

Section 2. The City Manager or his or her designee, acting individually, are hereby authorized and directed to take, for and on behalf of the City, all such actions by the City as shall be necessary to enable BAWSCA to issue and sell the Bonds and make the Prepayment, including, without limitation, the following:

(A) Certify that the Prepayment has been duly authorized by the City and will not violate any law or agreement (including agreements respecting obligations providing for the issuance of debt secured by the revenues of the City's water enterprise);

(B) Certify that payment of the Surcharge by the City will constitute an operation and maintenance expense of the City's water enterprise payable from the revenues of the City's water enterprise prior to the payment of obligations payable from the net revenues of the City's water enterprise;

(C) Certify that any information respecting the City and the City's water enterprise and the financial and operating data respecting the City's water enterprise included or incorporated by reference in the Official Statement delivered by BAWSCA in connection with the sale and issuance of the Bonds is true and correct; and

(D) Execute and deliver any continuing disclosure undertaking, or agreement to assist BAWSCA in connection with any BAWSCA continuing disclosure undertaking, required in connection with the sale of the Bonds.

Section 3. All actions heretofore taken by any officers, employees, or agents of the City with respect to the Prepayment and the Bonds are hereby approved, confirmed and ratified; and the City Manager and any such other officers, employees, or agents of the City as may be authorized by the City Manager are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, which they, or any of them, may deem necessary or desirable to carry out, give effect to and comply with the terms and intent of this Resolution.

Section 4. This Resolution shall take effect immediately upon its adoption.

Adopted by the City Council at a regular meeting held on _____, 2012, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

Michael D. Martello, Interim City Attorney