



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

**SUBJECT: SANTA CLARA VALLEY WATER
DISTRICT'S EFFORT TO DEVELOP
PURIFIED WATER PROJECTS IN
SANTA CLARA COUNTY**

DATE: June 2, 2021

Approved

Date

06/04/21

RECOMMENDATION

Accept this report of no progress in negotiations with Santa Clara Valley Water District (Valley Water) on a Purified Water Project.

OUTCOME

Provide an update on negotiations for Valley Water's Purified Water project.

BACKGROUND

On April 13, 2021 Council provided direction to the City Manager on pursuing negotiations with Valley Water for an indirect potable reuse style Purified Water Project. Council direction includes:

1. Negotiate an amended or new Master Agreement between Valley Water and the City of San José relating to Valley Water's Payment for City's support services to the expedited purified water program for an amount adequate to fund all costs incurred by the City to support negotiation of new agreements including legal services and a facilitator.
2. Coordinate with Valley Water to negotiate and enter into a three-party agreement with a consultant to facilitate negotiation meetings between the City and Valley Water for six months; and establish the executive steering committee comprised of representatives from the San José City Council and Valley Water Board, staff from each agency only if the negotiation with the facilitator requires additional guidance.
3. Negotiate with Valley Water an agreement to fund the reservation of wastewater effluent for potential water reuse projects with terms and conditions substantially similar to the Partnership Agreement to Advance Resilient Water Reuse Programs in Santa Clara

County between Valley Water and the cities of Palo Alto and Mountain View dated December 10, 2019.

4. Return to the San José City Council in December 2021 for action/consideration on a reservation of wastewater effluent agreement with Valley Water.
5. Following the reservation of wastewater effluent, engage Valley Water to negotiate an amended or new Ground Lease and Property Use Agreement for the existing Advanced Water Treatment Facility, concurrently with an amended or new Recycled Water Facilities and Programs Integration Agreement.
6. Direct the administration to continue prior Council direction on negotiating the expanded use of recycled water with Valley Water to increase a local, drought-resilient water supply and reduce reliance on imported water.
7. Return to the San José City Council on June 15, 2021 with an update regarding the status of the negotiations.

ANALYSIS

Due to the expedited schedule, staff established a negotiation team and contacted Valley Water staff to continue discussions, per Council direction. Staff provided Valley Water with a draft Master Agreement between Valley Water and the City of San José relating to Valley Water's Payment for City's support services and requested Valley Water's review. Staff also requested a funding commitment to support City staff involvement, necessary to enable City staff to negotiate.

In addition, staff requested that Valley Water provide a draft agreement to fund the reservation of wastewater effluent for potential indirect potable reuse projects, with terms and conditions substantially similar to the Partnership Agreement between Valley Water and the cities of Palo Alto and Mountain View.

On April 30, 2021, Valley Water submitted written correspondence (see Attachment A) that Council direction did not consider all elements as respectfully requested by Valley Water, and requested that Council re-evaluate past action(s).

On May 5, 2021, San Jose staff assured Valley Water that they are ready to move this important water supply project forward (see Attachment B). Mirroring Valley Water's successful partnership with the City of Palo Alto, correspondence included specific terms that would also be acceptable to San Jose. To facilitate continued momentum, also included was a list of Draft Agreement Components, and a request that Valley Water provide feedback.

On May 10, 2021, in written response, Valley Water has been clear that Council direction to City staff is unacceptable. Valley Water had neither responded with draft agreements, nor provided a status on when draft agreements might be expected (see Attachment C).

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City staff believes material progress towards our common goal could have been achieved over the last two months. Despite repeated and ongoing efforts by ESD staff to engage Valley Water, it has been unsuccessful.

Considering the City's priorities, available resources and time commitment, staff believes Council's prior direction is a sound approach; however, it is clear Valley Water does not agree with that direction and has been unwilling to move this project forward.

CONCLUSION

Despite Valley Water's disengagement in pursuing negotiations, Staff will continue to reach out to Valley Water to make progress on a funding agreement to support City staff involvement, and to negotiate a draft agreement to fund the reservation of wastewater effluent for potential indirect potable reuse projects.

EVALUATION AND FOLLOW-UP

No follow up is anticipated at this time.

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the June 15, 2021 City Council.

COORDINATION

This project has been coordinated with the City Attorney's Office and Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

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CEQA

Not a Project, File No. PP10-069.

/s/

KERRIE ROMANOW

Director, Environmental Services

For questions, please contact Jeff Provenzano, Deputy Director, at (408) 277-3671.

Attachments:

Attachment A - Valley Water letter to San José City Council dated April 30, 2021

Attachment B – San José Office of City Manager letter to Rick L. Callender, CEO Valley Water dated May 5, 2021

Attachment C – Valley Water CEO Response letter to San José Office of City Manager dated May 10, 2021



April 30, 2021

Mayor and City Council
City of San José
200 East Santa Clara Street, 18th Floor
San Jose, CA 95113

Subject: San José City Council Decision on the Purified Water Project in Santa Clara County (Item #6.1 on the April 13, 2021, City Council Agenda)

BOARD OF DIRECTORS

John L. Varela (District 1)
Barbara F. Keegan (District 2)
Richard P. Santos (District 3)
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Tony Estremera / Chair (District 6)
Gary Kremen / Vice Chair (District 7)

CHIEF EXECUTIVE OFFICER

Rick L. Callender, Esq.

CLERK OF THE BOARD

Michele L. King, CMC

Dear Mayor and City Council:

The Santa Clara Valley Water District (Valley Water) would like to thank the City Council for your consideration of the potential partnership with Valley Water to advance the use of recycled and purified water in Santa Clara County. However, the decision of the City Council on April 13, 2021, (Item #6.1) appears to limit negotiations and not consider all elements as respectfully requested by Valley Water. With that said, given the strong support for a partnership with Valley Water conveyed by numerous members of the Council, Valley Water still supports entering into more formal facilitated discussions similar to the recommendations initially listed in the memorandum from Vice Mayor Jones from the Joint Meeting on March 19, 2021 (Item #5).

Should you be willing to reconsider the aforementioned action (April 13, 2021) and accommodate the requests from our letter of April 13, 2021 (Attachment A), please let us know by Tuesday, May 11, so that we may move towards an agreement expeditiously. Valley Water is committed to continuing our long-standing partnership; however, given the urgency of current and future droughts, we respectfully request that you reevaluate your past action(s) and consider the following to enable productive discussions:

1. Expansion of scope of the negotiations to include all elements needed for the project to proceed in its entirety, which includes:
 - a. Options for water and land lease.
 - b. Reverse Osmosis Concentrate management options.
 - c. The amendment of the 2010 integration agreement to allow the existing Silicon Valley Advanced Water Purification Center expansion to proceed.
2. Inclusion of two policy makers from each elected body immediately, along with staff from both agencies.
3. Entering facilitated discussions and development of final agreements with the parties to be concluded by September of 2021.



Valley Water and city staff have been discussing expansion of the Silicon Valley Advanced Water Purification Center for the last five years. San José, Santa Clara, and Valley Water staff have also been discussing the integration agreement, land, water, and Reverse Osmosis concentrate management productively since the beginning of the calendar year. Furthermore, without clear direction and guidance from the elected officials, San José staff appears unable to agree to specific terms and thus proceed in a timely manner. Consequently, we believe it is essential for elected officials to immediately engage at this stage to resolve issues that are fundamentally of a policy nature.

If the above request is unable to be considered, Valley Water must unfortunately suspend our negotiations to expand the purification center for groundwater replenishment with San José. While we would be disappointed to not build on our long history of collaboration for the benefit of our mutual ratepayers for this project, we remain committed to working with the City of San José for future phases of potable reuse expansion at the Silicon Valley Advanced Purification Center.

Thank you for your time and consideration, we look forward to your response by May 11, 2021.

Sincerely,



Tony Estremera
Chair, Board of Directors

cc: Board of Directors (7), Dave Sykes, San José City Manager
kn:fd
0428a-l

May 5, 2021

Rick L. Callender, Esq.
Chief Executive Officer
Valley Water
5750 Almaden Expy
San José, CA 95118

Subject: Water Purification Project Negotiations

I was copied on an April 30, 2021 letter from Valley Water Board Chair Estremera emailed to our City Council Members. The timeframe outlined in that letter does not provide enough time to bring the item forward for Council discussion; however, I want to assure you and your Board that San Jose staff are ready to move this important water supply project forward. We believe mirroring the process Valley Water established with Palo Alto is very prudent and we commend you for your thoughtful approach. The framework ratified with Palo Alto provides value for our ratepayers now and ensures protection of water quality in the San Francisco Bay.

To avoid any further confusion, we want to reiterate the components of the agreement Valley Water signed with the Cities of Palo Alto and Mountain View:

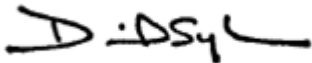
| Palo Alto Agreement Components | | |
|--|---|----------------------------|
| Category | Specific Term | Status |
| Establish Agreement Term | 63 Year Term Established | Approved December 2019 |
| Water Rights for 9 MGD | Valley Water to provide \$16 M in upfront compensation | Approved December 2019 |
| Reverse Osmosis Concentrate Management | Not Completed; Valley Water assumes responsibility for treatment of Reverse Osmosis Concentrate | <i>In Discussion (TBD)</i> |
| Ground Lease Terms | Not Completed | <i>In Discussion (TBD)</i> |
| Financial Risk | If cost to treat wastewater increases, Valley Water to pay for the increase | Approved December 2019 |
| Financial Contribution | Upon exercising option, Valley Water provides \$1M per year in compensation | Approved December 2019 |

As mentioned in February 2020, San Jose will accept the same terms as those provided to the City of Palo Alto. San Jose is a recognized leader in environmental protection and Climate Change. We already operate the largest recycled water system in Valley Water's service area and provide 4% of Santa Clara County's overall water supply and 75% of its recycled water supply.

Rick L. Callender, Valley Water
May 5, 2021
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The City sees no reason to delay this important effort and sincerely hope Valley Water is as committed as we are to move this water infrastructure project forward expeditiously. Since our April 13th Council meeting City staff have been trying to meet with Valley Water staff to discuss this project, but unfortunately Valley Water staff have been reluctant to meet. To facilitate continued forward momentum, I am requesting that Valley Water provide feedback to Deputy City Manager Lee Wilcox and Director Kerrie Romanow using the Draft Agreement Components provided as Attachment A. Please let me know by May 10, 2021 if Valley Water is ready to proceed with a contract. We propose our respective staff convene the week of May 10th to move this project forward and continue to partner with Valley Water on opportunities to build water infrastructure locally.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Sykes".

David Sykes
City Manager

Cc: San Jose City Council, Valley Water Board Members
Lee Wilcox, Deputy City Manager
Kerrie Romanow, Director, Environmental Services Department

Attachment



May 10, 2021

Mr. David Sykes
City Manager, City of San José
200 East Santa Clara Street, 17th Floor
San José, CA 95113

Subject: Purified Water Project Negotiations

Dear Mr. Sykes:

Thank you for your letter dated May 5, 2021, related to the Purified Water Project (PWP) negotiations between Valley Water and the City of San José. I also want to thank you for acknowledging our successful efforts with negotiating the Palo Alto agreement and the approach, which followed our partnership with the City of San José since 1998. This longstanding collaboration with the City of San José currently stands with our operation of the Silicon Valley Advanced Water Purification Center (SVAWPC) which has provided significant benefits to San José and its tributary agencies.

As you are aware, our Board has stated in the letters from our Chair to your City Council (April 13, 2021 and April 30, 2021), that the negotiation of an agreement restricted to only water does not meet the needs of the PWP for additional water supply for Santa Clara County. As a result, Valley Water has requested simultaneous negotiation of an amendment of the integration agreement, water, land, and RO concentrate management. We are genuinely looking forward to a win-win approach for Valley Water, the City of San José and our mutual constituents, and our suggested approach assures a win-win.

Valley Water must ensure that water supply projects yield desired benefits so that water remains affordable for all. Based on the reiteration of the same issues in your letter which have been discussed among staff for a number of years, we emphasize that we believe the City Council and our Board's involvement is necessary to move these stalled negotiations forward per our Chair's letter.

As you know, the drought realities make this project even more critical. We also appreciate your concern related to increasing water rates translates into moving forward with negotiation of an agreement that allows the expeditious expansion of the SVAWPC. While an expanded SVAWPC would have been our preferred option due to the benefits to our mutual rate payers, these continued delays result in escalated costs, making a San José project less cost-effective.

Therefore, we anxiously await a reply to our Chair's April 30, 2021 letter sent to the Mayor and Council on behalf of Valley Water, as to the invitation to meet directly with the policy makers. As you mentioned in your letter that you could not accomplish direction from the City Council by May 11, I am happy to ask our staff to resume staff level meetings to discuss potential facilitators, however if you are unable to



Mr. David Sykes
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receive Council direction by June 1, 2021, we will have to suspend discussions on the SVAWPC, so that we can pursue the North County project.

Thank you again for your time, consideration, and continued efforts to find workable solutions to issues of common interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Callender", with a long horizontal line extending to the right.

Rick L. Callender, Esq.
Chief Executive Officer

cc: San José City Council, Valley Water Board of Directors (7)
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