

DATE: December 7, 2012

TO: Mayor and City Council Members

FROM: City Manager's Office

SUBJECT: **FOLSOM PLAN AREA SPECIFIC PLAN PROJECT – AN ADDENDUM TO THE ENVIRONMENTAL IMPACT REPORT FOR THE FOLSOM PLAN AREA SPECIFIC PLAN PROJECT FOR PURPOSES OF ANALYZING AN ALTERNATIVE WATER SUPPLY FOR THE PROJECT; AN AGREEMENT BETWEEN THE CITY OF FOLSOM AND FOLSOM PLAN AREA LANDOWNERS FOR A WATER SUPPLY AND ITS FINANCING AND AUTHORIZING THE FILING OF AN ACTION TO VALIDATE THE AGREEMENT**

- a) Resolution No. 9096 - A Resolution Approving and Certifying an Addendum to the Environmental Impact Report for the Folsom Plan Area Specific Plan Project for Purposes of Analyzing an Alternative Water Supply for the Project; and
- b) Resolution No. 9097 - A Resolution Approving a Water Supply and Facilities Financing Plan and Agreement Between the City of Folsom and Folsom Plan Area Landowners for a Water Supply for the Folsom Plan Area, Authorizing the City Manager to Execute the Agreement, and Authorizing the Filing of an Action to Validate the Agreement.

**BACKGROUND / ISSUE**

The Water Conservation Act of 2009, or Senate Billx7-7 (SBx7-7, Steinberg), amended the Water Code, under Sections 10608.20 and 10608.24, to require the City to increase water use efficiency, and to identify a method for the State to achieve a 20% statewide reduction in urban per capita water use by December 31, 2020. The local water agencies and agricultural suppliers are required to make incremental progress towards this goal by reducing per capita water use by at least 10% on or before December 31, 2015. A major objective by the State, through SBx7-7, is for local water suppliers to increase water supply reliability and reduce dependence on the Delta. Other provisions of California law impose unfunded mandates that require the City to reduce water usage and undertake various water conservation measures. For example, Water Code Section 526 requires the City to implement metered rates for all retail water deliveries.

Since 2009, the City has undertaken various water management measures, including implementing metered water rates beginning on January 1, 2013 and carrying out the Water Systems Optimization Review (SOR) Program, consisting of conservation, repairs, improvements and replacements of existing water transmission and distribution facilities. On February 24, 2009, the City Council of the City adopted Resolution No. 8457, Declaring an Intent to Retain Control of Conserved Water, which in accordance with Water Code Section 1011 permits the City to retain and use water supplies resulting from its conservation actions. This resolution protects the loss of the City's water supplies of the water supplies gained through the SOR Program to the downstream Delta and exports. To further protect the reduced water demands resulting from the SOR Program, the City must identify a use of this SOR Water or possibly lose the supply to the downstream Delta and exports.

The City's actions have made available new water supplies through the SOR Program that cannot be used by the City's existing water users. However, these water supplies could be made available by the City for beneficial use by third parties. Under the SBx7-7 mandate and the SOR Program, the City assessed the City's water supplies for reductions through water conservation and reduction of water waste. Prior to the initiation of the SOR Program, the City identified "unaccounted water" of 25% to 30% within its water distribution system.

During the March, June and November, 2012, City Council meetings, City staff introduced and presented alternatives to the City Council regarding the water supplies made available under the unfunded State mandate, SBx7-7. In the alternatives presented to the City Council under the SOR Program, the City could:

- 1) Take no action and lose the SOR Water to the downstream Delta and exports;
- 2) Sell or lease the SOR Water supplies to downstream water purveyors or exporters; or
- 3) Identify a new use for the SOR Water supplies within the Folsom city limits, including the Folsom Plan Area (FPA).

In the alternatives reviewed with the City Council, SBx7-7 does not allow the historic users of the conservation and SOR Water to continue to use these water supplies for its own uses. The "take no action" alternative was ruled out since that would ultimately result in a reduction of the City's water supply portfolio of 34,000 acre-feet per annum. The alternatives for selling or leasing the SOR Water was assessed; however, the economic benefits for the SOR Water would be reduced to mitigation for transferring the water supply outside the City and the full value of the water supply would not be realized. Because the FPA is not a historical user of the SOR Water, the FPA, as a new use, causes no reduction in the water supplies designated to serve existing water users north of Highway 50 and allows the City to maximize its water supply portfolio.

As authorized through Resolution No. 8879, adopted by the City Council at the July 26, 2011 City Council meeting, the City Manager submitted an application for annexation of the Folsom Plan Area (formally known as the Folsom Sphere of Influence or SOI) to the Local Agency Formation Commission (LAFCo). The LAFCo application initiated the process and proceedings for annexation of approximately 3,600 acres of property located between U.S. Highway 50 on the northern boundary and White Rock Road on the south, and between Prairie City Road and the Sacramento/El Dorado County boundary.

Prior to the annexation process with Local Agency Formation Commission (LAFCo), which approved the FPA annexation at its January 18, 2012 Meeting, the landowners secured a water supply from the Natomas Central Mutual Water Company and entered into an agreement with the City to accept this water supply for the FPA. The water supply analysis also included alternative water supplies such as other Sacramento River water supplies, groundwater and conservation water options. Due to uncertainties concerning the Bureau of Reclamation's approval of assignment of the Natomas water supplies, the City has evaluated the feasibility of meeting the water supply needs of the FPA using the alternative water supplies identified in the FPA EIR/EIS, including the use of conservation and water management practices. The use of conserved water was examined as Alternative 3 in the EIR for the FPA project.

The use of the water supplies, captured through the SOR Program and used in the FPA recognizes (1) that the water supplies can no longer be made available to the Folsom residents north of Highway 50 and (2) that this water supply poses no reduction in water supplies designated to serve the Folsom residents north of Highway 50. Both these provisions are required under Section 7.08 of the Folsom City Charter.

To maximize the use of the water supplies made available through the SOR Program and to secure the City's water supply portfolio, staff is recommending the City Council adopt two resolutions: (1) to accept the Amendment to the Environmental Impact Report for Folsom Plan Area Specific Plan Project regarding the use of the SOR water supply; (2) to authorize the City Manager to execute an agreement between the City of Folsom and Folsom Plan Area landowners for the water supply to the FPA, including authorization to file an action to validate the *Facilities Financing Plan and Agreement Between the City of Folsom and Folsom Plan Area Landowners for a Water Supply for the Folsom Plan Area* with the State courts to ensure compliance the City Charter.

### POLICY / RULE

The Water Conservation Act of 2009, or Senate Bill X7-7 (SBX7-7, Steinberg) Water Conservation (Water Code Sections 10608.20 and 10608.24), requires the City to increase water use efficiency, and to identify a method for the State to achieve a 20% statewide reduction in urban per capita water use by December 31, 2020. The local water agencies and agricultural suppliers are required to make incremental progress towards this goal by reducing per capita water use by 10% on or before December 31, 2015.

Section 7.08, Local Control of Land South of Highway 50, of the City Charter and commonly referred as Measure W, provides:

*The City Council shall take the following actions prior to the approval by the Local Agency Formation Commission of the annexation of any of the land bounded by Highway 50, White Rock Road, Prairie City Road and the El Dorado County Line, hereafter referred to as "the Area."*

- A. *Water Supply. Identify and secure the source of water supply(ies) to serve the Area. This new water supply shall not cause a reduction in the water supplies designated to serve existing water users north of Highway 50 and the new water supply shall not be paid for by Folsom residents north of Highway 50.*

One of the elements of Resolution No. 9097 is to authorize the filing of a Validation action associated with the agreement between the City and the Landowners. The Agreement, as described in detail above addresses use of 5,000 acre-feet per annum (AFA) of Golden State Water Company Water that is presently used in the East Area and 600 AFA of the City's pre-1914 water supply, which was made available through conservation, in the FPA.

The agreement with the FPA Landowners constitutes a plan identifying public facilities needed for development within a defined area and the method of financing construction of such public facilities within the definition of California Government Code sections 53511, 53982, 53983 and 53984, and that the City bring an action pursuant to California Code of Civil Procedure section 860 to determine the validity of this Agreement.

A Validation action would permit a court to review the contract agreed to between the City and the Landowners. The Validation statutes provide that a lawsuit is prepared and it is served by publication to inform all interested parties. A summons is served by publication in order to give notice to all persons that the action is taken and give them an opportunity to address the proposed action and file a response to the complaint if they object to the proposed transaction. The matter proceeds as an ordinary civil action in court. A Validation action is appropriate for the court to review the action to move forward the necessary steps during the land entitlement process for subdividing the properties.

## **ANALYSIS**

### **WATER CONSERVATION ACT OF 2009**

During the March, June and November, 2012, City Council meetings, City staff introduced and presented alternatives to the City Council regarding the water supplies made available as result of SBx7-7. Under this unfunded mandate, the City is required to increase water use efficiency, and requires the State, through local water agencies and agricultural suppliers, to achieve a 20% statewide reduction in urban per capita water use in California by December 31, 2020. The local water agencies and agricultural suppliers are required to make incremental progress towards this goal by reducing per capita water use by at least 10% on or before December 31, 2015.

In SBx7-7, the State identifies water as a public resource that the California Constitution protects against waste and unreasonable use, and also describes growing population, climate change, and the need to protect and grow California's economy while protecting and restoring our fish and wildlife habitats make it essential that the state manage its water resources as efficiently as possible. To retain the City's water supply portfolio, the City must identify uses for its water supplies or face the possible consequences of reductions to its water supplies.

### **THE SYSTEM OPTIMIZATION REVIEW-WATER**

A major objective for SBx7-7 is for water suppliers to increase water supply reliability and reduce dependence on the Delta. Consequently, under the SBx7-7 mandate, the City initiated a System Optimization Review (SOR) Program that assessed the City's water supplies for reductions through water conservation and reduce water waste, and identify possible new uses for the water supplies identify in these reductions. At the initiation of the SOR Program, the City identified unaccounted water of 25% to 30% within its water distribution system.

In the alternatives presented to the City Council in March, June and November under the SOR Program, the City could (1) take no action and lose the SOR Water to the downstream Delta and exports; (2) sell or lease the SOR Water to downstream water purveyors; or (3) identify a new use for the SOR Water within the Folsom city limits, including the FPA. In these alternatives, SBx7-7 does not allow the historic users of the SOR Water supplies to continue to use this water supply for its own uses.

#### **WATER SUPPLY PROJECTIONS UNDER THE SYSTEM OPTIMIZATION REVIEW PROGRAM**

The water conservation programs and system leak repairs are cost-effective methods to increase efficiency of water use determined on the basis of measurable outcomes related to water use or efficiency. Improvements in technology and management practices provided measurable increases in water efficiency.

Since 2009, the City has undertaken various water conservation measures, including implementing metered water rates and implementing the SOR Program, consisting of repairs, improvements and replacements of existing water transmission and distribution facilities. The City's actions have made available new water supplies that cannot be used by the City's existing water users and that could be made available by the City for beneficial use by third parties.

The City has determined that its SOR Program and implementation of metered rates will recover an estimated amount of 6,450 AFA, which is surplus to the present and forecasted demands of the City's existing water users.

#### **FOLSOM PLAN AREA**

In the LAFCo process, which approved the annexation of the FPA into the City, the landowners secured a water supply from the Natomas Central Mutual Water Company and entered into an agreement with the City to accept this water supply for the FPA. The water supply analysis also included alternative water supplies such as other Sacramento River water supplies, groundwater and conservation water options. Due to uncertainties concerning the Bureau of Reclamation's approval of assignment of the Natomas water supplies, the City has evaluated the feasibility of meeting the water supply needs of the FPA using these alternative water supplies identified in the FPA EIR/EIS.

#### **PROPOSED ALTERNATIVE AND USE FOR THE SOR WATER SUPPLY WITHIN THE FPA**

Currently, the East Area is using 5,000 AFA of a water supply that is leased from Golden State Water Company (GSWC) of approximately \$1.4M to \$1.5M per year, which must be paid regardless of use, or non-use, of this water supply. The East Area also has an unused designated water supply of 7,000 AFA under a Sacramento County Water Agency contract with the U.S. Bureau of Reclamation, known as the Fazio Water supply. The Fazio Water Supply is charged on a consumptive use basis, where the City only pays for the water used, which is unlike the GSWC water supply. The Fazio Water Supply can only be used in the East Area and costs approximately \$40/AFA, or an upper limit of approximately \$280,000 per year for the entire 7,000/AFA.

The FPA's projected water demands are 5,600 AFA. Under the alternative to use the SOR Program water within the City, the City would begin using the Fazio Water Supply in the East Area. The GSWC Water Supply of 5,000 AFA would be applied to the FPA. The City would meet the additional build-out water demand of the FPA with approximately 600 AFA of water produced by the SOR Program that is in excess of the water demand in the East Area.

The water made available under the GSWC Agreement and SOR Program, as determined: (1) would not cause a reduction in the water supplies needed to meet the current and future needs of the East Area; and (b) would significantly reduce the cost of water service within the East Area by providing these customers with a less-expensive source of water supply by using the Fazio Water in lieu of the current GSWC (SoCal) water supply.

The City has determined that providing the FPA Water would be consistent with the requirements of Measure W because providing the FPA Water Supply:

- (a) Would not cause a reduction in the water supplies designated to serve existing water users north of Highway 50. Because the water supplies realized through the SOR Program can no longer be made available to the Folsom residents north of Highway 50 and because the FPA is not a historical user of the SOR Water, the FPA causes no reduction in the water supplies designated to serve existing water users north of Highway 50;
- (b) Would not be paid for by City residents north of Highway 50. Under the proposed Agreement, the FPA will reimburse the Folsom residents north of Highway 50 for infrastructure and program costs incurred to date that made the water supply available to the FPA, and will pay for the associated future costs as allocated for the SOR Program; and
- (c) Would result in reduced costs for water service paid for by City residents north of Highway 50 because the cost of the FPA Water would include the Landowners' payment of certain costs of the SOR Program that would otherwise have been paid for by all City water customers.

Because the use of the water supplies recovered through the SOR Program can no longer be made available to the Folsom residents north of Highway 50, the City has determined that this water supply poses no reduction in water supplies designated to serve the Folsom residents north of Highway 50. Staff is recommending the City Council authorize the City Manager to file an Action to Validate the Facilities Financing Plan and Agreement Between the City of Folsom and Folsom Plan Area Landowners for a Water Supply for the Folsom Plan Area with the State courts in order to ensure compliance with Measure W.

### **FINANCIAL IMPACT**

Section 7.08, Local Control of Land South of Highway 50, of the City Charter, specifies that the Folsom residents north of Highway 50 shall not pay for the new water supply. Therefore, the FPA landowners have agreed to enter into a "Facilities Financing Plan and Agreement" (Agreement) between the City of Folsom and FPA landowners for a Water Supply for the Folsom Plan Area.

Under the terms and conditions provided in this Agreement, the Participating Landowners are willing to pay for the FPA Water Supply, including reimbursing the City for the full costs of making the FPA Water Supply available and for constructing the facilities necessary to treat and convey those supplies to the FPA. Under the Agreement, the City will make up to 5,600 acre-feet of FPA Water Supply available to the FPA by:

- (a) Shifting from the East Area to the FPA the 5,000 acre-feet of pre-1914 water rights water supplies assigned to the City under the GSWC Agreement; and
- (b) Making available 600 acre-feet of water made available by the SOR Program.

**Reimbursement of Cost of Water Made Available Under GSWC Agreement**

Upon the issuance of a final judgment in the validation action described above, the FPA Landowners have agreed to the terms of the GSWC Agreement and will begin paying the annual cost of the 5,000 AFA made available under the GSWC Agreement, subject to the following:

- (a) The Landowners' payments to the City for the cost of the 5,000 AFA of water made available under the GSWC Agreement will be billed and payable 60 days before the date that the City is required to make payment to GSWC under the Folsom-GSWC Agreement, beginning with the installment payment that is due on December 31, 2013 with provisions for delinquent payments.
- (b) Any net revenues (defined as gross revenues received as a result of the sale of water to customers in the FPA, including the cost of water used by the City within the FPA for public parks and other City-owned facilities, less cost of treatment and distribution) received by the City as a result of use or sale of water under this Agreement within the FPA will be credited against the Landowner's cost obligations under the GSWC Agreement.
- (c) The Parties acknowledge that the FPA will be built out over a period of years and, therefore, the entire amount of the FPA Water Supply made available under the GSWC Agreement may not be needed to serve demands in the FPA during build out. The City retains the right, as it determines appropriate in its sole discretion, to use any portion of the water supply available under the GSWC Agreement surplus to demands in the FPA until such supplies are required to serve demands in the FPA, and to provide alternative water supplies for the FPA that do not result in a reduction in the quantity or reliability of the water supply or an increase in the cost of the water supply.

If the City sells or leases any portion of the surplus water supply under the GSWC Agreement, the City will credit the revenues received from such sales or leases against the amount owing from the FPA Landowners for the costs of such water supplies. This credit will include the applicable credit received by the City toward payments due under the GSWC Agreement under Amendment No. 1 to the GSWC, dated November 26, 2012.

- (d) The cost of the FPA Water made available under the GSWC Agreement is intended to be an ongoing obligation. The Landowners' reimbursement obligation for such water supplies will be reduced on a pro-rata basis as each EDU in the FPA receives water service from the City. This is a similar process defined in the East Area for the water supply in that area.

**Reimbursement of Costs Already Incurred by the City for Facilities and Water Conservation Projects to Make Available the FPA Water Supply**

The Landowners will reimburse the City for all of the costs that it has incurred to date:

- (a) \$2,298,125 to implement the Water Systems Optimization Review Program; and

- (b) \$13,392,000 to reimburse the City for all of the costs that it has incurred to upgrade its water treatment plant to provide sufficient capacity to treat the FPA's allocated share of the facilities.

The Landowners will reimburse the City for these costs as follows upon the judgment in the validation action described above:

- (a) Landowners will pay the City a lump sum of \$2,298,125 for all of the soft costs (defined as costs for engineering, tests and studies, legal and other professional services, and project administration) and all of the hard costs (defined as costs directly related to constructing infrastructure, including labor, equipment, materials, and supplies) and soft costs for leak repairs, incurred to date by the City for the Water SOR Program that represent the fair share of costs required to make the FPA Water Supply available to the FPA.

The City will permit the Participating Landowners to pay for these costs in installments, subject to the following conditions:

- (i) The Participating Landowners will pay the City an initial payment of \$500,000 within 10 days after their representative receives notice from the City of entry of judgment validating this Agreement; and
  - (ii) The Participating Landowners will pay five subsequent annual amortized installments on each anniversary date of the entry of the validation judgment representing the principal amounts and the City's cost to carry the unpaid balance of such costs at the rate of 4 percent per annum as outlined in EXHIBIT E of the Agreement, unless such subsequent payments are financed through the CFD over 10 years or such other period as the City and the Participating Landowners may agree.
  - (iii) Delinquent payments will incur a penalty of ten percent upon becoming delinquent and, in addition, delinquent invoices will bear interest at the rate of one percent per month until paid in full.
- (b) The City's water treatment facility has sufficient treatment capacity to serve the FPA resulting from reduced actual consumption and projected reductions in water demands resulting from SBx7-7. The FPA would buy into the water treatment capital improvements based on an allocated capacity made available from the existing customers north of Highway 50. The Landowners' obligation to reimburse the City for all costs incurred for the participating Landowners' share of the Water Treatment Plant upgrades required to treat the FPA Water Supply may be satisfied through one or more financing options, including without limitation, any of the following methods of payment and/or any combination thereof, as determined by the City in consultation with the Participating Landowners:
    - i. Building permit or connection fees;
    - ii. Water rates and charges within the FPA;
    - iii. Mello-Roos Community Facilities District ("CFD") financing, including special tax revenues and/or bond proceeds; and/or
    - iv. Cash advances.



**Reimbursement of Future Costs to be incurred by the City for Facilities and Water Conservation Projects to Make Available the FPA Water Supply**

The Landowners will reimburse the City's full costs to complete the SOR Program and the facilities necessary to pump and convey the FPA Water Supply to the FPA as follows:

- a. The Landowners will pay the costs to complete the SOR Program, which are estimated to be approximately \$5,699,624, using one or more of the financing options described above, as determined by the City in consultation with the Landowners.
- b. The Landowners will pay the City's full costs to construct the conveyance and pumping facilities necessary to transmit the FPA Water to a point to be determined by the City inside the boundary of the FPA adjacent to Placerville Road south of Highway 50, including all costs (including costs of acquisition and any fees and expenses incurred by the City in any pre-condemnation and condemnation proceedings) necessary to acquire any temporary construction easements required for construction of such facilities. The Landowners may use one or more of the financing options described above. Such facilities will be constructed under the State and City standards and laws for such work, and will be owned, operated and maintained by the City.
- c. The City and Landowners recognize that the costs to complete the implementation of the SOR Program and to construct the pumping and conveyance facilities for the FPA Water Supply are one-time charges and will not constitute on-going obligations of the Landowners or their successors.
- d. The Agreement provides that in determining the manner and timing of payment for the facilities to pump and convey the FPA Water to the FPA, it is understood that consideration will be given to:
  - i. The timing as to when the facilities are needed to deliver the water to the FPA;
  - ii. Developing a system that allows Landowners payments to be made so as to minimize the time between payment and distribution of the funds for construction of the facilities taking into account applicable statutory requirements and deadlines and the availability of and deadlines for expending grant funding; and
  - iii. Ensuring that the City will not contract to build any facility to transmit the FPA Water to the FPA without full funding being secured and accessible to the City.
- e. It is intended that the costs to complete the implementation of the SOR Program and to construct the pumping and conveyance facilities for the FPA Water Supply are one-time charges and will not constitute on-going obligations of the Landowners or their successors. Such charges will be finally identified and quantified in the Public Facilities Financing Plan that will be prepared as part of the entitlement process for developing the FPA. The Landowners acknowledge and agree that the foregoing intent does not in any way limit the City's discretion or authority to charge the Landowners all reasonable costs of providing water service to each parcel developed within the FPA, including the costs to treat and

convey water to each parcel and the fair share of the costs to construct, operate, maintain, repair, improve, and replace all facilities necessary to make water available to each such parcel.

**Administrative Fee**

To cover the City's costs for general-fund related expenses not otherwise charged in this Agreement, including but not limited to City Manager, Chief Financial Director, City Clerk and City Attorney time, services provided by the City's Finance Department, and other non-engineering City staff time expended to perform the City's obligations under this Agreement, the Participating Landowners will pay an administrative fee of two-percent imposed on all of the costs described above in Sections 3 through 5, above.

**Financing Plan for Water Conveyance Facilities and Costs of Making Water Available to FPA**

In accordance with the requirements of Government Code sections 53511 and 53982 through 53984, this Agreement also provides a plan describing the:

- (a) Facilities required to produce and convey water to the FPA;
- (b) Method of financing for those facilities; and
- (c) Proposed schedule for constructing the facilities necessary to make the FPA Water Supply available.

The proposed plan for the facilities to provide the FPA Water Supply and for financing those facilities is as follows:

- a. Facilities Required to Produce and Convey Water to FPA. The facilities that must be constructed to convey the FPA Water Supply to the FPA. The City agrees to make available, upon connection to the new FPA facilities, sufficient capacity in its existing water treatment plant to treat the FPA Water Supply and sufficient capacity in existing pipelines, storage reservoirs and appurtenant facilities to convey the FPA Water Supply. As a result, the City will charge for existing facilities' costs of operation, maintenance, repair, improvement, and replacement through connection fees and water rates and charges.
- b. Method of Financing FPA Water Supply Facilities. The obligation to pay the full costs of the facilities to make the FPA Water Supply available to the Landowners, as described in the Agreement, will be paid either as cash reimbursements, in cash as incurred, or through one or more of the described financing mechanisms mentioned above. It is the intention of the Landowners that they will form a CFD to finance all or a specified portion of the costs for the FPA Water Supply of this Agreement.
- c. Proposed Schedule for Constructing FPA Water Supply Facilities. Based on the Landowners' current projections for commencing development in the FPA, the City proposes to construct the facilities described in this Agreement as follows:
  - i. Water Systems Optimization Review (SOR) Program: The improvements and repairs necessary under the SOR Program to make water available to the FPA have already been completed. The remaining work under the SOR Program to be completed is (a) performance of additional leak repairs and lining of the Willow Hill Pipeline, including hard and soft costs; and (b) the report concerning the project to be completed by the

consultant, Water Systems Optimization. All remaining work on the SOR Program is expected to be completed by December 31, 2020, or sooner.

d.

- i. Water Treatment Plant Upgrades: The upgrades to the City's water treatment plant and appurtenant facilities have been completed.
- ii. Pumping and Conveyance Facilities for Transmission of FPA Water Supply: Subject to receipt of all required environmental clearances, permits and approvals, construction of the new facilities would occur in accordance with the pace of development in the FPA. The Parties estimate that construction of the pumping and conveyance facilities would begin on or prior to December 31, 2020, and would proceed on a schedule timed to coincide with development of water demand in the FPA.

### ENVIRONMENTAL REVIEW

The City Council will consider an action regarding the use of the water supply created from the City's SOR Program; and two related actions for an agreement between the City and FPA Landowners regarding the SOR Water and authorizing the City to file an action to validate this agreement.

On June 14, 2011, the City Council approved Resolution No. 8860- A Resolution Certifying the Folsom Plan Area Specific Plan Final Joint Environmental Impact Report/Environmental Impact Statement. The City Council also adopted Findings of Fact and a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program for the FPASP project.

As required by CEQA, the FPA EIR/EIS included several alternative water supply options to the Natomas water supply. One of those alternatives is a conserved water option similar to the FPA Water Supply. The City has prepared an addendum to the FPA EIR/EIS that analyzes the potential impacts of using the FPA Water Supply in lieu of the Natomas Central Mutual Water Company's (Natomas) water supply. The addendum determines that the use of the SOR Water as the water supply for the FPA will not have any significant effects on the environment and that the impacts of the use of the FPA Water Supply are within the range of potential impacts identified in the FPA EIR/EIS.

In accordance with CEQA Guidelines section 15164, an addendum to the EIR is appropriate for consideration for the proposed changes to the FPA project since the use of the FPA Water Supply and the changes in the facilities to treat and convey that water supply to the FPA will:

- (a) Not result in new significant impacts not identified in the FPA EIR/EIS: The use of the FPA Water Supply and changes in the facilities to treat and convey this water supply will not have any incrementally significant effects on the environment;
- (b) Not substantially increase the severity of impacts previously disclosed in the FPA EIR/EIS: The impacts of the use of the FPA Water Supply are within the range of potential impacts identified in the FPA EIR/EIS. The treatment and conveyance facilities will be constructed in substantially less sensitive areas than the conveyance facilities

analyzed in the FPA EIR/EIS to divert, convey, treat and convey the Natomas Water Supply; or

- (c) Not involve any of the other conditions related to new information: The impacts do not involve any of the other conditions related to new information that can require a subsequent or supplemental EIR under Public Resources Code section 21166 and CEQA Guidelines section 15162.

Specifically, the City has generated, and will generate, the new water supply for the FPA through water management activities that already have been implemented or are required by unfunded state mandates and that generally are the subject of CEQA exemptions. Because those activities are covered by CEQA exemptions, they have no significant environmental impacts.

### ATTACHMENTS

1. Resolution No. 9096 – A Resolution Approving and Certifying an Addendum to the Environmental Impact Report for the Folsom Plan Area Specific Plan Project for Purposes of Analyzing an Alternative Water Supply for the Project
2. Resolution No. 9097 - A Resolution Approving a Water Supply and Facilities Financing Plan and Agreement Between the City of Folsom and Folsom Plan Area Landowners for a Water Supply for the Folsom Plan Area, Authorizing the City Manager to Execute the Agreement, and Authorizing the Filing of an Action to Validate the Agreement.
3. Addendum to the Environmental Impact Report for the Folsom Plan Area Specific Plan Project for Purposes of Analyzing an Alternative Water Supply for the Project
4. Water Supply and Facilities Financing Plan and Agreement between the City of Folsom and Folsom Plan Area Landowners for a Water Supply for the Folsom Plan Area (Proposed Agreement referenced in Resolution No. 9097)

#### LIST OF EXHIBITS:

- A. Legal Descriptions for Landowner Properties
- B. GSWC Agreement, 1994 Agreement for Reallocation of Water Under Co-Tenancy Agreement between the City of Folsom and Southern California Water Company (Golden State Water Company)
- C. Itemization of Hard and Soft Costs to Implement Water Systems Optimization Review (SOR) Program
- D. Itemization of Actual and Estimated Costs of FPA Water Treatment, Conveyance and Pumping Facilities
- E. Amortization Schedule for Installment Payments for SOR Program Costs Incurred by City
- F. Description of FPA Water Conveyance and Pumping Facilities
- G. Map of Projected Route of FPA Water Transmission Pipeline
- H. Allocation of Reimbursement Obligations Among Landowners of All Parcels Comprising FPA
- I. Form of City-Approved Assignment Agreement

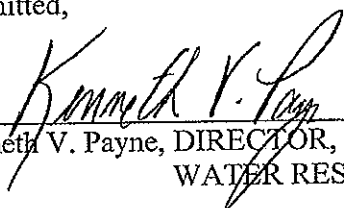
5. 1999 Contract Between the United States and the Sacramento County Water Agency Providing for Project Water Service
6. 2000 Subcontract Between the Sacramento County Water Agency and the City of Folsom Providing for Resale of Water Under Contract Between the United States of America and the Sacramento County Water Agency (Fazio Water Service Contract)
7. U.S.B.R. Place of Use Map for East Area for Fazio water service
8. 2012 Amendment No. 1 to the Agreement for Reallocation of Water Under Co-Tenancy Agreement between the City of Folsom and Southern California Water Company (Golden State Water Company)

**RECOMMENDATION/ CITY COUNCIL ACTION**

The City Manager's Office recommends that the City Council pass and adopt, for the Folsom Plan Area Specific Plan Project:

1. Resolution No. 9096 - A Resolution Approving and Certifying an Addendum to the Environmental Impact Report for the Folsom Plan Area Specific Plan Project for Purposes of Analyzing an Alternative Water Supply for the Project; and
2. Resolution No. 9097 - A Resolution Approving a Water Supply and Facilities Financing Plan and Agreement Between the City of Folsom and Folsom Plan Area Landowners for a Water Supply for the Folsom Plan Area, Authorizing the City Manager to Execute the Agreement, and Authorizing the Filing of an Action to Validate the Agreement.

Submitted,

  
\_\_\_\_\_  
Kenneth V. Payne, DIRECTOR, ENVIRONMENTAL AND  
WATER RESOURCES

# Attachment 1

**RESOLUTION NO. 9096**

**A RESOLUTION APPROVING AND CERTIFYING AN ADDENDUM  
TO THE ENVIRONMENTAL IMPACT REPORT FOR THE FOLSOM PLAN AREA  
SPECIFIC PLAN PROJECT FOR PURPOSES OF ANALYZING AN ALTERNATIVE  
WATER SUPPLY FOR THE PROJECT**

**WHEREAS**, in 2001, the Sacramento Local Agency Formation Commission (“LAFCo”) designated the undeveloped land south of U.S. Highway 50 between Prairie City Road, White Rock Road, and the El Dorado County line as part of the City of Folsom’s sphere of influence (hereinafter called the “Folsom Plan Area” or “FPA”); and

**WHEREAS**, to secure a water supply for the FPA prior to approval of its annexation to the City, certain owners of land in the FPA acquired the right to purchase an annual water supply of 8,000 acre-feet of Central Valley Project contractual entitlement from the Natomas Central Mutual Water Company (“Natomas”), and Natomas and the City requested that the Bureau of Reclamation approve the assignment of that entitlement to the City for use in the FPA; and

**WHEREAS**, a draft Environmental Impact Report under the California Environmental Quality Act (“CEQA”)/Environmental Impact Statement under the National Environmental Policy Act was prepared for the Folsom Plan Area Specific Plan (the “FPA EIR/EIS”); and

**WHEREAS**, the FPA EIR/EIS identifies and addresses all of the potential impacts of annexing the FPA to the City, including the water supply proposed to be acquired from Natomas to serve the FPA (the “Natomas Water Supply”) and three water supply options to be considered if the Natomas Water Supply were to be unavailable; and

**WHEREAS**, the draft FPA EIR/EIS was circulated for public review from June 28, 2010 to September 10, 2010, the City Council and City Planning Commission held workshops and hearings on the draft FPA EIR/EIS between August 2, 2010 and May 18, 2011, and on June 14, 2011, the City Council approved and certified the FPA EIR/EIS in Resolution No. 8860; and

**WHEREAS**, due to delays and uncertainties concerning the Bureau of Reclamation’s approval of the proposed assignment of the Natomas Water Supply to the City for purposes of making a water supply available to the FPA, the City has evaluated the feasibility of meeting the water supply needs of the FPA using an alternative water supply similar to Water Supply Option 3 (Conservation of Existing Entitlements and Water System Retrofit) identified in the FPA EIR/EIS; and

**WHEREAS**, in 1994, the City entered into an agreement with Golden State Water Company (f/k/a Southern California Water Company) to acquire the right to divert up to 5,000 acre feet of pre-1914 water rights water annually for use within the City (the “GSWC Agreement”); and

**WHEREAS**, the City has been using the supplies provided under the GSWC Agreement to serve the existing portion of the City known as the “East Area,” with all costs of the water

supplies made available under the GSWC Agreement paid for by East Area landowners and water users; and

**WHEREAS**, since 2009, the City has undertaken various water conservation measures, including implementing metered water rates beginning on January 1, 2013 and carrying out the Systems Optimization Water Project, consisting of repairs, improvements and replacements of existing water transmission and distribution facilities; and

**WHEREAS**, the City has determined that its Systems Optimization Water Project and implementation of metered rates will provide additional water supplies in an estimated amount of 6,450 acre-feet per year, which is surplus to the present and forecasted demands of the City's existing water users; and

**WHEREAS**, the City is willing to dedicate a portion of the 6,450 acre-feet per year of Systems Optimization Water Project and water conserved by metering to meet present and future water demand in the East Area for the purpose of making the 5,000 acre-feet per year of GSWC Agreement water supply available for use in the FPA and to further dedicate approximately 600 acre-feet per year of water made available by the Systems Optimization Water Project and implementation of metered rates to fully satisfy projected water demands in the FPA at build-out (which two sources of water supply are referred to collectively herein as the "FPA Water Supply"); and

**WHEREAS**, as required by CEQA, the FPA EIR/EIS included an analysis of several water supply options to the Natomas Water Supply, including Water Supply Option 3 as described above; and

**WHEREAS**, the City has caused to be prepared a proposed addendum to the FPA EIR/EIS that analyzes the potential impacts of using the FPA Water Supply as the water supply for build-out of the FPA in lieu of the Natomas water supply (the "Addendum"); and

**WHEREAS**, the City has provided all notices necessary for its consideration of approving and certifying the Addendum at the time and in the manner required by State law and the City Code; and

**WHEREAS**, the Addendum concludes that the use of the FPA Water Supply and the changes in the facilities to treat and convey that water supply to the FPA will not (1) result in new significant impacts not identified in the FPA EIR/EIS; (2) substantially increase the severity of impacts previously disclosed in the FPA EIR/EIS; or (3) involve any of the other conditions related to new information that can require a subsequent or supplemental EIR under Public Resources Code section 21166 and CEQA Guidelines section 15162, and that therefore the use of the FPA Water Supply and changes in the facilities to treat and convey that supply will not have any incrementally significant effects on the environment and that the impacts of the use of the FPA Water Supply are within the range of potential impacts identified in the FPA EIR/EIS.



**NOW, THEREFORE, BE IT RESOLVED**, by the Folsom City Council that:

**1. Recitals.** The City Council hereby finds and determines that the recitals set forth above are true and correct and are incorporated herein by this reference.

**2. CEQA Addendum.** Pursuant to CEQA, the City Council hereby approves and certifies the Addendum to the FPA EIR/EIS for the FPA Water Supply, including all exhibits thereto, as follows:

a. Name of Project: Folsom South of U.S. Highway 50 Specific Plan Project, CEQA Addendum -- Water Supply and Conveyance Facilities (“Project”).

b. Project Proponent and Lead Agency: City of Folsom, 50 Natoma Street, Folsom, CA 95630, (916) 355-7224. Contact person: David Miller, Public Works and Community Development Director.

c. Project Description: For more information concerning the Project, see the Addendum and attached Exhibits, which are attached as Item No. 3 to the staff report supporting this Resolution and incorporated herein by this reference.

a. Project Location: The Project will be conducted within the City’s existing boundaries by an exchange of the 5,000 acre-feet of water supplies made available under the GSWC Agreement that are currently in use within the East Area and use of surplus water supplies made available through implementation of conservation measures through the existing City’s water distribution facilities, and use of existing City water treatment and conveyance facilities and construction of new pumping and conveyance facilities that will convey the exchanged and conserved water supply through the existing City to its boundary with the FPA.

b. Findings: The City Council has reviewed the proposed Project, Addendum and attached exhibits, and other documents and information provided by City staff and consultants. On the basis of this information and the whole record before the City Council, the City Council hereby finds and determines as follows:

- i) The Addendum reflects the City Council’s independent judgment and analysis; and
- ii) The proposed use of the FPA Water Supply and the use of existing City water treatment and conveyance facilities and construction of new facilities to serve the FPA will not: (1) result in any new significant impacts not identified in the FPA EIR/EIS; (2) substantially increase the severity of impacts previously disclosed in the FPA EIR/EIS; or (3) involve any of the other conditions related to new information that would require a subsequent or supplemental EIR under Public Resources Code section 21166 and CEQA Guidelines section 15162; and
- iii) In specific, the City has generated, and will generate, the new water supply for the FPA through conservation activities that already have been implemented or are required by unfunded state mandates and that generally are the subject of CEQA exemptions. Because those activities are covered by CEQA exemptions, they are

viewed by law as having no significant environmental impacts. The City Council is not aware of any evidence that would remove the City's water conservation actions from the scope of the applicable CEQA exemptions; and

- iv) In addition, the facilities required to deliver the FPA Water Supply will be significantly less extensive, and will be built through a substantially less sensitive area, than the conveyance facilities analyzed in the FPA EIR/EIS to divert, convey, treat and transmit the Natomas Water Supply. In accordance with CEQA Guidelines section 15164, it therefore is appropriate for the City Council to approve the proposed changes to the FPA project based on an EIR Addendum; and
- v) Based on the above findings and determinations, there is no substantial evidence, in light of the whole record before the City Council, that the changes to the Project may have an incrementally significant effect on the environment.

c. Location and Custodian of Documents: The Addendum and its attached exhibits, and documents referred to in the Addendum and exhibits, are on file and available for public review at the City's offices at the above address. The Public Works and Community Development Director at the above address is the custodian of the documents that constitute the record of proceedings upon which the decision in this matter is based.

d. Notice of Determination: The City Council hereby authorizes and directs the City Manager or his designee to prepare, sign and file a CEQA Notice of Determination for the Addendum with the Sacramento County Clerk within five days from the date of adoption of this Resolution, and to pay the applicable California Department of Fish and Game CEQA review fee and posting fee, if any, to the County Clerk.

**3. Water Supply Assessment.** As a result of providing the FPA Water Supply in lieu of the Natomas Water Supply, the City Council further finds and determines that the City is not required to amend or update the Water Supply Assessment ("WSA") that was prepared and approved for the FPA and incorporated into the FPA EIR/EIS in accordance with Water Code sections 10910 and 10911, for the following reasons:

- (a) Water Code section 10910(h) governs when any additional WSAs must be prepared in relation to land use projects that require WSAs. Section 10910(h) provides that "no additional WSA shall be required for subsequent projects that were part of a larger project for which a WSA was prepared" unless certain conditions are met; and
- (b) The change in the FPA's water supply does not involve subsequent projects. An additional or amended WSA therefore is not required for the FPA under Water Code section 10910(h); and
- (c) In addition, as documented in the Addendum and its attachments, the FPA Water Supply derives from the yield of water conservation measures within the City's existing water system in a manner similar to the FPA EIR/EIS's Water Supply Option 3 and is sufficient to satisfy the FPA's projected build-out water demand as described in the FPA EIR/EIS; and

(d) Even if Water Code section 10910(h) applied to the FPA Water Supply, none of the conditions that could require an additional WSA would be triggered because the FPA's projected water demand has not increased, no changed circumstances affect the City's ability to meet that projected demand, and there is no new significant information that affects the City's ability to meet that projected demand.


**PASSED AND ADOPTED** on this 11<sup>th</sup> day of December 2012, by the following roll-call vote:

**AYES:** Council Member(s): Starsky, Morin, Sheldon, Howell, Miklos

**NOES:** Council Member(s): None

**ABSENT:** Council Member(s): None

**ABSTAIN:** Council Member(s): None

  
\_\_\_\_\_  
Stephen E. Miklos, MAYOR

ATTEST:

  
\_\_\_\_\_  
Lydia Konopka, ASSISTANT CITY CLERK