



**DATE:** November 16, 2021

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT:** Adopt a Resolution Authorizing the City Manager to Execute an Amendment to the Cooperating Agreement with East Bay Municipal Utility District to Prepare a Groundwater Sustainability Plan for the East Bay Plain Subbasin

### **RECOMMENDATION**

That the Council adopts the attached resolution (Attachment II) authorizing the City Manager to execute a third amendment to the Cooperating Agreement between the City of Hayward and the East Bay Municipal Utility District to jointly prepare a Groundwater Sustainability Plan for the East Bay Plain Subbasin.

### **SUMMARY**

The Sustainable Groundwater Management Act (SGMA) was signed into law in 2014 to provide for comprehensive and sustainable management of groundwater resources across the state. Hayward and East Bay Municipal Utility District (EBMUD) are the Groundwater Sustainability Agencies (GSAs) for the portions of the East Bay Plain Groundwater Subbasin that underlie their respective service areas, and as such are jointly responsible for the long-term sustainable management of the Subbasin.

On June 5, 2018, Council authorized execution of a Cooperating Agreement with EBMUD, under which the parties agree to work collaboratively and share the costs to prepare a single Groundwater Sustainability Plan (GSP) in accordance with SGMA. Council subsequently approved two amendments to the Agreement in January 2019 and October 2020 respectively to: 1) refine the scope of work and budget; and 2) incorporate additional needed tasks to improve the quality and quantity of data and to acquire and develop a data management system to organize data and make it readily available to the public.

A third amendment is recommended to: 1) allocate responsibilities for new groundwater monitoring wells that will be drilled to better characterize the groundwater basin and improve the agencies' ability to define the hydrogeologic transition zone between the East Bay Plain Subbasin and the adjacent Niles Cole Subbasin; and 2) appoint a Plan Manager to serve as a contact with the State Department of Water Resources (DWR).

## BACKGROUND

Following several years of drought and severe and unsustainable depletion of groundwater resources, SGMA was signed into law in 2014 to provide for comprehensive management of groundwater within California. The legislation provides a framework for groundwater management at the local level through formation of GSAs and implementation of GSPs. The City became the GSA for the portion of the medium-priority East Bay Plain Subbasin underlying the City in June 2017. EBMUD is the GSA for the remaining portion of the Subbasin.

As the GSA for a portion of the East Bay Plain Subbasin, the City is responsible for developing and implementing a GSP to sustainably manage and utilize groundwater within its management area, without causing adverse effects. Upon approval from the City Council on June 5, 2018, the City entered into an agreement with EBMUD on June 25, 2018 to jointly prepare a single GSP for the entire Subbasin. Working collaboratively reduces duplication of technical work and the cost of preparing the GSP for both agencies. SGMA requires that medium-priority basins be managed under an adopted GSP by January 31, 2022. The link below to the June 5, 2018<sup>1</sup> Council report provides additional background and discussion on key provisions of the Cooperating Agreement.

With Council approval, the Cooperating Agreement has since been amended twice:

- Amendment 1 – Reflected the actual scope of work, schedule, budget, and grant funding after selection of a consultant to assist with the GSP preparation, and EBMUD, on behalf of the GSAs, was awarded a \$1 million grant from the State Department of Water Resources. The link below to the January 29, 2019<sup>2</sup> Council report provides additional information on this action.
- Amendment 2 – Revised the scope of work and cost to incorporate additional groundwater monitoring and analysis, including installation of new monitoring wells, and to develop a Data Management System (DMS) to organize essential data and make it publicly available. A second grant in the amount of \$680,000 was awarded to support this work. The link below to the October 6, 2020<sup>3</sup> Council report provides additional information on this action.

As work has progressed on the GSP, Hayward and EBMUD staff have determined that a third amendment to the Cooperating Agreement is needed to: 1) allocate responsibility for the new monitoring wells; and 2) appoint a Plan Manager to submit the GSP and serve as a point of contact with DWR.

## DISCUSSION

### Cooperating Agreement Amendment 3

Staff recommends that the Cooperating Agreement be amended to document specific roles and responsibilities to be carried out by the City and EBMUD relative to the groundwater monitoring wells, as well as to appoint Grace Su, EBMUD Associate Civil Engineer, as the Plan Manager. SGMA requires that a single point of contact be designated for each GSP. This

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<sup>1</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=3518462&GUID=B02415CC-0E35-4651-A514-0136EE070AB8&Options=&Search=>

<sup>2</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=3846297&GUID=23693F53-005F-408B-8680-2B2C02A5CBB1&Options=&Search=>

<sup>3</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=4656503&GUID=554C1A76-4243-49E3-9DFC-A8FB09169374&Options=&Search=>

appointment would allow her to be the official contact for DWR and to submit the adopted GSP on behalf of both agencies.

Among other provisions, the second amendment to the Cooperating Agreement, executed in October 2020, expands the original scope of work to include construction of two monitoring wells within Hayward's management area to better define the hydrogeologic transition zone between the East Bay Plain Subbasin and the adjacent Niles Cone Subbasin, managed by Alameda County Water District (AWCD), an issue of great importance to the City. EBMUD likewise intends to drill two monitoring wells in the more northern part of the Subbasin.

The proposed third amendment addresses indemnification, financial responsibilities, and ownership of the wells. Specifically, the agencies would agree to:

- Be financially responsible for the new monitoring wells in their respective management areas;
- Indemnify and hold harmless the other agency in the event of claims and other legal actions, including claims and costs related to the release or spill of hazardous materials, that arise from the construction or operation of the wells; and
- Assume sole ownership of the monitoring wells within each management area and be responsible for operating and maintaining the wells.

The City's legal counsel for groundwater-related matters has reviewed the draft amendment and has indicated no concerns regarding the provisions.

#### Contractor Selection and Cost Update

The October 6, 2020 agenda report included a discussion of the consultant selection process, including EBMUD's intention to execute agreements with Luhdorff & Scalmanini Consulting Engineers (LSCE) in the amount of \$424,740 for technical and project development tasks related to the additional monitoring, and a separate contract with Bradley & Sons Drilling in the amount of \$335,890 to drill the wells. The field costs were subsequently increased to \$400,000; however, this separate agreement with Bradley and Sons was not executed as the two parties could not reach agreement on contract provisions. EBMUD issued a Request for Proposals to secure another contractor. EBMUD staff expects to select a contractor and return to the Board of Directors for approval on December 14. LSCE will continue in its consulting role to perform the additional monitoring and analysis.

Until a contractor is selected and a contract negotiated, the cost for well drilling is uncertain. However, based on the negotiated fee for Bradley & Sons to do the work and current market conditions, staff believes that the final cost will be within about 10 percent of \$400,000. It should be noted that the cost estimate assumes that no hazardous materials will be found during the drilling. While staff does not anticipate the presence of such materials, if site conditions warrant, there would be additional costs to the City for removal and disposal of contaminated soil.

Most of the cost for the additional monitoring and analysis, including well drilling, will be funded through a Proposition 68 grant secured by EBMUD on behalf of the two GSAs. In accordance with Amendment 2 of the Cooperating Agreement, Hayward will be responsible

for 35 percent of the local cost share for consultant services related to preparing the GSP and groundwater monitoring and analysis, and for 50 percent of costs related to data management. Table 1 summarizes the estimate City share of the costs to prepare the GSP and implement a data management system, assuming approval of staff's recommendation. As a reminder, a significant portion of the cost of preparing the GSP is being funded through a Proposition 1 grant in the amount of \$1 million and a Proposition 68 grant in the amount of \$680,000.

**Table 1 - Estimated City Share of Costs to Prepare GSP**

	<b>Amended Budget September 2020</b>	<b>Proposed Amended Budget November 2021</b>
Total Consultant Budget	\$2,452,072 - \$2,602,072	\$2,636,179
City Share of Consultant Cost		
Estimated Maximum Cost-Share (Upfront Cost)	\$873,000 - \$948,000	\$955,400
Maximum Prop 1 Grant Reimbursement	(\$350,000)	(\$350,000)
Maximum Prop 68 Grant Reimbursement	(\$220,000)	(\$220,000)
Net Cost Share	\$303,000 - \$378,000	\$385,400
City Staff Time (estimated)	\$150,000	\$150,000
<b>Total</b>	<b>\$453,000 - \$528,000</b>	<b>\$535,400</b>

### **ECONOMIC IMPACT**

The GSP provides a strategy for long-term sustainable management of the City's groundwater resources. These actions will benefit the community's economy through improved water supply reliability.

### **FISCAL IMPACT**

The majority of the construction costs for installing and maintaining the monitoring wells are covered by grant funding, and Hayward's local cost share would be funded by the Water Improvement Fund. Costs for maintaining the wells are not yet fully known at this time, but are not expected to be significant, and would also be funded by the Water Improvement Fund.

The Water Improvement Fund in the Capital Improvement Program (CIP) includes funds for groundwater-related activities, including groundwater monitoring and analysis. At this time, staff anticipates the City's costs for developing a GSP and data management system will not exceed \$535,400, including reimbursement to EBMUD for consultant fees, as shown on Table 1. The CIP allocation is sufficient to fund the City's share of preparing the technical studies and investigations, along with developing a GSP that complies with SGMA requirements. Implementation costs will depend on the needed actions, and will be further discussed when

the GSP is presented to the Council in December 2021. There will be no impact on the General Fund.

## **STRATEGIC ROADMAP**

This agenda item supports the Strategic Priority of Improvement Infrastructure, specifically:

- Project 13. Upgrade Water System Infrastructure

## **SUSTAINABILITY FEATURES**

The City's role as GSA, along with its responsibility for preparing and implementing a GSP, provide authority to ensure that the groundwater beneath Hayward is protected and sustainably managed for the future. A long-term commitment to groundwater sustainability increases the City's overall water supply reliability, maximizes local sources, and diversifies the City's water supplies, which can help the City respond to future water supply uncertainties and climate change impacts.

## **PUBLIC CONTACT**

SGMA requires active stakeholder participation in the development of GSPs to ensure common understanding and transparency. Key stakeholders in Hayward include large groundwater users and neighboring agencies, such as the Hayward Area Park and Recreation district (HARD), Chabot College, and Alameda County Water District. Staff has developed an interested parties' list to keep stakeholders apprised of groundwater activities, and staff participates in regular stakeholder meetings. The Stakeholder Communications and Engagement Plan, being implemented by the City and EBMUD, provides a roadmap for meeting SGMA requirements for stakeholder outreach. Both the City and EBMUD maintain websites where interested parties can access information and documents. This item will be properly noticed prior to the Council public hearing and action.

## **NEXT STEPS**

If the Council concurs, staff will amend the Cooperating Agreement with EBMUD and work with EBMUD to implement construction of the new monitoring wells. Staff anticipates bringing the GSP to the Council on December 7 for a public hearing and consideration of adoption, following the 90-day public review period for the draft GSP, which was released on September 17.

*Prepared by:* Cheryl Muñoz, Water Resources Manager

*Recommended by:* Alex Ameri, Director of Public Works

*Approved by:*



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Kelly McAdoo, City Manager