

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Aaron Peskin, Chair
Government Audit and Oversight Committee

FROM: Erica Major, Assistant Committee Clerk

DATE: April 11, 2016

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, April 12, 2016

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, April 12, 2016. This item was acted upon at the Government Audit and Oversight Committee Meeting on April 7, 2016 at 9:30 a.m., by the votes indicated.

Item No. 22 File No. 160133

Resolution approving a First Amended Tolling Agreement to toll the statutes of limitations for the California Department of Fish and Wildlife, Office of Spill Prevention and Response, to bring potential claims against the San Francisco Public Utilities Commission for discharges of chlorinated water into San Mateo Creek.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Aaron Peskin - Aye
Supervisor Norman Yee - Aye
Supervisor London Breed - Aye

cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy Director
Jon Givner, Deputy City Attorney

File No. 160133 Committee Item No. 8
Board Item No. 22

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date April 7, 2016

Board of Supervisors Meeting Date APRIL 12, 2016

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>City Attorney Memo - 02/08/2016</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Tolling Agreement Amend No. 1</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Committee Report Memo - 03/29/2016</u> |
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Completed by: Erica Major Date April 1, 2016
Completed by: [Signature] Date 4/11/2016

1 [First Amended Tolling Agreement - California Department of Fish and Wildlife, Office of Spill
2 Prevention and Response - San Mateo Creek Discharges]

3 **Resolution approving a First Amended Tolling Agreement to toll the statutes of**
4 **limitations for the California Department of Fish and Wildlife, Office of Spill Prevention**
5 **and Response, to bring potential claims against the San Francisco Public Utilities**
6 **Commission for discharges of chlorinated water into San Mateo Creek.**

7
8 WHEREAS, The San Francisco Public Utilities Commission ("Commission") owns and
9 operates Lower Crystal Springs Dam and the Crystal Springs Pipeline located on San Mateo
10 Creek in San Mateo County (collectively "Crystal Springs Facilities"); and

11 WHEREAS, The California Department of Fish and Wildlife, Office of Spill Prevention
12 and Response ("State") has identified potential violations and enforcement actions relating to
13 discharge of chlorinated water into San Mateo Creek from the Crystal Springs Facilities on
14 October 3 and 24, 2012, and February 9, 2013; and

15 WHEREAS, The City and County of San Francisco ("City") and State have agreed to
16 attempt to negotiate a resolution between the parties of potential claims without the expense
17 of litigation; and

18 WHEREAS, To facilitate an efficient and mutually beneficial resolution of potential
19 claims associated with the Crystal Springs Facilities and to avoid potentially unnecessary and
20 costly litigation, the Board of Supervisors previously approved a Tolling Agreement in
21 Resolution No. 356-15, File No. 150852, in which the Commission and the State agreed that
22 the limitations period for any potential litigation related to the operation of the Crystal Springs
23 Facilities in 2012 and 2013 would be tolled and the State would not pursue claims or causes
24 of action against the City until termination of the agreed upon tolling period on April 3, 2016;
25 and

1 WHEREAS, The Commission and the State desire to extend the limitations period in
2 the Tolling Agreement for any potential litigation related to the Crystal Springs Facilities to
3 October 3, 2016, in order to fully analyze fishery and other data gathered by Commission staff
4 and consultants during 2015, thereby facilitating an economical settlement favorable to the
5 Commission; and

6 WHEREAS, Upon the approval of the Board, the agreement to extend the limitations
7 period in the Tolling Agreement to October 3, 2016, is approved as set forth in the First
8 Amendment to the Tolling Agreement, on file with the Clerk of the Board of Supervisors in File
9 No. 160133; now, therefore, be it

10 RESOLVED, That the Board of Supervisors authorizes the City to agree that the
11 statute of limitations for the State to file an action against the City with respect to any claim
12 arising out of discharges from the Crystal Springs Facilities on October 3 and 24, 2012, and
13 February 9, 2013, shall be tolled as of the Effective Date of the First Amendment to the Tolling
14 Agreement to October 3, 2016, pursuant to the provisions therein; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors hereby approves the tolling
16 provisions of the First Amendment to the Tolling Agreement contained in Board of Supervisors
17 File No. 160133 and authorizes the City Attorney to enter into such Agreement on behalf of
18 the City; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes the City Attorney to
20 extend the tolling period for an additional six-month period to April 3, 2017, should such an
21 extension be necessary to conclude settlement negotiations with the State.

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23 n:\puclas2016\1120108\01080537.docx
24
25

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DENNIS J. HERRERA
City Attorney

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

JOSHUA D. MILSTEIN
Deputy City Attorney

2016 FEB -8 AM 11:16

BY AK

Direct Dial: (415) 554-4211
Email: joshua.d.milstein@sfgov.org

February 8, 2016

Ms. Angela Calvillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: Submission of Resolution Approving Extension of Tolling Agreement Involving California Department of Fish and Wildlife and San Francisco Public Utilities Commission

Dear Ms. Calvillo:

I represent the San Francisco Public Utilities Commission (SFPUC). The California Department of Fish and Wildlife, Office of Spill Prevention and Response (State) seeks to recover natural resource damages from the SFPUC for the discharge of chlorinated water into San Mateo Creek on three occasions in 2012 and 2013. The Board previously approved a Tolling Agreement in Resolution No. 356-15, File No. 150852. The City and State would like to extend the tolling period an additional 6 months to October 3, 2016 to facilitate further settlement negotiations. We would like to have the attached resolution, co-sponsored by the SFPUC, introduced at the Board. I am also including a confidential memo to the Government Audit and Oversight Committee and a copy of the proposed agreement with the State.

If you or your staff have any questions I can be reached at the number on the letterhead. Thank you.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Joshua D. Milstein
Deputy City Attorney

cc:
J. Givner, Deputy City Attorney
M. Scott, SFPUC

FIRST AMENDMENT TO TOLLING AGREEMENT
Between the California Department of Fish and Wildlife, Office of Spill Prevention and Response, and the San Francisco Public Utilities Commission

This First Amendment to the Tolling Agreement dated October 16, 2015 (Original Tolling Agreement) is entered into between the California Department of Fish and Wildlife, Office of Spill Prevention and Response (CDFW/OSPR), and the San Francisco Public Utilities Commission (SFPUC), a department of the City and County of San Francisco (the Tolling Parties). The Tolling Parties agree as follows:

1. Paragraph 5 of the Original Tolling Agreement is replaced in its entirety with the following new section 5:

The Tolling Parties agree the time between October 3, 2015 and October 3, 2016, inclusive, will not be included in computing the time limited by any statute of limitations under the causes of action that may arise out of the claims and contentions referred to in Paragraph 1, if any statute of limitations is applicable. Nor will those respective time periods be considered on a defense of laches or similar defense concerning timeliness of commencing a civil action. Further, SFPUC shall not assert, plead or raise in any fashion, whether by answer, motion or otherwise, any defense or avoidance based on the running of the statute of limitations during the aforementioned period, and any statute of limitations shall be tolled during and for that period. Nothing in this Agreement shall revive a claim that, prior to October 3, 2015, was barred by any applicable statute of limitations.

2. Effective Date. The modification to section 5 of the Original Tolling Agreement set forth in Section 2 shall be effective on and after the date of this First Amendment following approval by the San Francisco Board of Supervisors.

3. Legal Effect. Except as expressly modified by this First Amendment, all of the terms and conditions of the Original Tolling Agreement shall remain unchanged and in full force and effect.

DATED: _____, 2016

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
OFFICE OF SPILL PREVENTION AND RESPONSE

By: _____
Wendy Johnson
Staff Counsel III

Contact and Address for Notice:

Ms. Wendy Johnson
Staff Counsel III
California Department of Fish and Wildlife
Office of Spill Prevention and Response
Telephone: (916) 324-5660
Facsimile: (916) 324-5662
E-Mail: Wendy.Johnson@wildlife.ca.gov

Via United States Mail:
P.O. Box 160362
Sacramento, California 95816-0362

Via Express (Overnight) Mail:
1700 K Street, Suite 250
Sacramento, California 95811

DATED: _____, 2016

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

By: _____
Joshua Milstein
Deputy City Attorney
San Francisco City Attorney

Contact and Address for Notice:

Mr. Joshua Milstein
Deputy City Attorney
San Francisco City Attorney
Office of the City Attorney
Telephone: (415) 554-4211
Facsimile: (415) 554-8793
E-Mail: Joshua.D.Milstein@sfgov.org

Via United States Mail:
1390 Market Street, 7th Floor
San Francisco, California 94102

Via Express (Overnight) Mail:
1390 Market Street, 7th Floor
San Francisco, California 94102

Member, Board of Supervisors
District 3



AARON PESKIN

ORIG: COB
Comm: GAO, Leg
Rep
City and County of San Francisco

DATE: March 23, 2016

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Aaron Peskin
Chairperson

RE: Government Audit and Oversight Committee
COMMITTEE REPORT

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2016 MAR 29 PM 4:02
BY [Signature]

Pursuant to Board Rule 4.20, as Chair of the Government Audit and Oversight Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on April 12, 2016, as a Committee Report:

160133 [First Amended Tolling Agreement - California Department of Fish and Wildlife, Office of Spill Prevention and Response - San Mateo Creek Discharges]

Resolution approving a First Amended Tolling Agreement to toll the statutes of limitations for the California Department of Fish and Wildlife, Office of Spill Prevention and Response, to bring potential claims against the San Francisco Public Utilities Commission for discharges of chlorinated water into San Mateo Creek.

This matter will be heard in the Government Audit and Oversight Committee on April 7, 2016, at 9:30 a.m.

Thank you,

A handwritten signature in black ink, appearing to read "Aaron P. L.", written over a white background.

Aaron Peskin

