

File No. 150852 Committee Item No. 17
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date September 17, 2015

Board of Supervisors Meeting Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input 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 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)

- | | | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Tolling Agreement - Unsigned/Dated</u> |
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Completed by: Erica Major Date September 11, 2015
Completed by: _____ Date _____

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

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

7
8 WHEREAS, The San Francisco Public Utilities Commission owns and operates Lower
9 Crystal Springs Dam and the Crystal Springs Pipeline located on San Mateo Creek in San
10 Mateo County ("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 State have agreed to attempt to negotiate a resolution
16 between the parties of potential claims without the expense of litigation; and

17 WHEREAS, To facilitate an efficient and mutually beneficial resolution of potential
18 claims associated with the Crystal Springs Facilities and to avoid the need for potentially
19 unnecessary litigation, the Public Utilities Commission and the State have agreed that the
20 limitations period for any potential litigation related to the Crystal Springs Facilities shall be
21 tolled and the State shall not pursue claims or causes of action against the City until
22 termination of the agreed upon tolling period; and

23 WHEREAS, This agreement is set forth in the Tolling Agreement, on file with the Clerk
24 of the Board of Supervisors in File No. 150852; now, therefore, be it
25

1 RESOLVED, That the Board of Supervisors authorizes the City to agree that the
2 statute of limitations for the State to file an action against the City with respect to any claim
3 arising out of the Crystal Springs Facilities shall be tolled as of the Effective Date of the Tolling
4 Agreement pursuant to the provisions therein; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors hereby approves the tolling
6 provisions of the Tolling Agreement, Section 5, contained in Board of Supervisors File No.
7 150852 and authorizes the City Attorney to enter into such Agreement on behalf of the City
8 and County of San Francisco.

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TOLLING AGREEMENT
BETWEEN THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, OFFICE OF SPILL PREVENTION
AND RESPONSE AND THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION

This 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) (the "Tolling Party(ies)"). The undersigned representatives certify they are fully authorized to enter into the terms and conditions of this Agreement, and to execute and bind such Tolling Party to this Agreement.

The purpose of this Agreement is to facilitate settlement negotiations among the Tolling Parties within the time period provided by the Agreement, subject to the provisions set forth below.

Accordingly, the Tolling Parties, in consideration of the covenants set out herein, agree as follows:

1. CDFW/OSPR, as Trustee for fish and wildlife resources which may have been injured, contends that it presently has claims and causes of action against SFPUC for unauthorized releases or discharges of chlorinated water into San Mateo Creek located in San Mateo County, California. CDFW/OSPR also contends that it has claims and causes of action against SFPUC pursuant to California Fish and Game Code sections 2014, 2583, 5650, 5650.1, 1600 et seq., 12016, and 13013(c).
2. This Agreement does not constitute an admission of liability, or an admission any cause of action exists for any claim referred to in Paragraph 1.
3. This Agreement does not constitute any admission or acknowledgment by any of the Tolling Parties as to any applicable statute of limitations, or any statute of limitations at all applies.
4. The Tolling Parties enter into this Agreement in order to avoid the burden and expense of litigation, and to allow time for settlement negotiations with respect to claims referred to in Paragraph 1.
5. The Tolling Parties agree the time between October 3, 2015 and April 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 any 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.
6. Either Tolling Party to this Agreement may terminate its rights and obligations pursuant to this Agreement by providing a written notice by certified mail (return receipt requested) and by facsimile to the other Tolling Party to the Agreement. In that event, the Agreement will terminate sixty (60) days after the date written notice of termination has been faxed and mailed in the foregoing manner to all of the Tolling Parties to the Agreement. In the

event a Tolling Party terminates its rights and obligations to this Agreement, the time between October 3, 2015 and the date of termination of this Agreement, inclusive, will not be included in computing the time limited by any statute of limitations (if applicable) under the causes of action that may arise out of the claims referred to in Paragraph 1, nor will those respective time periods be considered on a defense of laches or similar defense concerning timeliness of commencing a civil action. Further, that Tolling Party shall not raise, assert, or plead in any fashion whether by answer, motion or otherwise any defense or avoidance based on the running of any statute of limitations during the aforementioned period, and any statute of limitations shall be tolled during and for that period.

7. This instrument contains the entire Agreement between the Tolling Parties and no statement, promise, or inducement made by either of the Tolling Parties or agents of the Tolling Parties not contained within this Agreement shall be valid or binding.

8. This Agreement may not be enlarged, modified, or altered except in writing signed by the Tolling Parties and endorsed herein.

9. This Agreement may be signed in counterparts and will be effective as of the date of the last signature.

DATED: _____, 2015

**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: _____, 2015

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

LEGISLATION RECEIVED CHECKLIST

Date 8/31/15 File Number (if applicable) _____

- Legislation for Introduction (**NEW**) ▶▶▶ **Legislative Clerk**
- Legislation Pending in Committee (**AMENDED**) ▶▶▶ **Committee Clerk**
- Legislation for Board Agenda (**AMENDED**) ▶▶▶ **Deputy Clerk**

Supervisor, Mayor, and Departmental Submittals

Grant Ordinance

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Grant budget/application
 - Grant information form, including signed disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (if applicable) in **Word** format
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO
 2015 AUG 31 AM 11:58

Ordinance

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Settlement Report/Agreement (for settlements)
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Grant Resolution

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Grant budget/application
 - Grant information form, including signed disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (if applicable) in **Word** format
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Resolution

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** None (Note: Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Settlement Report/Agreement (for settlements)
 - Other support documents as identified in the cover letter and legislation
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Joy Perez 554-3869
Name and Telephone Number

City Attorney
Department