



Folsom City Council Staff Report

MEETING DATE:	3/9/2021
AGENDA SECTION:	Consent Calendar
SUBJECT:	Resolution No. 10593 – A Resolution Authorizing the City Manager to Execute a Regional Water Authority Major Projects Management Services Program Agreement
FROM:	Environmental and Water Resources Department

RECOMMENDATION / CITY COUNCIL ACTION

The Environmental and Water Resources Department recommends the City Council pass and adopt Resolution No. 10593 - A Resolution Authorizing the City Manager to Execute a Regional Water Authority Major Projects Management Services Program Agreement.

BACKGROUND / ISSUE

The City has been working with the Cities of Roseville and Sacramento along with San Juan Water District, Sacramento Suburban Water District, Placer County Water Agency, Sacramento County Water Agency, and El Dorado Irrigation District, collectively known as the “American River Water Agencies” to complete a new operating plan for the American River to be used in various regulatory proceedings at the State Water Resources Control Board.

For any potential regulatory proceedings, the American River Water Agencies group has determined that the Modified Flow Management Standard (MFMS), a package of modified minimum instream flow requirements, temperature control, and carryover storage targets for Folsom Reservoir, is required to protect the co-equal goals of American River stakeholders: protection of the lower American River ecosystem and the long-term water supply reliability of the Sacramento region. In particular, implementation of the MFMS would protect the City's water supplies against the operational risks that occurred during the drought years of 2012-2016. The MFMS operating plan has been refined to be protective of the region's goals while also protecting the Sacramento River and the Bay Delta.

As discussed in Resolution No. 10592, the American River Water Agencies are seeking to coordinate regional efforts through a Common Interest and Cost-Share Agreement. The Parties desire to provide the technical basis to enable their respective counsel to provide informed legal advice and to identify and pursue appropriate approaches to protect American River water supplies and water rights, by jointly pursuing technical work to, among other things, provide comment on the Bay-Delta Water Quality Control Plan (WQCP) amendments. The Parties share a common interest in achieving all the above.

POLICY / RULE

In accordance with Chapter 2.02 of the Folsom Municipal Code, all powers of the City shall be vested in the City Council and the City Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the City by law.

ANALYSIS

Since August 2015, the American River Water Agencies have collaborated closely to complete a new operating plan for the American River in preparation for several upcoming regulatory proceedings at the California State Water Resources Control Board. The goal of this effort is to develop a proposal for new operational rules for Folsom Reservoir and the American River. The proposed operational rules protect against the reservoir being drawn down as it was during 2014 and 2015 and to ensure that the construction and use of the proposed Delta tunnels, and the implementation of new regulatory rules, do not cause such drawdowns.

The American River Water Agencies, along with the Water Forum, have determined that the key element of this effort is a Modified Flow Management Standard (MFMS), a package of modified minimum instream flow requirements and carryover storage targets for Folsom Reservoir. The MFMS has been determined to be sufficient to protect the co-equal goals of American River stakeholders: protection of the lower American River ecosystem and the long-term water supply reliability of the Sacramento region.

One of the upcoming proceeding is the update of the Bay Delta WQCP. In this proceeding, the State Water Resources Control Board will consider adopting new streamflow requirements for the Delta that apply to all water-right holders in the Central Valley, including the City. The American River Water Agencies plan to include the MFMS in that proceeding as sufficiently protective of environmental resources and water supplies in the Sacramento region. Further technical work will be necessary to include the MFMS in this proceeding.

Work on the MFMS has been directed by the senior management of the American River Water Agencies, in cooperation with the Water Forum staff, and has been carried out by a local consulting team that is extensively, and to some extent uniquely, familiar with the issues facing the lower American River. The MFMS operating plan has been refined to be protective of the region's goals while also protecting the Sacramento River and the Bay Delta.

The Regional Water Authority (RWA) developed a Major Projects Management Services Program that allows member agencies to enter into an Agreement that allows RWA to undertake a project or program. This RWA Program will help support member agency efforts to participate in various regulatory and administrative processes jointly and cooperatively, including the Bay-Delta WQCP and other environmental and regulatory matters that affect the surface water supplies in the region. Through the Program, participants can access RWA's availability to manage, on behalf of the Participants, large-scale regional efforts to participate in regulatory or administrative processes.

Staff recommends the City Council authorize the City Manager to execute a Regional Water Authority Major Projects Management Services Program Agreement for a not to exceed fee of \$18,812.50.

FINANCIAL IMPACT

The City's cost share for the Major Projects Management Services Program is \$18,812.50. Funding for this work is budgeted and available in the FY 2020-21 Water Operating Fund (Fund 520).

ENVIRONMENTAL REVIEW

Execution of this agreement is not considered a project and therefore not subject to CEQA.

ATTACHMENT

1. Resolution No. 10593 - A Resolution Authorizing the City Manager to Execute a Regional Water Authority Major Projects Management Services Program Agreement
2. Regional Water Authority Major Projects Management Services Program Agreement

Submitted,

Marcus Yasutake, Director
ENVIRONMENTAL AND WATER RESOURCES DEPARTMENT

ATTACHMENT 1

RESOLUTION NO. 10593

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A REGIONAL WATER AUTHORITY MAJOR PROJECTS MANAGEMENT SERVICES PROGRAM AGREEMENT

WHEREAS, the City, as part of the American River Water Agencies, began preparations for several regulatory proceedings regarding the Bay Delta Water Quality Control Plan; and

WHEREAS, the American River Water Agencies are seeking to coordinate regional efforts through a Regional Water Authority Program Agreement; and

WHEREAS, the American River Water Agencies wish to fund the regional project management for the regulatory proceedings regarding the Bay Delta Water Quality Control Plan; and

WHEREAS, this RWA Program will help support member agency efforts to participate in various regulatory and administrative processes jointly and cooperatively, including the Bay-Delta Water Quality Control Plan and other environmental and regulatory matters that affect the surface water supplies in the region; and

WHEREAS, the funds have been budgeted and are available in the FY 2020-21 Water Operating Fund (Fund 520); and

WHEREAS, the agreement will be in a form acceptable to the City Attorney:

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Folsom Authorizes the City Manager to Execute a Regional Water Authority Major Projects Management Services Program Agreement for a not to exceed fee of \$18,812.50.

PASSED AND ADOPTED this 9th day of March 2021, by the following roll-call vote:

AYES: Councilmember(s):

NOES: Councilmember(s):

ABSENT: Councilmember(s):

ABSTAIN: Councilmember(s):

Michael D. Kozlowski, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

ATTACHMENT 2

**REGIONAL WATER AUTHORITY
PROGRAM AGREEMENT**

MAJOR PROJECTS MANAGEMENT SERVICES PROGRAM

This Agreement is made and entered into as of the ____ day of _____, 20__, by and between the Regional Water Authority (“RWA”), a joint exercise of powers authority formed under California Government Code section 6500, and following, and the Members and Contracting Entities of RWA listed in Exhibit 1 to this Agreement, upon their execution of this Agreement (who are collectively referred to in this Agreement as “Participants”), to provide for carrying out a project or program that is within the authorized purposes of RWA, and sharing in the cost and benefits by the Participants.

RECITALS

A. RWA is a joint powers authority, formed to serve and represent regional water supply interests and to assist its members in protecting and enhancing the reliability, availability, affordability and quality of water resources.

B. The joint powers agreement (“RWA JPA”) pursuant to which RWA was formed and operates, and as was amended on October 8, 2013, authorizes RWA to enter into a “Project or Program Agreement,” which is defined in the RWA JPA as an agreement between RWA and two or more of its Members or Contracting Entities to provide for carrying out a project or program that is within the authorized purposes of RWA, and sharing in the cost and benefits by the parties to the Project or Program Agreement.

C. Article 21 of the RWA JPA states: “The Regional Authority’s projects are intended to facilitate and coordinate the development, design, construction, rehabilitation, acquisition or financing of water-related facilities (including sharing in the cost of federal, State or local projects) on behalf of Members and/or Contracting Entities. The Regional Authority may undertake the development, design, construction, rehabilitation, acquisition or funding of all or any portion of such projects on behalf of Members and/or Contracting Entities in the manner and to the extent authorized by such Members and/or Contracting Entities as provided in this Agreement, but shall not accomplish these functions, nor acquire or own water-related facilities in its own name.”

D. Article 22 of the RWA JPA states: “Prior to undertaking a project or program, the Members and/or Contracting Entities who elect to participate in a project or program shall enter into a Project or Program Agreement. Thereafter, all assets, benefits and obligations attributable to the project shall be assets, benefits and obligations of those Members and/or Contracting Entities that have entered into the Project or Program Agreement. Any debts, liabilities, obligations or indebtedness incurred by the Regional Authority in regard to a particular project or program, including startup costs advanced by the Regional Authority, shall be obligations of the

participating Members and/or Contracting Entities, and shall not be the debts, liabilities, obligations and indebtedness of those Members and/or Contracting Entities who have not executed the Project or Program Agreement.”

E. RWA and the Participants desire to carry out a program as more fully described below and share in the costs and benefits of the program, as a Project or Program Agreement as provided for in Articles 21 and 22 of the RWA JPA.

In consideration of the promises, terms, conditions and covenants contained herein, the parties to this Agreement hereby agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are hereby incorporated by reference.
2. **Defined Terms.** Terms defined in the RWA JPA will have the same meaning in this Agreement.
3. **Description of the Program.** The RWA and the Participants desire to create and carry out a Major Projects Management Services Program (“Program”). The Program will pay for one half of a full-time equivalent employee and expenses. The Program will help support member agency efforts to jointly and cooperatively participate in various regulatory and administrative processes, including processes like the Bay Delta Water Quality Control Plan and other environmental and regulatory matters that affect the surface water supplies in the region. Through the Program, Participants can access RWA’s availability to manage, on behalf of the Participants, large-scale regional efforts to participate in regulatory or administrative processes. Specific work activities will be identified in an annual Work Plan to be approved by the Program Committee as described in Article 4 below.
4. **Program Committee.** The Participants hereby form a Program Committee consisting of one representative (and alternates) designated by each Participant. The Program Committee will meet as necessary from time to time to administer and implement this Agreement on behalf of the Participants. The Program Committee will appoint a Chair and Vice-Chair from among its members. A majority of the total members of the Program Committee will constitute a quorum. Each member of the Program Committee will have one vote, either by its representative or an alternate. To proceed with a vote to take action, a quorum must be present at a meeting, with a two thirds majority of the number present required for an affirmative vote.
5. **Program Staffing and Resources.** The program will involve the hiring of an employee by RWA and cover the costs of expenses.
6. **Work Products.** Participants shall have full access to the work products of the Program. To the extent the Program is being utilized to support any work that is otherwise confidential, that information will remain confidential to the Participants and to RWA. In order to

protect confidentiality, for any management services provided to the Participants for confidential work as part of the program, RWA will be party to any confidentiality agreement among the parties for that work. In such circumstances, the confidential information shall be held in confidence by RWA and shall not be available to any RWA member that is not party to the agreement establishing confidentiality.

7. Sharing in Program Costs and Benefits. The assessments for each Participant are further described and attached hereto as Exhibit 2 (“Financing Plan”). Each of the Participants will make one or more payments to RWA as long as they are a member of the Program. In accordance with the provisions of Articles 21 and 22 of the RWA JPA, any debts, liabilities, obligations or indebtedness incurred by RWA in regard to the Program will be the obligations of the Participants, and will not be the debts, liabilities, obligations and indebtedness of those Members and/or Contracting Entities who have not executed this Agreement. The initial total annual cost for the program is estimated to be \$168,000. Notwithstanding article 4, future annual costs and allocations will be determined through an annual Work Plan approved by a two thirds majority vote of the entire Program Committee.

8. Role of RWA. The RWA will a) ensure that the interests of Members and Contracting Entities of RWA who do not participate in this Program are not adversely affected in performing this Agreement, b) provide information to the Participants on the status of implementation of the Program, c) assist the Program Committee in carrying out its activities under this Agreement, d) secure consultant support services as approved by the Program Committee; and e) manage consultant support services in completion of the Program. Notwithstanding article 4, initial consultant services will be approved by a two thirds majority vote of the entire Program Committee.

9. Authorization to Proceed with the Program. The Program is authorized to proceed upon the commitment of \$200,000 from Program Participants to fund initial costs. Upon execution of this Agreement, the Participants agree to fund their portion of the Program costs in an amount and manner as described in Exhibit 2 (“Financing Plan”) to this Agreement.

10. Term. This Agreement will remain in effect for so long as any obligations under this Agreement and/or obligations from other sources of funding secured remain outstanding.

11. Withdrawal. A Participant may withdraw from this Agreement without requiring termination of this Agreement, effective upon ninety days’ notice to RWA and the other Participants, provided that, the withdrawing Participant will remain responsible for any indebtedness incurred by the Participant under this Agreement prior to the effective date of withdrawal. If any surplus funds remain after the withdrawing Participant has met all of its financial obligations under this Agreement, then such funds will be returned to the withdrawing Participant in proportion to the total contribution made by each Participant.

12. Amendments. Notwithstanding article 4, this Agreement may be amended from time to time with the approval by the RWA and approval of a two thirds majority vote of the entire

Program Committee.

13. Privileges and Immunities. All of the privileges and immunities from liability; exemptions from laws, ordinances and rules; and all pension, relief, disability, worker's compensation and other benefits that apply to the activity of officers, agents or employees of RWA or the Participants when performing their respective functions for those agencies will, to the extent permitted by law, apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. It is further understood and agreed by RWA and the Participants that, notwithstanding anything contained herein, the employees of RWA and of each Participant shall continue to be entirely and exclusively under the direction, supervision and control of the employing party.

14. No Third Party Beneficiary. RWA and the Participants understand and agree that this Agreement creates rights and obligations solely between RWA and the Participants and is not intended to benefit any other party. No provision of this Agreement shall in any way inure to the benefit of any third person so as to constitute any such third person as a third-party beneficiary of this Agreement or any of its items of conditions, or otherwise give rise to any cause of action in any person not a party hereto.

15. Liabilities. With respect to this Agreement, RWA and the Participants expressly agree that the debts, liabilities and obligations of RWA and of each Participant shall remain the debts, liabilities and obligations of that party alone and shall not be the debts, liabilities and obligations of any other party to this Agreement, except as may be otherwise set forth herein or in an amendment to this Agreement.

16. Audits and Accounting. All funds provided and expenses incurred under this Agreement shall be separately accounted for and maintained, with books and records of such funding and expenses open to inspection by the Participants. Funding under this Agreement shall be subject to and consistent with the audit and accounting procedures set forth in Articles 27 and 28 of the RWA JPA.

17. General Provisions. Any notice to be given under this Agreement shall be made by: (a) depositing in any United States Post Office, postage prepaid, and shall be deemed received at the expiration of 72 hours after its deposit; (b) transmission by facsimile copy; (c) transmission by electronic mail; or (d) personal delivery. This Agreement shall be governed by the laws of the State of California. The contact information for each Participant with respect to this section of the Agreement is set forth in Exhibit 3 ("Notice Information"). This Agreement may be executed by the parties in counterpart and by facsimile or PDF signatures, each of which when executed and delivered shall be an original and all of which together will constitute one and the same document.

18. Signatories' Authority. The signatories to this Agreement represent that they have authority to execute this Agreement and to bind the Participant on whose behalf they execute it.

The foregoing Program Agreement is hereby agreed to by RWA and the Participants.

Dated: _____, 20__

_____, 20__

James Peifer
Executive Director
Regional Water Authority

Paul Rowley
Vice President of Water Operations
Golden State Water Company

List of Agreement Exhibits

Exhibit 1 – Program Participants

Exhibit 2 – Financing Plan

Exhibit 3 – Notice Information

EXHIBIT 1

PROGRAM PARTICIPANTS

REGIONAL WATER AUTHORITY

MAJOR PROJECTS MANAGEMENT SERVICES PROGRAM

Agency (Proposed)

Carmichael Water District
City of Folsom
City of Roseville
City of Sacramento
Golden State Water Company
El Dorado Irrigation District
Placer County Water Agency
Sacramento County Water Agency
Sacramento Suburban Water District
San Juan Water District

EXHIBIT 2

FINANCING PLAN

REGIONAL WATER AUTHORITY

MAJOR PROJECTS MANAGEMENT SERVICES PROGRAM

The fee for each Participant is shown in the table below. A Participant's fee will not be increased without the approval of that Participant.

Proposed Fee Table

Agency	Not-to-Exceed Fee
Carmichael Water District	\$ 6,500.00
City of Folsom	\$ 18,812.50
City of Roseville	\$ 18,812.50
City of Sacramento	\$ 18,812.50
El Dorado Irrigation District	\$ 18,812.50
Golden State Water Company	\$ 11,000.00
Placer County Water Agency	\$ 18,812.50
Sacramento County Water Agency	\$ 18,812.50
Sacramento Suburban Water District	\$ 18,812.50
San Juan Water District	\$ 18,812.50
Total	\$ 168,000.00

EXHIBIT 3

NOTICE INFORMATION

REGIONAL WATER AUTHORITY

MAJOR PROJECTS MANAGEMENT SERVICES PROGRAM

Carmichael Water District
Attn: Cathy Lee
7837 Fair Oaks Blvd
Carmichael, CA 95608
Phone: (916) 483-2452
Email: cathy@carmichaelwd.org

El Dorado Irrigation District
Attn: Jim Abercrombie
2890 Mosquito Road
Placerville, CA, 95667
Phone: (530) 642-4041
Email: jmabercrombie@eid.org

City of Folsom
Attn: Marcus Yasutake
50 Natoma Street
Folsom, CA 95630
Phone: (916) 461-6161
Email: myasutake@folsom.ca.us

Placer County Water Agency
Attn: Andy Fecko
144 Ferguson Road
Auburn, CA 95603
Phone: (530) 823-4965
Email: afecko@pcwa.net

Golden State Water Company
Attn: Paul Schubert
3005 Gold Canal Drive
Rancho Cordova, CA, 95670
Phone: (916) 420-6879
Email: PSCHUBERT@gswater.com

Sacramento County Water Agency
Attn: Kerry Schmitz
827 7th Street, Room 301
Sacramento, CA 95814
Phone: (916) 874-4681
Fax: (916) 874-8693
Email: schmitzk@SacCounty.NET

City of Roseville
Attn: Sean Bigley
2005 Hilltop Circle
Roseville, CA 95747
Phone: (916) 774-5513
Email: sbigley@roseville.ca.us

Sacramento Suburban Water District
Attn: Dan York
3701 Marconi #100
Sacramento, CA 95821
Phone: (916) 679-3973
Fax: 916-972-7639
Email: dyork@sswd.org

City of Sacramento
Attn: Anne Sanger
1395 35th Avenue
Sacramento, CA 95822
Phone: (916) 808-1725
Email: asanger@cityofsacramento.org

San Juan Water District
Attn: Paul Helliker
P.O. Box 2157
Granite Bay, CA 95746
Phone: (916) 791-6933
Fax: (916) 791-6983
Email: phelliker@sjwd.org

Regional Water Authority
Attn: James Peifer
5620 Birdcage Street, Suite 180
Citrus Heights, CA 95610
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Fax: (916) 967-7322
Email: jpeifer@rwah2o.org

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