

Agenda Report

July 24, 2017

TO: Honorable Mayor and City Council

FROM: Water and Power Department

SUBJECT: MODIFICATION TO CITY COUNCIL APPROVAL OF CONDITIONAL USE PERMIT #6222 AND ASSOCIATED MITIGATED NEGATIVE DECLARATION FOR THE ARROYO SECO CANYON PROJECT

RECOMMENDATION:

It is recommended that the City Council:

1. Acknowledge that the Final Initial Study/Mitigated Negative Declaration ("IS/MND") and Conditional Use Permit #6222 ("CUP") for the Arroyo Seco Canyon Project ("Project") were approved by City Council at a public hearing on June 1, 2015; a lawsuit was filed against the City seeking to invalidate the City's approval of the IS/MND and CUP for the underlying Project; the Los Angeles Superior Court issued its Statement of Decision on March 20, 2017 against the City; and that the Court entered Judgment Granting a Peremptory Writ of Mandate on June 26, 2017 (Attachment A) that severs the defectively analyzed Project elements and allows the remainder of the Project to proceed; and
2. Consistent with the Writ of Mandate and as detailed in this staff report, rescind the approval of the CUP and IS/MND for the Project components that were found by the court to have been inadequately analyzed under the California Environmental Quality Act, and are severable from the remainder of the Project, thereby leaving in place the IS/MND and CUP for the remainder of the Project.

BACKGROUND:

After the 2009 Station Fire and 2010 subsequent winter storms, Pasadena Water and Power ("PWP") proposed the Arroyo Seco Canyon Project ("Project") that would repair and replace facilities that were damaged or destroyed by winter floods. Through enhancements located in three areas of the Arroyo Seco, the project would also allow for the increased utilization of existing surface water rights held by the City, supplemented by environmental and recreational benefits.

Pursuant to the California Environmental Quality Act ("CEQA"), an Initial Study ("IS") was prepared to support a Mitigated Negative Declaration ("MND") for the Project. The CUP, IS/MND and corresponding Mitigation Monitoring and Reporting Program ("MMRP") were

initially adopted by the City's Hearing Officer at a public hearing on January 7, 2015. The Hearing Officer's decision was upheld by the City's Board of Zoning Appeals on March 4, 2015. The Board of Zoning Appeals' decision was subsequently appealed to the City Council, and was upheld on June 1, 2015.

On July 2, 2015, petitioners Spirit of the Sage Council and Project Soliton filed a lawsuit against the City seeking to invalidate the City's approval of the IS/MND. On March 23, 2017, the Los Angeles Superior Court issued a ruling that was partly unfavorable to the City. On June 26, 2017, the court issued a Writ of Mandate ordering the City to invalidate approval of the CUP and MND with the exception of those specific project elements the Court found severable under Public Resources Code Section 21168.9(b) ("Writ").

To comply with the Writ, the City Council is required to rescind and set aside its approval of CUP #6222 and the MND as it applies to Project facilities that would allow for increased capacity to take water from the Arroyo, specifically the dam, weir, intake facility and water collection area upstream from the dam/weir at Area 2, and select spreading basin work in Area 3 that would increase percolation capacity. A map depicting Areas 1, 2 and 3 of the Project is attached (Attachment B). The process for this rescission is through a public hearing, similar to the process that allowed for initial approval of the Project.

Attached hereto is a copy of the Judgment, and Declaration of Gary Takara (Attachment C), specifying the Project elements that do not increase PWP's ability to increase water diversions for spreading and are allowed to proceed under the Judgment. Mr. Takara's declaration also identifies those elements of the Project that are associated with increased spreading and may not proceed unless and until the City has prepared and certified an Environmental Impact Report ("EIR"). The EIR would analyze the potentially significant effects of such facilities and related potential for increased water diversion from the Arroyo Seco on biological resources from the diversion point downstream, including the imposition of appropriate mitigation measure(s).

The court allowed proceeding with the recreational elements of the project. However, it is not practical to proceed with the recreational elements as they are interconnected and dependent on the water works elements that have been denied. Even if it was practical to separate the construction of these components from the rest of the Project, there is currently no funding available.

PWP will be evaluating the feasibility and scope of the project, and report its determination to the City Council within six months.

COUNCIL POLICY CONSIDERATION:

The recommended action is consistent with City Council's Strategic Planning Goals to improve, maintain, and enhance public facilities and infrastructure.

ENVIRONMENTAL ANALYSIS:

The purpose of this action is to comply with the Judgment and Writ related to a CEQA lawsuit, and therefore is not independently subject to environmental review. Note that,

pursuant to the Writ and Judgment, the CUP and MND remain in effect for the remainder of the Project, specifically all Project elements in Area 1, the access road improvements and related slope reconstruction and protective riprap Project elements in Area 2, and all Project elements in Area 3 except expansion of 4 existing and construction of two new spreading basins.

FISCAL IMPACT:

The cost of this action will be minimal to cover coordination efforts by staff. Funding for this action will be addressed by the utilization of existing appropriations in the Water System Capital Improvement Program Budget Number 1040 – Arroyo Spreading Basins and Intake Structures. It is anticipated that 100% of the cost will be spent during the current fiscal year 2018.

Respectfully submitted,



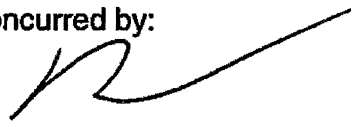
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Attachments: (3)

Attachment A - Writ of Mandate dated June 26, 2017
Attachment B - Arroyo Seco Canyon Project Site Map
Attachment C - Declaration of Gary Takara in Support of City of Pasadena's [Proposed] Judgement