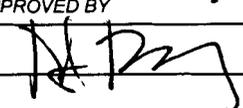


AGENDA ITEM NO.
COUNCIL MEETING
APPROVED BY
DEPARTMENT DIRECTOR 
CITY MANAGER

March 13, 2007

FROM: RENE A. RAMIREZ, Director 
Department of Public Utilities

BY: LON M. MARTIN, Assistant Director 
Department of Public Utilities

SUBJECT: RESOLUTION AUTHORIZING THE DEPARTMENT OF PUBLIC UTILITIES TO EXECUTE AN AMENDMENT TO THE LONG-TERM CENTRAL VALLEY PROJECT WATER SUPPLY CONTRACT AND FINDING SUCH ACTION EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND AUTHORIZE THE CITY MANAGER AND DIRECTOR OF PUBLIC UTILITIES TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

KEY RESULT AREAS

One Fresno
Customer Service
Resource Management

RECOMMENDATIONS

It is recommended that Council take action on the following items:

1. Adopt a resolution of the Council of Fresno, California, authorizing the Department of Public Utilities to execute an amendment to the long-term Central Valley Project Water Supply Contract and finding such action exempt from review under the California Environmental Quality Act.
2. Authorize the City Manager and the Director of Public Utilities to execute the contract amendment on behalf of the City.

EXECUTIVE SUMMARY

On July 19, 2005, the City of Fresno renewed its contract with the United States Bureau of Reclamation ("Bureau") for the Friant Division, Central Valley Project ("CVP") water supply for an additional 40-year term ("Renewal Contract"). Due to the expiration of the previous long-term contract, the City and the Bureau proceeded with the Renewal Contract, fully aware that there was current river restoration litigation (*Natural Resources Defense Council v. Patterson* (No. CIVS 88-1658-LKK-EM); referred to as the "Litigation"), that may require a future amendment. The proposed contract amendment simply incorporates the pre-existing commitment to comply with the resolution of the Litigation that was ongoing at the time the contract itself was signed in 2005. As a result of the settlement, the long-term average annual impact to the City is a reduction of less than 5% of its annual deliveries of CVP water.

KEY OBJECTIVE BALANCE

Council action on this matter optimizes the three key objectives of customer satisfaction, employee satisfaction, and financial management by allowing the Department of Public Utilities to maintain a long-term CVP contract allowing for prudent natural resource management. Customer satisfaction is achieved by maintaining and retaining all available surface water supplies for current and future use. Employee satisfaction is derived from the ability to provide high quality reliable surface water for direct treatment and recharge operations.

BACKGROUND

Article 14(b) of the Renewal Contract provides that the terms of the Renewal Contract "are subject to any enforceable order, judgment, and/or settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-EM and shall be timely modified as necessary to effectuate or facilitate any final order, judgment or settlement in said litigation." On October 23, 2006, Judge Karlton, United States District Court, approved a settlement to the Litigation ("Settlement"), which among other things, requires the City (and all other Friant contractors) to amend its Renewal Contract to conform to the settlement, as required in Article 14(b).

Prior to Settlement, the Litigation had been ongoing for several decades. The plaintiffs' primary focus with the Litigation was to develop a modified operational regime for the Friant Dam that would help restore some fishery and riparian resources along the San Joaquin River. Judge Karlton approved the Settlement on October 23, 2006.

As a result of the Settlement, the long-term average annual impact to the City is a reduction of less than 5% of its average annual deliveries of CVP water. The actual impact will vary from year-to-year based on weather and snow pack. In the critical driest of years, the City may receive little or no Friant water, but historically that has occurred even without the Settlement. In most normal and wet years, the City will not be impacted because of its Class 1 priority. In dry years, the City often received less than its full 60,000 acre-foot contract entitlement simply because there is insufficient water in the system to fulfill all the Friant Class 1 contract entitlements. The Settlement will fractionally further reduce deliveries in these dry years but it remains likely that the Friant contractors will receive their full contract entitlement (and access to excess water) in very wet years.

I. Fresno's Water Supply

As a Class 1 CVP water contractor, the City is among the group of contractors that have the highest priority right to receive Friant water. Class 2 contractors do not receive any of their contracted amounts until Class 1 contractors receive their entire contract entitlement. Thus, the settlement does NOT modify or affect this priority system.

The City's long-term CVP contract entitles it to receive 60,000 acre-feet per year of water from the Bureau of Reclamation's Friant Reservoir. As noted above, the City indirectly obtains roughly 40% of its potable water supplies from this supply. The balance of the City's water supply is indirectly obtained through its water rights to the Kings River. Now, both these supplies are primarily used for local groundwater basin recharge. Although, with operation of the current surface water treatment facility and a second planned for Southeast Fresno, direct treatment of surface water is an increasingly important component to the delivery of potable water.

The actual amount of surface water the City obtains from its CVP contract and its Kings River water rights vary

The Settlement will result in some cost increase, which was already incorporated into the costs for water with the long-term Renewal Contract approved July 19, 2005. The Water Division's five year rate plan that was adopted by Council on February 27, 2007, includes the increase in costs. However, the Settlement includes several components that can potentially off-set these increases. First, there will be no direct pass through of the capital costs associated with implementing the settlement. Those direct costs will be paid from Federal appropriations (not requiring contractor repayment), state grants, local bond issues the debt service on which will be funded through existing CVP water supply revenues, and current CVPIA mandated environmental surcharges. The cost increase occurs because the Bureau will continue to impose the same operating and capital cost allocation on the contractors as it did absent the Settlement. But because the per acre foot charge is calculated based on the volume of water delivered, the actual per acre foot cost will increase because the average volume of water delivered will decrease.

To alleviate any detriment to contractors, the Settlement specifically provides that the Bureau will keep track of the amount of water each contractor is "shorted" through the Settlement. In those years when excess water is available, Friant contractors will have the first right to purchase the excess water at the fixed price of \$10 per acre-foot. Current fully burdened rate for CVP water is just under \$110 per acre-foot. Those contractors, like the City, that have the ability to take excess water in wet years (groundwater banking projects or recharge supplies) will be able to purchase the excess water from the Bureau and the Friant contractors will be able to purchase the excess water from the Bureau as a part of implementing the Settlement.

Attachment:

Resolution Certifying Long-Term Renewal Contract Amendment for Execution

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF FRESNO, CALIFORNIA, AUTHORIZING THE DEPARTMENT OF PUBLIC UTILITIES TO EXECUTE AN AMENDMENT TO THE LONG-TERM CENTRAL VALLEY PROJECT WATER SUPPLY CONTRACT AND FINDING SUCH ACTION EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, on July 19, 2005, the City of Fresno renewed its contract with the United States Bureau of Reclamation ("Bureau") for the Friant Division, Central Valley Project water supply for an additional 40-year term ("Renewal Contract"); and

WHEREAS, prior to executing the Renewal Contract the Bureau completed its environmental review under the National Environmental Policy Act ("NEPA") and appropriate compliance with the Endangered Species Act; and

WHEREAS, prior to execution of the Renewal Contract, the City prepared an environmental assessment and initial study pursuant to the California Environmental Quality Act pursuant to Public Resources Code section 21000 et seq. ("CEQA"). Based on this analysis, the City determined the 2025 General Plan Master Environmental Impact Report No. 10130 ("MEIR") evaluated the potential impacts of the Renewal Contract and concluded that the execution of the Renewal Contract will not create new or additional impacts not previously assessed in the MEIR; and

WHEREAS, on July 19, 2005, the Fresno City Council approved and certified the finding of conformity (State Clearinghouse No. 20050110009) with the MEIR; and

WHEREAS, at the time the Renewal Contract was signed, there was ongoing litigation involving the San Joaquin River and the operation of Friant Dam (*Natural Resources Defense Council v. Patterson* (No. CIVS 88-1658-LKK-EM); referred to as the "Litigation"), which the City was not a party to; and

WHEREAS, Article 14(b) of the Renewal Contract provides that the terms of the Renewal Contract "are subject to any enforceable order, judgment, and/or settlement in NRDC v. Patterson, No. CIVS 88-1658-LKK-EM and shall be timely modified as necessary to effectuate or facilitate any final order, judgment or settlement in said litigation."; and

WHEREAS, on or about October 23, 2006, Judge Karlton, United States District Court, approved a settlement to the Litigation, which among other things, requires the City (and all other Friant contractors) to amend its Renewal Contract to conform to the settlement, as required in Article 14(b); and

WHEREAS, the Bureau has determined the amendments to the CVP contracts required under the settlement are exempted from review under the NEPA; and

WHEREAS, the proposed amendment to the Renewal Contract is exempt from CEQA because the execution of the amendment to the Renewal Contract is a ministerial action and results in no substantial changes to the Renewal Contract or significant impacts to the environment [CEQA Guidelines Section 15061(b)(3)]; and

WHEREAS, the proposed amendment to the Renewal Contract is exempt from CEQA because the City has only ministerial authority [Pub. Resources Code Section 21080(b)(1); Cal. Code of Regulations, Title 14, Chapter 3 (CEQA Guidelines) Section 15300.1] as the amendment was contemplated as part of the original agreement in 2005.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno, based upon the documentation on file with the City, it makes the following findings:

- (1) Council finds that the execution of the amendment to the Renewal Contract is required by terms of the original Renewal Contract and that the Council's authorization of the Renewal Contract is not a discretionary decision; and
- (2) Council finds that the execution of the Renewal Contract is a ministerial action exempt from CEQA; and
- (3) Council finds, in accordance with its own independent judgment, that there is no substantial evidence in the record that the execution of the amendment to the Renewal Contract may have a significant effect on the environment beyond those disclosed in the previously certified Master Environmental Impact Report (MEIR); and
- (4) There are no substantial changes in circumstances that would result in new significant environmental effects because the original MEIR considered the possibility of obtaining less supply of water from the Friant Division project;

Accordingly, Council finds that the execution of the amendment to the Renewal Contract is exempt from CEQA, is hereby approved, and City staff is directed to file a notice of exemption with the State Clearinghouse.

Council further directs and authorizes the City Manager and the Director of the Department of Public Utilities to execute the amendment to the Renewal Contract.

///

///

///

CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, California, at a regular meeting held on the _____ day of _____, 2007.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2007

Mayor Approval/No Return: _____, 2007

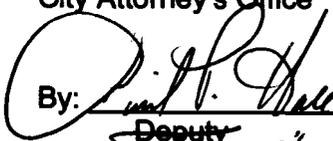
Mayor Veto: _____, 2007

Council Override Vote: _____, 2007

REBECCA E. KLISCH
City Clerk

Deputy

APPROVED AS TO FORM:
City Attorney's Office

By: 
Deputy 
Chief Assistant.