



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Public Works Director

MEETING DATE: November 12, 2024

SUBJECT: Consideration of Resolution 2024-07 UA, Approving a Reimbursement in the Amount of \$127,613.58 to the Banning Heights Mutual Water Company for Consultant Expenses Related to the San Gorgonio Flume Project

RECOMMENDATION:

Adopt Resolution 2024-07 UA.

BACKGROUND:

In the early 1900s, Consolidated Reservoir and Power Company, a Southern California Edison (“SCE”) predecessor, initiated construction of a hydroelectric project, including water conveyance facilities, which eventually consisted of two diversion dams on the East and South forks of the Whitewater River, concrete lined canals, two steel forebay tanks, two penstocks, two powerhouses, and associated transmission lines (“San Gorgonio Hydroelectric Project No. 344 Water Conveyance Facilities” or “San Gorgonio Flume” or “Project”).

Use of the Project by SCE was discontinued in 1998 after storms destroyed one of the powerhouse forebay tanks. Subsequently, SCE decided to not restore the power generation components of the project and to surrender its Federal Energy Regulatory Commission (“FERC”) power license. Discussion soon followed between SCE, the City of Banning, Banning Heights Mutual Water Company (“BHMWC”), and San Gorgonio Pass Water Agency (collectively referred to as “Parties”) on the transfer of ownership of the Project. In June of 2010, the Parties entered an “Agreement for Transfer of San Gorgonio Hydroelectric Project No. 344 Water Conveyance Facilities”, the agreement is also known as the “Four Party Transfer Agreement”, which recognizes the City, BHMWC and the San Gorgonio Pass Water Agency as the Participating Entities. As part of the Four Party Transfer Agreement, it was determined that SCE would restore and repair the facilities and transfer ownership to the City of Banning and BHMWC. Additionally, Section 4.b “Regulatory Approvals - Use Permit, Long Term Easement or Power License” obligates the Participating Entities of acquiring all necessary approvals for the continued operation of the Project.

On March 26, 2013, City Council approved Resolution 2013-07UA, approving an “Agreement for the Rehabilitation and Maintenance Allocation of Responsibilities and Rights for San Gorgonio Hydroelectric Project No. 344 Water Conveyance Facilities” (“Flume Maintenance Agreement”). The Flume Maintenance Agreement defines the terms by which the City of Banning and BHMWC will continue to operate the San Gorgonio Flume once it is transferred to the Parties.

Specifically, and pertaining to Resolution 2024-XXUA, Article 4.0 “Design, Alternative Restoration Plan and Power Generation”, Section 4.1 “Design and Permitting Team” of the Flume Maintenance

Agreement obligates the City of Banning to contract, pay for, and direct the consultants, with BHMWC having unrestricted access to these consultants. Additionally, Section 4.1 recognizes Mr. Steve Stockton as member of the “Permitting Team”.

Aspen Environmental Group

The San Gorgonio Flume is located in part on National Forest System lands managed by the United States Forest Service (USFS), and in part on City-owned lands. In and around 2014 the USFS took a firm position that in order for the San Gorgonio Flume to remain on National Forest System lands, the Parties would have to prepare and submit a Special Use Permit application and eventually acquire a Special Use Permit from the USFS.

Recognizing that the City would require assistance in negotiating with the USFS and eventually preparing an SUP application, City Council approved Resolution 2015-68, “Approving a Professional Services Agreement with Aspen (“Aspen”) Environmental Group to Provide Environmental and Permitting Services Related to the Flume”. The agreement with Aspen was amended on May 24, 2016 by City Council’s approval of Resolution 2016-07UA to increase the contract amount.

On September 13, 2016 SCE received a letter from Christine A. Hill, USFS District Ranger, stating that a SUP would have to be received by January 3, 2017 or the temporary use permit would be revoked and the temporary pipeline which delivered water to the communities of the City of Banning and BHMWC would cease to operate. The responsibility of preparing the SUP application fell on the City and BHMWC as stated in the Four Party Transfer, Section 4.b, as mentioned above.

Soon after receiving the letter from Christine Hill, it was identified that the City’s contract with Aspen was nearly exhausted. It was also noted that the level of effort to accomplish completing the SUP application and back up documentation would require that the work commence as soon as possible. At that time it was determined that due to scheduling constraints in getting an amendment to the Aspen contract on a City Council agenda for approval, the quickest way to begin the work would be to have BHMWC enter into a contract with Aspen to commence the work in order to meet the January 3, 2017 deadline. BHMWC entered into a contract with Aspen with the understanding that the City would reimburse BHMWC due to the City’s responsibility to pay for consulting expenses as required in Section 4.1 of the Flume Maintenance Agreement as described above. The amount spent by BHMWC for work on the SUP application amounted to \$94,394.50.

Steve Stockton

Mr. Steve Stockton has been an active participant (e.g. meeting attendance, design review, etc.) in the Flume negotiations since the execution of the Flume Maintenance Agreement. BHMWC was paying for Mr. Stockton’s consultant services, which should have been an expense paid for by the City per Section 4.1 of the Flume Maintenance Agreement. The expense from February, 2016 to November, 2021 amounts to \$31,816.44.

JUSTIFICATION:

Per Section 4.1 of the Flume Maintenance Agreement, the City is obligated to pay for all consultant expenses related to the design review and permitting efforts. BHMWC has covered costs associated with these activities that should have been paid for by the City.

FISCAL IMPACT:

If approved, the City would reimburse BHMWC a total of \$127,613.58, which will first be credited to BHMWC to cover any outstanding balances and the remainder, if any, will be paid from Account No. 660-6300-471.33-11.

ALTERNATIVES:

Do not approve Resolution 2024-07 UA and provide staff with alternative direction, if any.

BUDGETED?:

No

CONTRACT/AGREEMENT:

No

ATTACHMENTS:

1. Resolution 2024-07 UA.docx
2. 2010 Transfer Agreement between SCE and PEs - 4 party .pdf
3. 2013 Agreement Banning BHMWC Rehab and Maint Responsibilities COB Signed.pdf
4. 9-13-16 C_Hill Letter.pdf
5. CC Resolution No. 2015-068 Aspen Award 7.14.15.pdf
6. Resolution No. 2016-07 UA Aspen Amendment.pdf
7. Resolution No. 2017-07 UA-Aspen Environmental.pdf
8. UA Resolution No. 2018-19.pdf
9. Banning Heights Bill Payments Aspen Enviro.pdf
10. Banning Heights Bill Payment Stephen Stockton.pdf