



Department: Utilities
Cost Center: 6001
For Agenda of: 7/2/2024
Placement: Business
Estimated Time: 30 minutes

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SUBJECT: ESTABLISH AN AD-HOC SUBCOMMITTEE TO DETERMINE RECYCLED WATER SALES NEGOTIATION PARAMETERS AND TO EXPAND THE RECYCLED WATER REQUEST FOR INTRESTED PARTIES SOLICITATION TO INCLUDE NON-AGRICULTURAL INTERESTS

RECOMMENDATION

1. Establish an ad-hoc subcommittee consisting of two members of the City Council to assist in determining negotiation parameters, participate in contract negotiations, review draft agreements, and provide a final recommendation to the City Council for the contractual sale of surplus recycled water; and
2. Direct staff to release an expanded supplemental Request for Interested Parties solicitation for the sale of surplus recycled water to non-agricultural interests.

POLICY CONTEXT

The formation of this subcommittee and release of a supplemental Request for Interested Parties aligns with the City's long-term strategies for maximizing the use of recycled water as outlined in the [2017 Recycled Water Master Plan](#) and the [2022 Recycled Water Maximization Study](#). It supports the goals of transparency, legal compliance, and cost recovery while ensuring that the Community's best interests are met.

DISCUSSION

Background

On November 15, 2022, the City Council reviewed the Recycled Water Maximization Study, which included strategies for both short-term and long-term uses of recycled water. At this study session staff received guidance from the Council regarding the direction for use of the City's recycled water supplies, including general City Council support for further investigating the sale of recycled water outside of City limits.

Following the study session staff developed and released a [Request for Interested Parties \(RFIP\)](#) that was designed to gauge local interest in purchasing recycled water for agricultural use. This RFIP requested information from interested parties regarding the volume of recycled water they were interested in purchasing, where the water was proposed to be used, and whether or not the party was able to accommodate a *minimum* sales price of \$1,200 per acre-foot.

The RFIP also noted that purchasing parties may be required to fund and install infrastructure improvements to deliver recycled water to their properties if the City's recycled water lines do not currently meet the proposed delivery location. The RFIP intended to both notify potential buyers of costs and restrictions on the use of recycled water, and to collect information to help the City estimate project costs, delivery duration, and complexity. City staff identified a list of geographic areas where surplus recycled water could be feasibly delivered for agricultural use and sent the RFIP to local agricultural representatives in those areas. The City received one response to this RFIP. The responding party, the Edna Valley Growers, indicated that they were willing to adhere to the initial limitations, including the proposed minimum price of \$1,200 per acre-foot.

Non-Agricultural Interest in Purchasing Recycled Water

In June 2024, City staff became aware of *non-agricultural* interest in the City's surplus recycled water from a local environmental group. To-date, staff had been following the Recycled Water Maximization Plan outline, which solely contemplated the sale of recycled water for agricultural purposes. The new stated interest involves utilizing surplus recycled water to provide supplemental streamflow in San Luis Obispo Creek until long-term creek enhancements are made to support steelhead and other natural habitat. This proposal maintains the current release of recycled water to the creek and would not require the installation of new infrastructure, additional pumping for delivery, or additional staffing resources.

Without having additional details about the proposed project, similar to those requested in the original RFIP, staff cannot determine whether the delivery for agricultural use and environmental use can be made concurrently, nor can staff evaluate the potential merits and benefits of the differing proposals. For these reasons, staff is recommending that the City Council approve the release of a second, supplemental RFIP to gather additional information from environmental groups that are interested in purchasing surplus recycled water. Staff anticipate that releasing a supplemental RFIP would require an additional month, resulting in the subcommittee convening in August 2024. Staff anticipate that the negotiations and final recommendation to the Council will be completed by the end of 2024.

Formation of a Subcommittee

Once all RFIP responses have been received, which may or may not include non-agricultural interests dependent on City Council action, staff will request that a subcommittee consisting of two City Council members and representatives of the Utilities Department meet to review RFIP submissions. In order to begin negotiations with interested parties, it is crucial to establish clear negotiating parameters to ensure that the City Council's and community's interests are met. The proposed subcommittee would ensure that the terms of any sales contracts align with City policies, protect the City's existing water rights, and provide the maximum benefit to the community.

A subcommittee, consisting of two Council members, would collaborate with City staff to develop a comprehensive framework for negotiating recycled water sales contracts. This framework would address several key areas, including but not limited to the following categories and topics the subcommittee may provide input on:

1. Delivery Limitations and Restrictions

- a. Service Prioritization – Protection of the needs of in-City uses of recycled water before providing recycled water for outside-City use.
- b. Delivery Quantities – Definitions of the minimum and maximum daily, monthly, and annual volumes of recycled water available or required to be delivered.
- c. Quality Standards – Provisions outlining the quality of the water the City ensures it will deliver and ensuring that secondary treatment is the responsibility of the recipient.

2. Delivery Pricing and Project Cost Recovery:

- a. Cost Distribution – Delineation of costs for recycled water production, treatment, and delivery. Including costs allocated to inside-City customers and outside-City users.
- b. Offset to City Rates – The minimum and maximum amount of revenue that the City should receive to offset existing or future water rates or to supplement investments in aging infrastructure.
- c. Annual Pricing Adjustments – The methodology for establishing annual pricing adjustments to account for increases in City-costs for categories such as electricity, chemicals, and staffing.

3. Regulatory and Environmental Responsibility:

- a. Water Quality Standards – Water quality standards and regulations for the use of recycled water for agricultural, environmental, or other uses.
- b. Sustainable Groundwater Management Act (SGMA) Compliance – Measures that may be required by the City to ensure that recycled water is being utilized to ensure compliance with SGMA.

4. Land Use Restrictions:

- a. Conservation Measures – Provisions that ensure that properties receiving recycled water are unable to develop or intensify agricultural operations while receiving recycled water.
- b. Ownership Changes – Measures to ensure that restrictions imposed as a result of utilizing recycled water carry forward if ownership of receiving property changes.

5. Contract Duration and Extension:

- a. Contract Length – Definition of the minimum and maximum contract length that could be negotiated.
- b. Extension Options – Definition of the extension options that may be practiced at the end of a contract.
- c. Early Termination Penalties – Description of penalties that may be assessed if a party terminates the contract early.

6. Legal Provisions:

- a. Dispute Resolution – Identification of standard practices for dispute resolution, such as the use of a mediator.
- b. Indemnification – Establishing language that ensures the City will be held harmless from liability arising from the sale or use of recycled water.
- c. Protection of City Water Rights – Establishment of language that ensures the City's water rights are protected and not compromised as a result of delivering recycled water to a third party.

These parameters will guide the subcommittee in creating a robust and fair framework for negotiating recycled water sales contracts, ensuring all agreements are beneficial, compliant, and sustainable for the City while protecting the investments the City has made in its water supplies.

Next Steps

If directed by the City Council, staff will release a supplemental RFIP to gauge interest from local environmental groups. Staff anticipate that this RFIP will be open for 30 days, commencing at the beginning of August 2024. It is recommended that, after closure of the supplemental RFIP solicitation, the subcommittee will review all RFIP responses from the initial solicitation and the supplemental solicitation and prioritize negotiations based on community benefit and recycled water availability. Based on the results of the RFIP solicitation, the subcommittee may ultimately negotiate with multiple interested parties. Upon the conclusion of negotiations, City staff will present a draft contract or contracts to the City Council for their consideration. At that juncture, the full five-member Council will be afforded the opportunity to review the draft contract(s), approve it/them, or propose amendments. This process ensures that the final agreement(s) align with the City's priorities and interests, while receiving input from all Council members.

Previous Council or Advisory Body Action

On March 21, 2017, the City Council approved the 2017 Recycled Water Master Plan, which outlined the City's strategy for expanding the use of recycled water, including plans to ultimately utilize recycled water as a potable water supply. Additionally, as part of the 2021-23 Financial Plan, the City Council authorized funding to develop the Recycled Water Maximization Study. This study aims to identify opportunities for both short-term and long-term expansion of the City's recycled water supplies in alignment with the Council's directives. On November 15, 2022, during a study session, the City Council received an update on the Recycled Water Maximization Study and provided input regarding the future expanded use of the City's recycled water supplies. These actions demonstrate the Council's ongoing commitment to enhancing water resilience and sustainability through the strategic use of recycled water.

Public Engagement

The topic of selling recycled water outside of City limits has been discussed in several public meetings, providing numerous opportunities for community input and engagement. Notably, during the study session held on November 15, 2022, the City Council received an update on the Recycled Water Maximization Study. This session included a comprehensive presentation on the potential for expanded use of recycled water, both within and outside City limits. The meeting was open to the public, allowing community members to voice their opinions, ask questions, and provide feedback.

CONCURRENCE

This report has been reviewed by Utilities staff involved in the production and delivery of recycled water.

ENVIRONMENTAL REVIEW

The proposed action is limited to the establishment of an ad-hoc subcommittee to establish recycled water sales negotiation parameters and the release of a supplemental RFIP and would not commit the City to any form of agreement, nor the sale of recycled water or construction of any physical improvements. Therefore, pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3), action on this item is not subject to environmental review because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and falls within the “common sense” exemption, which excludes actions where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.”

FISCAL IMPACT

Budgeted: NA

Budget Year: 2024-25

Funding Identified: NA

Fiscal Analysis:

The proposed actions do not directly have any fiscal impact. Staff will return to the City Council in the future to outline specific fiscal impacts related to signing a contract to sell recycled water outside of City limits. This meeting will be held after the City has developed a draft contract with the party proposing to purchase recycled water.

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
Water Fund	\$	\$0	\$	\$
State				
Federal				
Fees				
Other:				
Total	\$	\$	\$	\$

ALTERNATIVES

1. ***The City Council could choose not to form the subcommittee and instead direct City staff to independently develop the negotiation parameters for recycled water sales contracts.*** Under this alternative, a draft agreement would be prepared and, ultimately, presented to Council for consideration at a future public meeting, at which time Council could provide direction regarding any necessary changes. Those changes would then need to be negotiated with the potential recycled water purchaser(s), which would extend the time and costs associated with preparation and approval of the agreement. This alternative is not recommended, as the City Council's perspective in development of negotiating parameters will provide valuable oversight, ensure alignment with community goals, and enhance efficiency, transparency, and accountability in the negotiation process.
2. ***The City Council could choose not to approve the release of a supplemental RFIP for non-agricultural parties.*** Under this alternative, the City Council could elect to move forward with the establishment of an ad-hoc subcommittee to assist in the negotiation process with the single agricultural respondent to the initial RFIP. This alternative is not recommended, as the proposal from the interested environmental group may align with City goals and priorities, such as reducing greenhouse gas emissions, protecting the environment, and promoting fiscal sustainability.