



**DATE:** June 5, 2018

**TO:** Mayor and City Council

**FROM:** Director of Utilities & Environmental Services

**SUBJECT** Sustainable Groundwater Management: Authorization for the City Manager to Execute a Cooperating Agreement with the East Bay Municipal Utility District for Preparation of a Groundwater Sustainability Plan for the East Bay Plain Subbasin

### **RECOMMENDATION**

That Council adopts a resolution authorizing the City Manager to execute a Cooperating Agreement with the East Bay Municipal Utility District to jointly prepare a Groundwater Sustainability Plan for the East Bay Plain Subbasin.

### **SUMMARY**

In June 2017, the State formally designated Hayward as the Groundwater Sustainability Agency (GSA) for the portion of the East Bay Plain Subbasin that underlies the City. The East Bay Municipal Utility District (EBMUD) is the GSA for the remaining portion of the Subbasin. GSAs for medium-priority ranked groundwater basin are responsible for developing and implementing a Groundwater Sustainability Plan (GSP) to sustainably manage the utilization of groundwater within its management area. In accordance with previous direction from the Council Sustainability Committee (CSC) and City Council, staff has negotiated a Cooperating Agreement with EBMUD, under which the parties would agree to work together and share the costs to prepare a single GSP for the East Bay Plain Subbasin. Staff is requesting that Council authorize the execution of a Cooperating Agreement with EBMUD. EBMUD's Board was briefed on the State's latest developments and moved forward with authorizing execution of the Cooperating Agreement on May 22, 2018.

The State is currently going through a process to reprioritize basins. On May 18, 2018, the State released information that could potentially result in the East Bay Plain Subbasin being re-classified as a very low-priority basin, making preparation of a GSP a voluntary, rather than a mandatory requirement. Final decisions for this latest round of basin prioritizations will be made in fall of 2018 and the State will continue to periodically reassess basin prioritization. While preparing a GSP is not required for a very low-priority basin, given that EBMUD and the City have received a \$1 million grant towards preparing a GSP and the prioritization of the East Bay Plain Subbasin may continue to change in the future such that a GSP is required, staff

recommends that the City continue with the current approach to sustainable groundwater management and prepare a GSP cooperatively with EBMUD.

## **BACKGROUND**

The Sustainable Groundwater Management Act (SGMA) was signed into law in 2014 to provide for comprehensive and sustainable management of groundwater resources within the State. The legislation provides a framework for groundwater management at the local level through formation of Groundwater Sustainability Agencies (GSAs) and implementation of Groundwater Sustainability Plans (GSPs). The requirements to form GSAs and develop and implement GSPs is mandatory for medium- and high-priority ranked groundwater basins. Hayward became the GSA for the portion of the medium-priority East Bay Plain Groundwater 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 undesirable results. Based on direction from the Council Sustainability Committee and with Council approval on July 18, 2017, the City entered into a Memorandum of Understanding (MOU) with EBMUD in July 2017 to negotiate a Cooperating Agreement, under which the parties would jointly prepare a single GSP for the entire Subbasin. Working collaboratively with EBMUD will reduce duplication of technical work and thus the cost of preparing a GSP for both agencies. The following link to the July 18 Council report provides additional background and discussion: <http://bit.ly/2HfzooV>.

On July 18, 2017, Council also directed staff to work with EBMUD to apply for grant funding to offset the costs of preparing a GSP. Under Proposition 1, approved by voters in November 2014, the State Department of Water Resources (DWR) has established the Sustainable Groundwater Planning Grant Program to provide funds for GSP development and implementation. In September 2017, DWR released the Groundwater Sustainability Plans and Projects Proposal Solicitation Package for grant funding related to development of GSP, for which both Hayward and EBMUD were eligible. Since only one GSA per basin could apply, EBMUD was the lead agency, and with Hayward's support, submitted a grant application in October 2017 for \$1 million. On May 7, 2018, DWR conditionally recommended award of the full \$1 million grant to EBMUD and the City for GSP development contingent on successful execution of a grant agreement between DWR and EBMUD. The grant will fund about one-half of the estimated cost of preparing the GSP.

## **DISCUSSION**

The MOU between the City and EBMUD established a framework for the parties to negotiate in good faith the terms of a Cooperating Agreement for sustainable management of the East Bay Plain Subbasin in its entirety, incorporating principles of collaboration, a clear governance and decision-making structure, stakeholder involvement, equitable cost-sharing, and effective dispute resolution. Through regular communication and discussion over the last several months, staff from both entities have negotiated a Cooperating Agreement setting forth roles, responsibilities, cost-sharing, and other commitments to jointly develop a single

GSP for the East Bay Plain Subbasin in compliance with SGMA. Staff envisions that the Cooperating Agreement would be amended, or a new agreement would be negotiated to implement the GSP in the future.

### Council Sustainability Committee (CSC) Action

On March 12, 2018, staff reviewed the key terms and provisions of the draft Cooperating Agreement with the CSC, and the CSC unanimously recommended approval.

### Proposed Cooperating Agreement

Key provisions of the proposed Cooperating Agreement include:

- *Development of the GSP.* The Cooperating Agreement acknowledges the parties' intent to develop a single GSP for the entire East Bay Plain Subbasin which meets all SGMA requirements and anticipates the use of outside technical consultants to complete some of the work. While EBMUD is expected to be the contracting entity, the Agreement defines contract procurement and administration procedures that provide both parties with representation in the selection of consultants and oversight of technical work products.
- *Collaborative Working Structure.* The draft Cooperating Agreement sets out a working structure for the GSAs that incorporates a Steering Committee to provide overall direction and management, and a Technical Team to oversee preparation of the GSP, including development of technical data and sustainability objectives. The Technical Team will also coordinate input from basin stakeholders and interested parties. The governing bodies of each entity will have responsibility for approving the GSP after a public hearing.
- *Stakeholder Communication and Engagement.* SGMA requires implementation of outreach and communication with groundwater basin stakeholders to ensure that their interests are considered in developing the GSP. The draft Cooperating Agreement commits the parties to implement a Stakeholder Communication and Engagement Plan consistent with the DWR Guidance Document. In addition to public meetings and web-based materials, the parties will jointly create a Technical Advisory Committee and Interbasin Working Group to provide input and share information.
- *Cost Sharing.* As noted earlier, there are advantages to both agencies in combining efforts and sharing the cost to develop a single GSP. It is estimated that development of the GSP will cost about \$2 million, including staff costs and consulting services. Each party has agreed to be responsible for paying for its own internal staff costs. The Parties have negotiated a cost allocation of 35 percent for the City and 65 percent for EBMUD for technical consulting services, based on benefits to each agency and relative Subbasin coverage. The City overlies some of the most productive portions of the East Bay Plain Subbasin. Therefore, even though Hayward's GSA coverage accounts for less than 20 percent of the total size of the East Bay Plain Subbasin, the City's proposed cost

allocation of 35 percent for technical consulting services reflects that a significant amount of effort will be dedicated to studying and establishing sustainable management criteria for the southern portion of the East Bay Plain Subbasin, beneath the City. The proposed cost share allocation also considers EBMUD's added responsibilities for being the contracting entity and agreeing to administer the consultant contract and grant funding.

As previously discussed, DWR has recommended award of a \$1 million Proposition 1 Sustainable Planning Grant to Hayward and EBMUD to prepare a GSP for the East Bay Plain. The grant would help fund approximately half the cost to prepare the plan. With the grant funding, Hayward's share of the cost to prepare the GSP is estimated to be about \$350,000, with approximately \$200,000 (net amount after receipt of City's proportion of grant funding) being paid to EBMUD for reimbursement of technical consultant costs and the remaining \$150,000 in City staff costs. The actual consultant and staff costs to prepare the GSP will be better known after the consultant services are procured and staff has a better understanding of the required level of effort.

- *GSP Cost Accounting.* EBMUD will establish a separate account in which to deposit the City's and EBMUD's cost share contributions, as well as grant funds, and from which to make disbursements to consultants. Under the terms of the Agreement, Hayward and EBMUD would make initial contributions of \$105,000 and \$195,000 respectively to the account. Whenever the balance is drawn below \$50,000, both parties would make additional contributions of the same amount, or the proportional amount needed to complete the GSP, whichever is less. The total amount of cost-contributions needed to be deposited into the account from each party will depend on the timing of reimbursements from DWR. The City's total upfront contribution would not exceed \$575,000, with up to \$375,000 being reimbursed to the City through grant funding, resulting in the City's net amount for paying consultants to develop the GSP of approximately \$200,000. The City will receive periodic reports on the account, and when the project is complete, EBMUD will prepare a reconciliation to determine if a refund is owed to the City.
- *Supplemental Projects.* The parties will work collaboratively with stakeholders to develop the GSP over the next three years. As with any long process, the parties may identify additional work outside the existing project scope that would be necessary or complementary to the GSP development effort. Therefore, the Agreement has been structured to allow for amendments that allow for the parties to jointly or individually pursue supplemental projects, subject to necessary approvals.
- *Dispute Resolution.* The parties have agreed to meet in good faith to resolve any disputes that may arise, and if necessary, process amendments to the Cooperating Agreement to implement terms of the resolution. In the unlikely event that a dispute cannot be resolved, provisions for cancelling the Cooperating Agreement are also included.

## Basin Prioritization

In 2014, DWR classified the East Bay Plain Subbasin as a medium-priority groundwater basin, making it mandatory for the basin to be managed under a GSP by January 31, 2022. SGMA requires that DWR reassess basin prioritization anytime DWR updates basin boundaries. In late 2016, DWR completed a first-round of basin boundary modifications and initiated a process to reassess basin prioritization. On May 18, 2018 DWR released its latest draft prioritization of groundwater basins. The draft prioritization would re-classify the East Bay Plain Subbasin as a very low-priority basin, making compliance with SGMA voluntary rather than mandatory. The grant funding would not be affected unless EBMUD and Hayward decline to move forward with development of a GSP.

DWR anticipates finalizing the latest basin prioritization rankings in the fall of 2018 following a 60-day public comment period. Staff is reviewing the data DWR used for ranking the East Bay Plain Subbasin to ensure that it represents the most accurate and up to date information available for the basin. The primary reason for the change between the 2018 and 2014 ranking appears to be the amount of groundwater pumping that DWR has estimated is occurring within the East Bay Plain Subbasin. It is possible that the final prioritization rankings may change from the draft rankings. In addition, DWR has begun another round of basin boundary modifications and will continue to periodically reassess basin prioritization as required by SGMA. Thus, even if the East Bay Plain Subbasin is re-classified as a very low-priority basin in the fall of 2018, this classification could change in the future based on new information or changed basin conditions (*e.g.* increased groundwater pumping).

On May 22, EBMUD's Board authorized execution of the Cooperating Agreement with Hayward to jointly prepare a GSP for the East Bay Plain Subbasin and staff recommends that Council proceed with authorizing the execution of the Cooperating Agreement. The proposed Agreement includes a requirement for the parties to meet and confer to determine appropriate next steps if DWR re-classifies the East Bay Plain Subbasin such that preparation of a GSP is no longer a mandatory requirement. Preparation of a GSP, whether a mandatory or voluntary requirement, would ensure long-term sustainable management and protection of the City's groundwater resources. Staff has worked with EBMUD to secure grant funding and negotiated a cost-share arrangement that significantly lowers the cost to the City to prepare a GSP. Staff will continue to update the CSC and Council on DWR's basin prioritization process and potential effects on the City's approach to sustainable groundwater management.

## **ECONOMIC IMPACT**

If EBMUD and the City receive the full \$1 million in grant funding from DWR, the City's cost to develop the GSP is estimated at \$350,000. Costs for implementing the GSP have not been fully evaluated and will largely depend on actions needed to sustainably manage the basin. SGMA provides mechanisms for GSAs to recover costs for groundwater management through water rates, pump and extraction fees, and grants. The City's costs are difficult to estimate at this time, but are not expected to significantly affect customer water rates.

## **FISCAL IMPACT**

The Water Improvement Fund in the Capital Improvement Program (CIP) includes funds for groundwater-related activities such as preparation and implementation of a GSP. Based on an initial scope of work developed for the Cooperating Agreement, the City's share of the cost for developing the GSP is estimated at \$350,000, if EBMUD and Hayward receive the full \$1 million in grant funding from DWR. Staff anticipates that the estimate will increase once work on the GSP begins and the internal resources needed to support development of the GSP are better understood. The existing allocation in the CIP 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. There will be no impact on the General Fund.

## **STRATEGIC INITIATIVES**

This agenda item does not directly relate to one of Council's Strategic Initiatives.

## **SUSTAINABILITY FEATURES**

The City's emergency wells are an important part of Hayward's water supplies and critical to reliably delivering water in the event of an earthquake or other disruptions to imported surface water supplies. Hayward's role as a GSA and responsibility for developing a GSP provide the authority to ensure that the groundwater beneath the City is protected and sustainably managed for the future. A long-term commitment to groundwater sustainability increases Hayward's overall water supply reliability, maximizes local sources, and diversifies the City's water supplies, which will help the City respond to future water supply uncertainties and the effects of climate change.

## **PUBLIC CONTACT**

As noted in the discussion, SGMA requires active stakeholder participation in development of GSPs to ensure common understanding and transparency throughout the process. Key stakeholders include large groundwater users and neighboring agencies, such as the Hayward Area Park and Recreation District, Chabot College, Alameda County and Alameda County Water District.

Staff has developed an interested parties list to keep stakeholders apprised of the City's activities, and together with EBMUD, will be implementing a Stakeholder Communication and Engagement (C&E) Plan. The C&E Plan provides a roadmap for meeting SGMA's requirements for stakeholder outreach and incorporates a broad variety of communication methods, including stakeholder meetings, social media, and websites. The C&E Plan also calls for formation of a Technical Advisory Committee (TAC), comprised of individuals with relevant technical backgrounds, to review technical documents and provide comments and recommendations. The TAC will include professionals with diverse perspectives and experience.

City and EBMUD staff held a stakeholder meeting for the East Bay Plain Subbasin at the Hayward City Hall on February 27. During the meeting, stakeholders received information on the development of the GSP and opportunities for participation. The meeting also provided a forum for stakeholders to offer input into the process. Future meetings will be held as the GSP process moves forward. Both the City and EBMUD also maintain websites where interested parties can access information and updates. The City's website may be viewed at <https://www.hayward-ca.gov/content/sustainable-groundwater-management>.

## **NEXT STEPS**

If Council concurs, staff will execute a Cooperating Agreement with EBMUD to jointly develop a single GSP for the East Bay Plain Subbasin with grant funding from DWR.

*Prepared by:* Jan Lee, Water Resources Manager

*Recommended by:* Alex Ameri, Director of Utilities & Environmental Services

Approved by:



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Kelly McAdoo, City Manager