



CITY COUNCIL AGENDA REPORT



DEPARTMENT: Public Services

MEETING DATE: May 1, 2018

PREPARED BY: Tina Cherry, Director

AGENDA LOCATION: AR-1

TITLE: Temporary Lease of 1,000 Acre Feet of Main San Gabriel Basin Water Production Rights from the Azusa Valley Water Company and the Main San Gabriel Basin Watermaster in the Total Amount of \$734,160

OBJECTIVE: To authorize the acquisition of 1,000 acre feet of water production rights from the Azusa Valley Water Company for a total amount of \$734,160

BACKGROUND: The City's water is supplied from the Main San Gabriel Groundwater Basin (Basin), which is managed by the Main San Gabriel Basin Watermaster (Watermaster). The Watermaster was created in 1973 pursuant to Judgment No. 924128, which adjudicated the water rights within the Basin and established a framework for the management and utilization of groundwater in the region.

Based on the water rights established by the creation of the Watermaster, the City is granted 3.095% of the available safe yield from the Basin in annual water production rights, plus 1,098 acre feet / year as a surface diversion credit. The safe yield is the amount of water that the Watermaster determines is an appropriate allotment for annual pumping to serve the needs of member water systems while also protecting the supply and quality of the water in the Basin.

For Fiscal Year 17/18, the Watermaster established the safe yield of the basin at 150,000 acre feet of water. Given that allotment, the City's allocated water production right is 4,642 acre feet. Furthermore, given the City's 1,098 acre feet of surface diversion credit, Monrovia has 5,740.8 acre feet worth of water through our by-right allocation in Fiscal Year 17/18.

Based on the adjudication the Basin, when any member agency produces more water than it has in available production rights, that agency must then lease additional pumping rights from other Basin member agencies or from the Watermaster directly. If the member agency fails to lease additional pumping rights, an administrative penalty of \$100 / acre foot of water use is assessed.

Based on our citywide water usage during this past year, and taking into account the City's existing cyclic storage account, staff is recommending that the City acquire an additional 1,000 acre feet of water production rights in order to meet our current customer demand.

ANALYSIS: The cost to acquire additional water rights from the Azusa Valley Water Company has been set at \$734.16 per acre foot, which is less than the base cost for acquiring water rights directly from the Watermaster, which is established at \$798 per acre foot. In addition, for comparative purposes, if the City were to overproduce without making these advance lease arrangements, our total assessment for overproducing would be \$898 for every acre foot of water used beyond our base allocation of 5,740.8 acre feet.

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ENVIRONMENTAL IMPACTS: There are no environmental impacts associated with acquiring temporary lease rights for excess water production.

FISCAL IMPACTS: At \$734.16 / acre foot, the purchase of 1,000 acre feet of temporary lease rights from Azusa Valley Water Company will cost \$734,160. Funding for the purchase of excess water production rights is available in the Fiscal Year 17/18 Water Services Operating Budget.

OPTIONS: The following options are provided for the City Council's consideration:

1. Approve the acquisition of 1,000 acre feet of temporary water lease production rights from Azusa Valley Water Company in the amount of \$734,160.
2. Request additional information from staff before taking action.

RECOMMENDATION: Staff recommends Option 1, to approve the acquisition of 1,000 acre feet of temporary water lease production rights from Azusa Valley Water Company in the amount of \$734,160, and authorize the City Manager to execute the necessary documents in a form approved by the City Attorney.

COUNCIL ACTION REQUIRED: If City Council concurs, the appropriate action would be a motion to approve the acquisition of 1,000 acre feet of temporary water lease production rights from Azusa Valley Water Company in the amount of \$734,160, and authorize the City Manager to execute the necessary documents in a form approved by the City Attorney.

LEASE OF WATER RIGHTS

PRODUCTION RIGHT

THIS LEASE OF WATER RIGHTS (the "Lease") is entered into on this 23rd day of April 2018 by and between Azusa Valley Water Company ("Lessor") and the City of Monrovia ("Lessee"), a California municipal corporation, with respect to the following:

RECITAL

This Agreement is made with respect to the following facts:

Lessor owns of record and beneficially or otherwise controls, or is the duly authorized and acting agent for the owners of 1,000 acre-feet of Production Rights in the Main San Gabriel Basin as adjudicated in the case of "Upper San Gabriel Valley Municipal Water District vs. City of Alhambra, et al." LASC No. 92418. The ownership of said Rights entitle Lessor to take delivery or otherwise produce from the Main San Gabriel Basin said 1,000 acre-feet of water on an annual basis or in such amount as is determined from time to time by the Main San Gabriel Groundwater Basin Watermaster ("Watermaster"). As of the date hereof, the Rights associated with said Production Right are 1,000 acre-feet for the 2017-18 water year.

AGREEMENT

IN CONSIDERATION of the foregoing recital and the mutual promises set forth herein, Lessor and Lessee agree as follows:

1. Leasing of Production Rights. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, 1,000 acre-feet of Production Rights ("Leased Production Rights") for the term and upon the terms and conditions set forth in this Lease.
2. Term. The term of this Lease shall be for a period commencing July 1, 2017 and ending June 30, 2018.
3. Lease Rate, Payment and Adjustment.

The prevailing Pre-purchased Supplemental Water Rate ("SWR") was set by Upper San Gabriel Valley Municipal Water District's ("USGVMWD") Board of Directors in the amount of \$798 per acre foot for the current year.

The gross rental amount payable for the lease of the Leased Production Rights under this Lease for the term as listed in paragraph 2 above shall be \$734,160. This amount has been calculated on the basis of 92% of the Pre-purchased

SWR of \$798 per acre foot set by the USGVMWD Board of Directors at its June 6, 2017 meeting. If the SWR set by the USGVMWD Board is revised or otherwise changed, to be effective prior to June 30, 2018, from the current SWR set forth herein, a reconciling payment adjustment will be made by the Lessee or the Lessor to the other party within 30 days from the date of the SWR approval by the USGVMWD Board. Upon execution of this Lease, Lessor will send an invoice and the Lessee will make the full payment of \$734,160 within 45 days of Watermaster's acknowledgement of the lease.

All payments due to Lessor pursuant to this Lease shall be made and sent as follows:

Azusa Valley Water Company
P.O. Box 9500
Azusa, CA 91702

4. Agreement Re: Main San Gabriel Basin Watermaster.
 - (a) Lessor agrees to execute and deliver to Lessee all documents which, from time to time, may be required by the Watermaster to reflect the lease to Lessee of the Leased Production Rights which are the subject of this Lease. All such documents shall be in such form and substance as shall be reasonably satisfactory to Lessor, Lessee and the Watermaster. If for any reason, the Watermaster elects not to honor this Lease, the Lessor agrees to refund prior payments to the Lessee within 60 days from the date of refund request by the Lessee and substantiation of said refusal by Watermaster.
 - (b) Lessee shall, at its expense, prepare and submit all reports required by the Watermaster in connection with the exercise by Lessee of the Leased Production Rights.
 - (c) Lessee shall pay all assessments required by the Watermaster, San Gabriel Basin Water Quality Authority, and San Gabriel Valley Water Association in connection with the exercise by Lessee of the Leased Production Rights.
 - (d) This Lease entitles Lessee to the use of only the Leased Production Rights (i.e., lease of water rights) associated with the Production Rights. Lessor retains and does not convey to Lessee any other rights associated with said Production Rights.
5. Other Provisions.
 - (a) In the event any dispute shall arise between the parties to this Lease, the same shall be resolved by arbitration conducted by the American Arbitration Association in accordance with the Commercial

Arbitration Rules of the American Arbitration, as then in affect. Such arbitration shall be conducted in a site within Los Angeles County, California agreeable to both parties before three (3) arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of arbitrators within fifteen days, then each of the parties shall select an arbitrator and the two (2) arbitrators so selected shall select a third. The provisions of the Commercial Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration except that the prevailing party shall be entitled to recover from the other party its attorney's fees actually incurred in such amount as may be determined by the arbitrators.

- (b) All communications, notices and demands (collectively "Notices") of any kind shall be made in writing and personally served or sent by registered or certified mail, postage prepaid to the following:

Owner: Yarek Lehr, P.E.
Azusa Valley Water Company
P.O. Box 9500
Azusa, California 91702

City of Monrovia: Tina Cherry
City of Monrovia
415 S. Ivy Ave.
Monrovia, California 91016

Any Notice personally served shall be effective upon service. Any Notice sent by mail, and properly addressed, shall be effective upon date of receipt, or refusal as indicated on the return receipt. Either party may change its address for Notices by notice to the other given in a manner provided in this subparagraph.

- (c) This Lease shall inure to the benefit of and be binding upon the heirs, successors and assigns of both parties hereto.
- (d) Each party shall, upon request of the other party, take such further actions and execute and deliver such further instruments as shall be reasonably required to carry out the purpose and intent of this Lease.
- (e) This Lease is executed in the State of California and shall be governed by and construed in accordance with California law. Venue for any action arising out of or related to the Lease shall be placed in any court of the State of California with appropriate jurisdiction and located in the County of Los Angeles, with service of process to be in accordance with the then provisions of the California Code of Civil Procedure.

- (f) This Lease may be executed in two or more counterparts, each of which shall be an original but all of which, together, shall constitute a single instrument. It shall not be necessary for both parties to execute the same counterpart(s) of this Lease for this Lease to become effective.
- (g) This Lease constitutes the entire agreement of the Lessor and Lessee with respect to the subject matter hereof. This Lease supersedes all prior discussions and understandings with respect to the subject matter hereof. There are no representations, warranties, promises or covenants as to the subject matter hereof except as expressly set forth in this Lease.
- (h) This Lease may be amended only by a written instrument executed by the party to be charged.
- (i) The paragraph headings contained in this Lease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.
- (j) Lessor represents and acknowledges that it is executing this Lease either as the beneficial and recorded owner of certain of the Production Rights or as the duly authorized representative of the beneficial and recorded owner of all Production Rights not beneficially owned by Lessor.

IN WITNESS WHEREOF, Lessor and Lessee have executed and delivered this Lease of Water Rights as of the day first above written:

LESSOR

Azusa Valley Water Company
A California Corporation

LESSEE

City of Monrovia
A California Municipal Corporation

Yarek Lehr, P.E.
Chief Operating Officer

Tina Cherry
Public Services Director

TEMPORARY ASSIGNMENT OR LEASE OF WATER RIGHT

For valuable consideration, receipt of which is hereby acknowledged, **AZUSA VALLEY WATER COMPANY** ("Assignor") does hereby assign and transfer to **CITY OF MONROVIA** ("Assignee") commencing on **JULY 1, 2017** and terminating on **JUNE 30, 2018**, the following water right(s):

(Check the following appropriate category)

- | | |
|--|---|
| <input checked="" type="checkbox"/> <u>Production Right</u> <u>1,000</u> AF <input type="checkbox"/> <u>Prescriptive Pumping Right</u> _____ AF <input type="checkbox"/> <u>Base Annual Diversion Right</u> _____ AF | <input type="checkbox"/> <u>Integrated Production Right</u> (consisting of _____ acre-feet of "Prescriptive Pumping Component" and _____ acre-feet of "Diversion Component") <input type="checkbox"/> <u>Carry-over Right</u> _____ AF |
|--|---|

adjudicated to Assignor or his predecessor in the Judgment in the case of "Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al." Los Angeles Superior Court No. 924128.

Said assignment is made upon condition that:

- (1) Assignee shall exercise said right on behalf of Assignor for the period described hereinabove and the first water produced by Assignee from the Relevant Watershed of the Main San Gabriel Basin after the date hereof shall be that produced hereunder;
- (2) Assignee shall put all waters utilized pursuant to said transfer to reasonable beneficial use; and
- (3) Assignee shall pay all Watermaster assessments on account of the water production hereby assigned or leased.

DATED: _____

ASSIGNEE

ASSIGNOR

CITY OF MONROVIA

AZUSA VALLEY WATER COMPANY

(Signature) *Tina Cherry, Public Services Director*

(Signature) *Yarek Lehr, P.E., Chief Operating Officer*

Name of Designee (of Assignee) to receive service of Processes & Notice:

Name of Designee (of Assignor) to receive service of Processes & Notices:

Tina Cherry

Yarek Lehr, P.E.

415 South Ivy Avenue

Azusa Valley Water Company

Monrovia, CA 91016

P.O. Box 9500, Azusa, CA 91702

Address

Address

Telephone No. of Designee: 626-256-8226

Telephone No. of Designee: 626-812-5214

To be executed by both Assignee and Assignor and, if separately requested by Watermaster, be accompanied by a map of the service area where the water was used by Assignor and a map of the service area where the water is intended to be used by the Assignee.

(Have the appropriate individual(s) or corporate attached acknowledgments completed as part of the temporary transfer.)

A TRUE COPY HEREOF MUST BE FILED WITH WATERMASTER WITHIN 15 DAYS OF EXECUTION.

(To be accompanied by completed Exhibit "E" if Assignee is not a party to the Judgment.)