

TO: Thomas Frutchey, City Manager  
FROM: Dick McKinley, Public Works Director  
SUBJECT: Nacimiento Water Project –Reserve Water Full Allocation  
DATE: March 1, 2016

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**NEEDS:** Consider whether to authorize an amendment to the Nacimiento Project Water Delivery Entitlement Contract reflecting the additional allocation to the City of 2,488 acre-feet per year and acknowledging the addition of two new participants to the project.

**FACTS:**

1. Since 2004, the City of Paso Robles has held a 4,000 acre-feet per year (AFY) entitlement in Lake Nacimiento.
2. Total delivery entitlement secured by Paso Robles and other project participants now totals 9,655 AFY, leaving 6,095 AFY available as “Reserve Water”.
3. In September 2015, Paso Robles joined other participants in applying for an additional delivery entitlement in accordance with applicable provisions of the Nacimiento Project Water Delivery Entitlement Contract. The City’s entitlement would increase from 4,000 to 6,488 AFY.
4. On January 19, 2016, City Council adopted Resolution 16-XXX certifying a California Environmental Quality Act Negative Declaration for the Nacimiento Water Project – Paso Robles Reserve Water Full Allocation.
5. As early as April 2016, the San Luis Obispo County Board of Supervisors, sitting as the governing body of the County Flood Control & Water Conservation District, will consider whether to enter into contracts for water delivery to two new entities.
6. The County Flood Control & Water Conservation District will also document the City’s share of Reserve Water full allocation in “Amendment No. 3” to the Nacimiento Project Water Delivery Entitlement Contract and the City is asked to sign that documentation ahead of time.

**ANALYSIS AND CONCLUSIONS**

6,095 AFY is available as Reserve Water from the Nacimiento Water Project. Before distributing that water among participants, others were asked if they had an interest in buying into the project.

Of those that have expressed interest, two entities put funds on deposit and request to contract for water – Santa Margarita Ranch Mutual Water Company and Bella Vista Mobile Home Park. Also, County Service Area 10 A, a water supplier in Cayucos who is now a project participant, wishes to increase their entitlement.

Amounts requested are:

**Proposed Reserve Water Full Allocation**

<b>Water Allocation Participant</b>	<b>Current Delivery Entitlement (AFY)</b>	<b>Proposed Share of Reserve Water (AFY)</b>	<b>Total at Full Allocation (AFY)</b>
<b>City of Paso Robles</b>	4,000	2,488	6,488
<b>City of San Luis Obispo</b>	3,380	2,102	5,482
<b>Atascadero MWC</b>	2,000	1,244	3,244
<b>Templeton Community Services District</b>	250	156	406
<b>County Service Area 10A (Cayucos)</b>	25	15	40
<b>Bella Vista MHP (Cayucos)</b>	0	10	10
<b>Santa Margarita Ranch MWC</b>	0	80	80
<b>Reserve Water</b>	6,095	0	0
<b>Total</b>	<b>15,750</b>	<b>6,095</b>	<b>15,750</b>

The combined entitlement requested by Bella Vista Mobile Home Park and Santa Margarita Ranch MWC is 90 AFY and each is considered an “Exhibit B Environmental Impact Report Entity” such that they may secure a water entitlement so long as Reserve Water is available.

Documenting the allocation of Reserve Water among the City and other Participants is in the form of contract Amendment No. 3. Amendment No. 3 also recognizes the addition of Bella Vista Mobile Home Park and Santa Margarita Ranch MWC into the Project.

**POLICY**

**REFERENCE:** Nacimiento Project Water Delivery Entitlement Contract

**FISCAL**

**IMPACT:** The City has been paying a proportional share of the Reserved Capacity costs such that the additional 2,488 AFY allocation would require no additional capital cost. This financial arrangement holds so long as other Initial Participants also agree to accept their proportional share.

The estimated buy-in fee for the purchase of the 90 AFY by Bella Vista Mobile Home Park and Santa Margarita Ranch Mutual Water Company is approximately \$1.7 million (see Attachments 1 and 2) and that revenue offsets a portion of the City's cost associated with the project. For example, the City's debt service obligation would be reduced by approximately \$311,000 as a result.

- OPTIONS:**
- a. Adopt Resolution 16-XXX authorizing the City Manager to execute an amendment to the Nacimiento Project Water Delivery Entitlement Contract reflecting the additional allocation to the City of 2,488 acre-feet per year in a form subject to the approval of the City Attorney; or
  - b. Amend, modify or reject the above.

**ATTACHMENTS:**

- 1. Resolution 16-XXX
- 2. Draft of Amendment #3 to the Nacimiento Project Water Delivery Entitlement Contract

**RESOLUTION NO:**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF EL PASO DE ROBLES  
AUTHORIZING AN AMENDMENT TO THE NACIMIENTO PROJECT WATER  
DELIVERY ENTITLEMENT CONTRACT  
REFLECTING AN ADDITIONAL ALLOCATION OF WATER TO THE CITY**

**WHEREAS**, the City of Paso Robles joined other participants in applying for an additional delivery entitlement in accordance with applicable provisions of the Nacimiento Project Water Delivery Entitlement Contract; and

**WHEREAS**, the action would proportionally distribute reserve water as an “additional delivery entitlement share” among participants; and

**WHEREAS**, on January 19, 2016, City Council adopted Resolution 16-008 certifying a California Environmental Quality Act Negative Declaration for the Nacimiento Water Project – Paso Robles Reserve Water Full Allocation; and

**WHEREAS**, the San Luis Obispo County Board of Supervisors, sitting as the governing body of the County Flood Control & Water Conservation District, will document each Participant’s share of Reserve Water full allocation in “Amendment No. 3” to the Nacimiento Project Water Delivery Entitlement Contract; and

**WHEREAS**, proposed Amendment No. 3 will also recognize the addition of Bella Vista Mobile Home Park and Santa Margarita Ranch MWC into the Project as New Participants; and

**WHEREAS**, the City and other Participants are asked to sign that documentation ahead of time; and

**WHEREAS**, this action results in no additional capital cost to the City so long as other Participants also sign the Amendment No. 3 documentation.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of El Paso de Robles, to authorize the City Manager to execute an amendment to the Nacimiento Project Water Delivery Entitlement Contract reflecting the additional allocation to the City estimated at 2,488 acre-feet per year in a form subject to the approval of the City Attorney.

**PASSED AND ADOPTED THIS** 1st day of March, 2016, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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Steven W. Martin, Mayor

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Kristen L. Buxkemper, Deputy City Clerk

**THIRD AMENDMENT (FULL ALLOCATION)  
TO NACIMIENTO PROJECT  
WATER DELIVERY ENTITLEMENT CONTRACT**

This Third Amendment (Full Allocation) to the Nacimiento Project Water Delivery Entitlement Contract (“Amendment”) is entered into by and between the San Luis Obispo County Flood Control and Water Conservation District, a Flood Control and Water Conservation District duly established and existing under the San Luis Obispo County Flood Control and Water Conservation District Act, Act 7205 of the Uncodified Acts of the California Water Code (the “District”), and \_\_\_\_\_ (the “Participant”).

**RECITALS**

**WHEREAS**, the Participant has contracted with the District pursuant to that certain Nacimiento Project Water Delivery Entitlement Contract, effective August 17, 2004, and as subsequently amended by the Memorandum of Understanding dated May 24, 2005 (First Amendment to Nacimiento Project Water Delivery Entitlement Contract) and as subsequently amended by the Second Amendment to Nacimiento Project Water Delivery Entitlement Contract dated August 28, 2007 (collectively, the “Contract”) for an annual Delivery Entitlement to Nacimiento Project Water; and

**WHEREAS**, the Contract is a Like-Contract that is substantially identical to the Nacimiento Project Water Delivery Entitlement Contracts between the District and the Other Participants; and

**WHEREAS**, Article 29, subdivision (A) of the Contract contains a list of priorities for the District’s use of its Reserve Water, giving fourth priority to “adding to and supplementing the Delivery Entitlements for the Participant and/or the Other Delivery Entitlements for the Other Participants who are Initial Participants as provided for by Article 6(D)” and giving fifth priority to providing a water supply to “additional and New Participants [as defined in Article 29, subdivision (C) of the Contract] who were not Initial Participants;” and

**WHEREAS**, pursuant to Article 6, subdivision (D) and Article 29, subdivision (B) of the Contract, the Participant has the right to acquire additional Delivery Entitlement from the District by entering into an amendment to the Contract with the District subject to certain requirements, including, without limitation, the requirement that the Participant pays the District a Purchase of Reserve Water Delivery Entitlement and Reserved Capacity Fee which shall be applied as a credit to the obligations of the Participant and the Other Participants based on their respective Unit Percentage Share; and

**WHEREAS**, the Participant and the Other Participants (i.e. All Participants) have elected to exercise their rights under Article 6, subdivision (D) and Article 29, subdivision (B) of the Contract and each purchase a portion of the currently unsubscribed Reserve Water (6,095 acre-feet) in accordance with their Delivery Entitlement Shares minus the combined entitlement of

two New Participants, namely SMR Mutual Water Company (80 acre feet per year) and Bella Vista MHP, LLC (10 acre feet per year), such that the Total Delivery Entitlement Obligation shall equal 15,750 acre feet per year and the total amount of Reserve Water shall equal 0.0 acre feet per year; and

**WHEREAS**, pursuant to Article 17, subdivision (B)(5) of the Contract, when there is no longer any Reserve Water, the District will no longer have any obligation to apply any portion of the *ad valorem* taxes allocated to the Nacimiento Water Fund of the District to the Reserved Capacity Construction Cost Component; and

**WHEREAS**, given that the Participant and the Other Participants are simultaneously purchasing a share of Reserve Water equal to their Delivery Entitlement Shares, the Participant's and each Other Participant's Reserved Capacity Fee is equal to the credit to which they are entitled under Article 29, subdivision (B) of the Contract; and

**WHEREAS**, the purpose of this Amendment is to increase the Participant's Delivery Entitlement consistent with Article 29, subdivision (B) of the Contract and all other contractual requirements, including, without limitation, those set forth in Article 32 of the Contract.

**NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED** by and between the Participant and the District as follows:

**Section 1.** Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

**Section 2.** Defined Terms. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in Article 1 of the Contract.

For purposes of this Amendment, "Other Participants" shall exclude SMR Mutual Water Company and Bella Vista MHP, LLC. The Nacimiento Project Water Delivery Entitlement Contracts with SMR Mutual Water Company and Bella Vista MHP, LLC provide that they are not entitled to any credit against their respective financial obligations as a result of this Amendment and the Like-Amendments.

"Like-Amendment" shall mean an Amendment (Full Allocation) to Nacimiento Project Water Delivery Entitlement Contract that is substantially identical to this Amendment, except for Participant information, dates, Unit Participations, Participant's Unit Percentage Share and Delivery Entitlement Share.

**Section 3.** Notice. Participant acknowledges that it received the notice required by Article 29, subdivision (B) of the Contract in connection with each Other Participant's acquisition of its proportionate share of Reserve Water.

**Section 4.** Amendment to Article 16, Subdivision (C)(5). The second sentence of Article 16, subdivision (C)(5) of the Contract is hereby amended and restated in its entirety and shall hereafter be and read as follows:

There is apportioned to the Participant \_\_\_\_\_ of the District's said remaining costs, including the Required Additional Project Costs and Master Water Contract Costs.

**Section 5.** Amendment to Table 1. Table 1 (Parametric Information for the Water Delivery Entitlement Contract of the Nacimiento Project) is hereby replaced with the revised Table 1 (Parametric Information for the Water Delivery Entitlement Contract for the Nacimiento Project) attached hereto as Exhibit A and incorporated herein by this reference. Said revised Table 1 reflects the Participant's increased Delivery Entitlement and the Participant's revised cost share obligations upon the Effective Date of this Amendment.

**Section 6.** Effective Date. The Effective Date of this Amendment shall be the date upon which the Participant and all Other Participants have executed and delivered this Amendment and the Like-Amendments to the District, and the District has executed this Amendment and each Like-Amendment.

**Section 7.** Severability. Any provision of this Amendment that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof affecting the validity, enforceability or legality of such provision in any other jurisdiction.

**Section 8.** Governing Law. This Amendment shall be interpreted, governed and enforced in accordance with the laws of the State of California applicable to contracts made and performed in such State.

**Section 9.** Counterparts. This Amendment may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

ADD Signature Page

ADD Parametric Table