



CITY COUNCIL AGENDA STATEMENT



September 18, 2018

File ID: 18-0310

TITLE

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING THE AMENDED AND RESTATED WASTEWATER DISPOSAL AGREEMENT AND DIRECTING THE METRO COMMISSION/METRO JPA REPRESENTATIVE TO SUPPORT THE SAME AT METRO COMMISSION/METRO JPA MEETINGS

RECOMMENDED ACTION

Council adopt the resolution.

SUMMARY

In 1998, the members of the JPA, or their predecessors in interest, entered into a Regional Wastewater Disposal Agreement with the City of San Diego for the Point Loma Wastewater Treatment Plant (PLWTP). In order to reduce outfall flows at PLWTP and provide more potable water to the region, the Pure Water Program was initiated. The 1998 Agreement did not contemplate the Pure Water Program and due to the complexities of incorporating the impacts of the Pure Water Program an Amended and Restated Agreement was required. The Agreement contains long-term financial protections for wastewater ratepayers by defining cost allocation for the Pure Water facilities. The Agreement also includes a financial cap on future Pure Water construction spending and a future revenue sharing component that is expected to pay back wastewater ratepayers over time for their investment in Pure Water. The resolution will support incorporating the Pure Water Program as part of the Amended and Restated Regional Wastewater Disposal Agreement, allow the City Metro Commission JPA Representative to support of the Agreement, authorize the City Attorney to make nonsubstantive changes to the Agreement, and authorize the Mayor to sign the final Agreement after approval by the City of San Diego City Council.

ENVIRONMENTAL REVIEW

The Director of Development Services has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a Project" as defined under Section 15378 of the State CEQA Guidelines because the agreement does not authorize any activity that will result in a physical change to the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

Background

The Point Loma Wastewater Treatment Plant (PLWTP) is a regional facility in the Metro Wastewater System (Metro System) and is permitted to treat 240 million gallons of regional wastewater per day (MGD) to an Advanced Primary Level. Operated by the City of San Diego, the PLWTP was constructed in 1963 and is the backbone of the Metro Wastewater System. The City of Chula Vista's daily average of 15.5 million gallons of wastewater is treated at PLWTP.

The City of Chula Vista is one of 12 participating agencies (PAs) that convey wastewater to PLWTP for treatment. The Metro JPA is a joint powers agency composed of the 12 local public PAs each having the authority to provide and contract for the conveyance, treatment, and disposal of wastewater. The Metro JPA represents over 800,000 sewer rate payers and provides more than \$75M a year in contributions to the Metro System. The Metro JPA and the City of San Diego are partners in overseeing the PLWTP.

The federal Clean Water Act, passed in 1972, required that all wastewater treatment plants be permitted with a National Pollutant Discharge Elimination System (NPDES) permit. The permitting process in California involves the Environmental Protection Agency, the Regional Water Quality Control Board, the State Water Resources Control Board and the California Coastal Commission.

The Clean Water Act required wastewater treatment plants to treat wastewater to at least a secondary level. The actual treatment required varied depending on whether discharging to a lake, river or ocean as well as the particular characteristics of the receiving water body.

Several years after the Clean Water Act was enacted, it was amended to allow a modified permit (waiver of secondary treatment) if the discharger could demonstrate the safe discharge of wastewater to the receiving water. Initially, the City of San Diego applied for a modified permit for PLWTP, but later withdrew the application and began planning to convert PLWTP to secondary treatment. During this time, the window for applying for modified permits closed and the City of San Diego had not begun the construction to convert PLWTP. Subsequently, the EPA and several environmental groups sued the City of San Diego for not being at the secondary treatment level.

In 1994, the Ocean Pollution Reduction Act (OPRA) was passed by the Federal government modifying the Clean Water Act. OPRA re-opened the window and gave the City of San Diego the opportunity again to apply for a modified permit for PLWTP. In return for support from the environmental community, the City of San Diego agreed to construct facilities to provide 45 million gallons per day of reclaimed water capacity. This resulted in the construction of the North City Water Reclamation Plant, the South Bay Water Reclamation Plant and the South Bay Ocean Outfall. The City of San Diego was granted the first modified permit for PLWTP in 1994.

During this period there was a significant discontent between the City of San Diego and the PAs. The PAs felt that the City of San Diego was operating the Metro System and making large financial decisions without their input or consideration. The disputes led to the creation of the 1998 Regional Wastewater Disposal Agreement (Attachment #1) and the formation of the Metropolitan Wastewater Commission (Metro Commission).

The Metro Commission was formed pursuant to the terms of the Regional Wastewater Disposal Agreement between the PAs and the City of San Diego. Each participating agency had representation on the Metro Commission. The Metro Commission was an advisory body to the San Diego City Council. The 1998 Regional Wastewater Disposal Agreement stipulated that the City of San Diego is the owner of the Metro System and that all decisions with respect to the planning, design, construction, operation and maintenance shall rest with the City of San Diego in consultation with the Metro Commission. The Chula Vista City Council approved the Agreement on April 21, 1998, per Resolution # 18968 (Attachment # 2)

The purposes of the 1998 Agreement were: (1) to replace the prior-existing sewage disposal agreements between the City of San Diego and the PAs; (2) to provide certain contract rights to capacity in the Metro System to the PAs; (3) to establish a mechanism to fund the planning, design, construction, operation and maintenance of the Metro System by the City of San Diego and the PAs as necessary to provide hydraulic capacity, and to comply with applicable law and with generally accepted engineering practices; and (4) to establish a system of charges which allocates the costs of the planning, design and construction of wastewater conveyance, treatment and disposal facilities as are necessary on a fair and equitable basis.

While the PLWTP continues to operate under a modified National Pollutant Discharge Elimination System Permit (NPDES) from the Environmental Protection Agency (EPA), the modified permit requires renewals. Each renewal has required a request to waive the secondary treatment requirement at PLWTP. Even though PLWTP is operating within the current law, and has demonstrated through 20 years of extensive ocean monitoring that there is no harm to the environment in operating as an Advanced Primary Wastewater Treatment Plant, there has been consistent pressure to fully convert PLWTP to a Secondary Wastewater Treatment Plant. The California Coastal Commission had warned the City of San Diego that it should not continue to assume that it will be granted waivers from the secondary treatment requirement. Environmental stakeholders have sued the City of San Diego in the past and have threatened to do so again if waiver applications are submitted without some type of progressive improvement to environmental protection. All this uncertainty creates a significant amount of risk and instability for not only the City of San Diego but all PAs in the Metro System. As previously mentioned, this past pressure ultimately resulted in the implementation of other projects in return for permit support from the environmental community. Even though PLWTP is currently discharging treated wastewater effluent that meets most of the criteria required of a secondary plant, implementing the Pure Water Program is seen as a way to help secure waiver approval in the future.

Pure Water and Secondary Equivalency

Seeking a sustainable alternative to a costly conversion to secondary treatment, a strategy was developed using the improvements proposed in the 2012 San Diego Recycled Water Study. This strategy is called

Pure Water San Diego. The strategy allows achievement of equivalent treatment to secondary level within the Metro System by offloading flows from PLWTP to other facilities within the system thereby, reducing the discharges from PLWTP to levels below those required for secondary wastewater treatment. In addition, there is now proven technology available to convert these offloaded flows into potable drinking water. Two regional problems could be improved with one solution. Offloaded flows from PLWTP could be used as a new water source for the San Diego region while reducing the outfall to the ocean.

The Pure Water program will still require a significant financial investment from wastewater rate payers. To commit to this investment, the PAs requested the City of San Diego seek permanent relief from the waiver approval requirement. It was thought that Federal legislation could be passed defining secondary equivalency for PLWTP and allowing PLWTP to remain at the advanced primary treatment level. In 2014 representatives from the PAs, the City of San Diego and environmental stakeholders (Surfrider, Coastkeeper, Audubon Society and Coastal Environmental Rights Foundation) agreed on proposed language to enable secondary equivalency legislation and titled it the Ocean Pollution Reduction Act II (OPRA II). An agreement was also prepared between the City of San Diego and the environmental stakeholders that assured environmental stakeholder support for NPDES permits at PLWTP as well as OPRA II.

The City of San Diego included the concept of secondary equivalency and a program of facility construction within the 2015 NPDES permit for PLWTP. The concept included offloading 83 million gallons a day of wastewater from PLWTP and turning it into drinking water by the year 2035. The key to this strategy was securing secondary equivalency legislation (OPRA II) and ratepayer protection from having to construct secondary treatment at PLWTP. Instead of investing in secondary treatment facilities at PLWTP, which offered negligible improvement/benefit from the current advanced primary treatment, the investment would be in the Pure Water program. This would have an equivalent benefit to the environment but the added benefit of creating a local drinking water supply. The City of Chula Vista and the Metro Commission supported the City of San Diego's NPDES permit that was submitted in 2015.

Pure Water Program JPA Discussion

The City of San Diego and the PAs have been meeting since 2014 to discuss how to implement the Pure Water program. The first phase of the Pure Water program is to be constructed at the North City Water Reclamation plant and will develop 30 million gallons a day of potable drinking water from secondary treated wastewater. The primary discussion point was allocation of costs. The challenge with Pure Water cost allocation was to fairly apportion costs between the water customer and the wastewater customer. Agreement has been reached that define the cost allocation principals.

Consideration was given to how to memorialize the cost allocation principals and agreements. The logical mechanism was to use the 1998 Agreement, but it was quickly realized that the 1998 Agreement was going to need significant changes to accommodate the complexities of the Pure Water program. This led to the development of the Amended and Restated Agreement (Attachment # 3).

The basis for financial discussions began with the cost of fully converting PLWTP to secondary treatment. This was the assumed worst-case scenario for the wastewater rate payer. Since this was the worst-case

scenario, a financial cap is included in the Amended and Restated Agreement that limits future sewer rate payer financial exposure to this amount.

The current cost estimate to convert PLWTP to secondary treatment is \$1.8 billion. The cost estimate for Pure Water phase 1 is currently \$1.388 billion and is divided into \$546 million for wastewater costs (39%) and \$842 million for water costs (61%). The City of Chula Vista's portion of the wastewater cost is approximately 11.23% of the total costs, or approximately \$62 million. The financial cap in the Amended and Restated Agreement will limit the City of Chula Vista's long term Pure Water financial exposure to \$160 million.

Also, included in the Amended and Restated Agreement is a future revenue sharing component for wastewater customers. The revenue sharing is an additional incentive for PAs to support the Pure Water program and to provide a mechanism to recover wastewater rate payer investments. While the initial cost to produce Pure Water will be more expensive than the cost of imported water (similar to desalinated water which is currently more expensive than imported water) the unit cost of imported water is projected to increase faster than the unit cost to produce Pure Water and, eventually, will exceed the cost of Pure Water. When the cost of imported water exceeds the cost of Pure Water there will be revenue that will be credited back to the wastewater PAs based on their capital investment in the Pure Water program. Once the capital debt is paid off the credit will be based on proportional share of operation and maintenance costs for Pure Water.

At this point in time, secondary equivalency legislation (OPRA II) has not yet been submitted for consideration at the Federal government. Staff from the City of San Diego has been working with Congressman Scott Peter's office and Congressman Duncan Hunter's office on sponsoring the legislation. The lack of secondary equivalency legislation approval reinforces the need and importance of having a financial cap for wastewater rate payers.

Next Steps

The City of San Diego intends to approve the Agreement either prior to or at the same time as it considers authorization to proceed with the construction for Pure Water phase 1.

The current schedule for Pure Water construction authorization approval is as follows:

- September 6, 2018 Metro Commission & Metro Wastewater JPA
- September 13, 2018 City of San Diego Environment Committee
- September 19, 2018 Metro Technical Advisory Committee
- October 2, 2018 City of San Diego City Council

SUMMARY AND CONCLUSION:

The NPDES permit for the PLWTP submitted in 2015 included a goal of offloading 83 million gallons a day of wastewater and turning it into potable drinking water by the year 2035. This project is titled Pure Water San Diego. The PLWTP offloading, as planned, will bring the solids discharged from the plant down to a level that would be equivalent to that of converting the plant to secondary treatment. Federal legislation

language to protect PLWTP from having to convert to the secondary treatment level has been agreed to by local stakeholders including environmental groups, but has not yet been approved at the Federal level.

The 1998 Regional Wastewater Disposal Agreement between the City of San Diego and the PAs governs the planning, capacity rights and cost allocation of wastewater facilities in the Metro System. The 1998 Agreement did not contemplate the complexities of the Pure Water program and must be amended to adequately address the proposed facilities, allocation of costs and long-term financial protection of wastewater rate payers.

The City of San Diego and the PAs have been working since 2014 on deal points for the Pure Water program and those deal points have been incorporated into an Amended and Restated Wastewater Disposal Agreement. The Amended and Restated Agreement will be considered by the Metro Commission/Metro JPA and ultimately sent to the City of San Diego for consideration and approval. Therefore, staff recommends that the City Council provide direction to the Metro Commission/Metro JPA Representative to support the Amended and Restated Regional Wastewater Disposal Agreement at the Metro Commission/Metro JPA meeting, authorize the City Attorney to make nonsubstantive changes to the Agreement and, authorize the Mayor to sign the final Agreement after approval by the City of San Diego City Council.

DECISION-MAKER CONFLICT

Staff has reviewed Councilmembers' property holdings and has determined that the effect of the decision contemplated by this action on public officials' interest in real property would also affect 10% or more of all property owners in the public officials' jurisdiction, or 5,000 property owners in the jurisdiction of the officials' agency, in substantially the same manner. Therefore, pursuant to California Code of Regulations (§18707, §18707.1), the Public Generally Exception applies.

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The Regional Wastewater Disposal Agreement between the City of San Diego and the Metro JPA and the Pure Water Program support the Operational Excellence and Healthy Community goals. The agreement and program provide a fiscally sustainable agreement with the City of San Diego that protects the environment from pollution.

CURRENT-YEAR FISCAL IMPACT

The City's sewer enterprise fund is self-supporting and funds the operations, maintenance, repair, and rehabilitation and expansion of the system, and treatment. The utility is primarily supported by user fees, which provide a sustainable annual funding source. The current rate plan generates sufficient revenue to fund the financial obligations for wastewater service and equitably recover costs from customers. The current rate plan expires on June 30, 2019, and will be updated to incorporate the pro-rata share of the Pure Water Program costs as determined by the Metro JPA.

ONGOING FISCAL IMPACT

The five-year financial plan adopted by the City Council for the period of FY13/14 through FY18/19 was developed using a robust and dynamic cash flow model that mirrors the utility's accounting and operations. The model did contemplate potential changes in operating costs – specifically, increases in treatment costs related to the upgrade of City of San Diego's Point Loma Wastewater Treatment Plant (PLWTP). In FY18/19, the Engineering & Capital Projects Department will embark on an updated sewer rate report that will be completed in time for the July 1, 2019 deadline to adopt a new sewer rate. The updated Pure Water Program costs and revenue projections will be included in the updated sewer rate report to Council in late FY18/19.

ATTACHMENTS

1. Regional Disposal Agreement dated 1998
2. Council Resolution # 18968 dated April 21, 1998.
3. Draft Amended Regional Disposal Agreement dated July 31, 2018
4. Comparison of the 1998 Agreement vs. Amended and Restated Agreement

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