

STAFF REPORT



ITEM NO. 6 CITY OF OCEANSIDE

DATE: August 1, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **AMENDMENT 3 TO THE WATER SUPPLY AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND WHELAN LAKE BIRD SANCTUARY, INC., TO EXTEND THE AGREEMENT FOR AN ADDITIONAL NINETEEN YEARS**

SYNOPSIS

Staff and the Utilities Commission recommend that the City Council approve Amendment 3 to the Water Supply Agreement (Exhibit A) between the City of Oceanside and the Whelan Lake Bird Sanctuary, Inc., (Sanctuary), for the provision of recycled water to Whelan Lake from the San Luis Rey Wastewater Treatment Plant at no charge to the Sanctuary, extending the term of the agreement from June 30, 2012 to June 30, 2031, with water to be provided at no cost in exchange for use of habitat at Sanctuary for future mitigation purposes for Water Utilities Department projects; and authorize the City Manager to execute the amendment.

BACKGROUND

The Whelan Lake Bird Sanctuary, which is adjacent to and west of the San Luis Rey Wastewater Treatment Plant, is a 323-acre natural habitat for migratory and indigenous birds (Exhibit B). Because the Bird Sanctuary is considered a community-wide benefit, since 1958, the City has provided Whelan Lake, which is on the Sanctuary property, with recycled water. Over the course of several agreements, recycled water was provided in-trade for use of storage onsite, for maintenance improvements onsite by the City and for rent payments to the Whelan sisters.

The existing Water Supply Agreement between the City and the Sanctuary expires on June 30, 2031; however, a provision in the agreement to supply recycled water without cost expires on June 30, 2012. For the remaining term of the water supply agreement, recycled water is supposed to be provided at (i) the City's cost to supply the water, or (ii) at the price which the City would otherwise sell the same water to another buyer, whichever is less.

In March 6, 2012, the City received a request from the Whelan Lake Sanctuary, Inc., to extend the existing water supply agreement without cost to the Sanctuary (Exhibit C).

ANALYSIS

The City has previously used land adjacent to the lake as mitigation for utility project impacts. The previous mitigation included creation of southern willow scrub and freshwater/alkali marsh habitat.

Staff has hired a biologist to oversee the closing of the mitigation project and the final removal of the non-native plant material. The City is obligated to maintain the habitat which includes the supply of recycled water to the habitat. The amount of recycled water needed to maintain this habitat is 15 acre-feet/year. (1 acre-foot = 325,851 gallons) Staff anticipates the need for mitigation land for future utility projects.

Staff recommends that the City Council approve Amendment 3 extending the term of the agreement from June 30, 2012, to June 30, 2031, for the provision of recycled water to Whelan Lake from the San Luis Rey Wastewater Treatment Plant at no charge to the Sanctuary, in exchange for use of habitat at the Sanctuary for future mitigation purposes for Water Utilities Department projects.

FISCAL IMPACT

During 2010, the City delivered 163.66 acre-feet (AF) (53.33 Million Gallons or 71,295 units) of recycled water to Whelan Lake. The recycled water rate is \$1.81/unit and 115 AF of water delivered to paying customers would generate \$90,676 annually or \$1.722 million over the remaining life of the contract.

Staff estimates there are approximately 25-30 acres available at the Sanctuary for wetlands mitigation at a value of \$60,000/acre (\$1,500,000 - \$1,800,000). Annual water transfers are equivalent to \$85,000/100 acre-foot of water (\$1,615,000 over the 19 years).

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

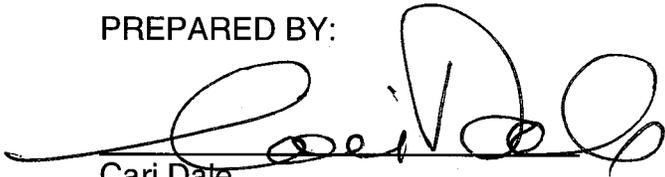
COMMISSION OR COMMITTEE REPORT

The Utilities Commission will review staff's recommendation at its regularly scheduled meeting on July 24, 2012.

RECOMMENDATIONS

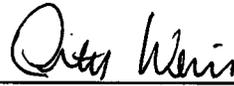
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PREPARED BY:



Cari Dale
Water Utilities Director

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Teri Ferro, Financial Services Director

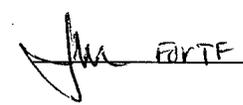


Exhibit A: Amendment 3

THIRD AMENDMENT TO WATER SUPPLY AGREEMENT

BETWEEN THE CITY OF OCEANSIDE AND

THE WHELAN LAKE BIRD SANCTUARY, INC.

This Third Amendment, dated _____, 2012 for identification purposes, is entered into by and between the WHELAN LAKE BIRD SANCTUARY, INC., a California nonprofit public benefit corporation, hereinafter referred to as "SANCTUARY" and the CITY OF OCEANSIDE, a municipal corporation, hereinafter referred to as "CITY".

WITNESSETH:

WHEREAS, CITY and SANCTUARY are parties to that certain Water Supply Agreement dated May 17, 2000, and amended June 29, 2006 and July 6, 2011, (the "Existing Agreement"), pursuant to which CITY furnishes to SANCTUARY reclaimed water from the CITY's San Luis Rey Wastewater Treatment Plant, which water is used to maintain an appropriate water level at the SANCTUARY's Whelan Lake, which Lake is adjacent to the City's San Luis Rey Wastewater Treatment Plant.

WHEREAS, the parties desire to amend the Existing Agreement as described below.

NOW, THEREFORE, the parties hereto agree as follows:

1. Section 2 of the Existing Agreement is hereby amended and shall read: "CITY agrees to provide SANCTUARY with effluent discharge as set forth in the CITY's current waste discharge requirements for the San Luis Rey Wastewater Treatment Plant issued by the California Regional Water Quality Control Board. Such water will be of a quantity sufficient to maintain Whelan Lake at an appropriate level, which quantity is estimated to be a minimum of 116 Acre-Feet annually. Said water will be provided without cost to SANCTUARY from June 30, 2012 until June 30, 2031. In exchange for such water, CITY shall have a right to use SANCTUARY property for future mitigation purposes for Water Department projects, with each such mitigation project to be implemented and maintained in a manner which is compatible with SANCTUARY's wildlife conservation mission and is not adverse to SANCTUARY's existing use of the SANCTUARY's property, all as mutually approved by both CITY and SANCTUARY, which approval will not be unreasonably withheld or delayed. City shall coordinate with and seek input from SANCTUARY and applicable wildlife agencies regarding the scope of each such mitigation project. CITY shall be responsible for all costs associated with implementing and maintaining

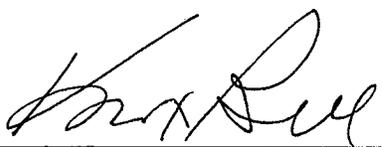
each mitigation project; and CITY shall reimburse SANCTUARY for any costs which SANCTUARY needs to incur to assist CITY to implement and maintain mitigation projects.”

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Third Amendment to the Agreement to be executed by setting hereunto their signatures this _____ day of _____, 2012.

WHELAN LAKE BIRD SANCTUARY, INC.
SANCTUARY

BY: _____
SIGNATURE

NAME/TITLE

BY:  _____
SIGNATURE

KNOX Bell, Secretary
NAME/TITLE

CITY OF OCEANSIDE
CITY

BY: _____
CITY MANAGER

ATTEST; CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

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}S.S.
}

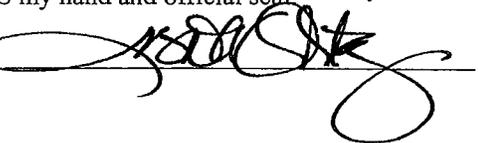
On JULY 11, 2012, before me, LISA A. ORTIZ, NOTARY PUBLIC
personally appeared KNOX BELL

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature



(Seal)

