

City of Visalia Agenda Item Transmittal

Meeting Date: April 17, 2006

Agenda Item Number (Assigned by City Clerk): 2

Agenda Item Wording: Consider and authorize City Manager to enter into agreement with Kaweah Delta Water Conservation District providing for the development and joint use of basins owned by KDWCD, and consider and authorize the use of form agreements providing for consent by various water rights holders to temporarily divert water into the joint use basins.

Deadline for Action: April 17, 2006

Submitting Department: Public Works & City Attorney's Office

Contact Name and Phone Number: Alex Peltzer, 636-0200
Andrew Benelli, 713-4340

For action by:

- ☒ City Council
- ☐ Redev. Agency Bd.
- ☐ Cap. Impr. Corp.
- ☐ VPFA

For placement on which agenda:

- ☐ Work Session
- ☐ Closed Session
- Regular Session:
 - ☒ Consent Calendar
 - ☐ Regular Item
 - ☐ Public Hearing

Est. Time (Min.):10

Department Recommendation

Staff recommends that the Council grant the City Manager the authority to execute the attached agreements with Kaweah Delta Water Conservation District to divert storm water flows from Mill Creek.

Discussion

Presented for the City Council's approval are two agreements that, if approved, would put into place a new tool for the City to use in storm water management. The two agreements, taken together, would allow the City to temporarily divert certain water flowing in the Mill Creek system out of the Creek before it enters the City and hold that water in upstream basins. Doing so would enable the City to control flows in Mill Creek, which would maximize the City's ability to use that channel for disposing of storm waters generated within the City.

The terms of the agreements were negotiated by Public Works staff and drafted by a joint effort of the general counsel for Kaweah Delta Water Conservation District ("KDWCD") and the City Attorney. The two agreements are:

- 1) A "Basin Agreement" between KDWCD and the City, establishing the terms by which the City and KDWCD will jointly develop off-stream basins on property owned by KDWCD east of the City, and the terms of use of these basins.
- 2) A form agreement referred to as the "Water Diversion Agreement." This agreement has been developed with the intent that it would be executed for each water user whose water is temporarily diverted into upstream basins.

Background – Basin Agreements

The City and KDWCD have been working cooperatively on several projects related to the City's efforts to develop a source of water that it would devote to groundwater recharge purposes, and to establish ways that such water could be managed for the City's benefit. In the process, KDWCD identified two sites that initially were thought of as groundwater recharge sites. KDWCD's engineers, together with the City's engineers, concluded that these sites could also be useful as temporary layoff basins which would aid in the City's efforts to keep water out of Mill Creek during storm events.

The Oakes Basin site is a parcel of real property comprised of approximately 40 acres just east of the City limits, located where the Lower Kaweah River splits into Mill Creek and Packwood Creek, both of which are natural channels that flow through the City. If developed as anticipated, the Oakes Basin would be capable of receiving water from the Lower Kaweah River and discharging it back into either Mill Creek or Packwood Creek (Exhibit B).

The Peoples Basin site is adjacent to the Lower Kaweah River upstream from the Oakes Basin site. If developed as planned, the City and KDWCD would be able to deliver a portion of the flow of the Lower Kaweah River into the basin and back out of it into the river (Exhibit B).

By the time the potential storm water use for these sites was identified, KDWCD had already acquired the land for the basins and had started designing and constructing the facilities necessary for its own use of the basins. Since the potential joint use with the City was identified, the City and KDWCD negotiated a plan to jointly pay for more intensive development of the basins, and a way for the basins to be jointly managed for each other's benefit.

The result of the negotiations is the Basin Agreement attached hereto as Exhibit A. The Basin Agreement provides for the following:

1. Development of Basins. The District will develop the basins, but the City will agree to reimburse costs according to a formula developed with the intent of reflecting the proportion of the basins the City will be entitled to use, as compared to portion the District will be entitled to use. Using this reasoning, the City and the District have agreed to share the costs to develop the Basins as follows:

- Future earthwork for the Oakes Basin is allocated 12.5% to KDWCD and 87.5% to the City. (The City's share is significantly higher because KDWCD has already done a large portion of the work necessary to excavate the basin in a way that serves KDWCD's purposes.)
- Earthwork for the Peoples Basin is allocated 23.08% to KDWCD and 76.92% to the City. (City will be entitled to use approximately 60 percent of the basin – City's share of the costs is more than this because the land was acquired at KDWCD's cost.)
- A 40 cubic feet per second (cfs) inlet diversion structure for Oakes Basin has already been constructed at KDWCD's cost, for which KDWCD will not be reimbursed. The cost of increasing the inlet structure to a 100 cfs inlet structure, and the cost of creating a new outlet structure are to be paid 100 percent by the City. An interior diversion structure is to be paid 20% by the KDWCD and 80% to the City.
- A 100 cfs inlet diversion structure for People's Basin is to be paid for 40% by the KDCWD and sixty percent 60% by the City. The costs to construct a 40 cubic feet per second outlet structure and related facilities will be allocated one hundred percent (100%) to the City, because KDCWD has no need to evacuate water from the basin.

- The parties will share equally the costs of all plans, specifications, drawings, and engineering studies necessary for the planning and development of the Basins.

2. Use of Basins. The general intent of the Agreement is to allow for joint use of the basins at all times. The City intends to use its space in the basins for storm water relief during the storm season, but can also use its space for accepting delivery of water for groundwater recharge purposes during the non-storm season. The Agreement sets up exclusive areas of use:

- Oakes Basin is designed to have a total useable depth of 11 feet; of this depth, City shall have the exclusive right to use 9 feet of this depth, and KDWCD shall have the exclusive right to use the remaining 2 feet.
- Peoples Basin shall have a total useable depth of 5.5 feet; of this depth, City shall have the exclusive right to use 3.5 feet of this depth, and KDWCD shall have the exclusive right to use the remaining 2 feet.

In addition, the Agreement provides a mechanism for each party to encroach into the other party's exclusive space by agreement. It is anticipated that the parties will have varying needs for the basins, and a cooperative approach to the management of the space in the basins is expected to be beneficial to both parties.

The actual cost of the work necessary to make use of the basins has not yet been established. The Agreement specifies that the respective governing bodies of both the City and KDWCD must approve any project in furtherance of the agreement before it is undertaken. Staff anticipates bringing specific projects in furtherance of this agreement to the Council for approval in the near future.

Background – Basin Agreements

Mill Creek and Packwood Creek, as they flow through the City, are used to convey water that originated at the Kaweah River belonging to a variety of water rights holders, primarily Tulare Irrigation District, Evans Ditch Company, Persian Ditch Company and Watson Ditch Company. During those times the City normally makes use of Mill Creek (and to a lesser extent Packwood Creek) for disposal of storm water, there is likely to also be water in the creeks that is being transported through the City to be delivered to these water rights holders.

The basins as described above would be used by the City to divert most if not all of the flow of Mill Creek and Packwood Creek during an extreme flood period. The water that would ordinarily flow into the creeks would be held in the basins until the flood event has concluded, and then would be returned to the creeks for delivery to the water rights holder.

Because the use of the basins would require the temporary holding of water belonging to other parties, the City needs to have those parties' consent. Further, a portion of the water held at the basins would likely be lost to groundwater recharge; therefore an agreement regarding such losses is necessary.

The City and KDWCD, together with the Kaweah-St. Johns Rivers Association and the respective water rights holders, negotiated the terms of an agreement that would establish the conditions under which the water rights holders would be asked to consent to the temporary diversion of their water. A form of agreement (Water Diversion Agreement) has been arrived at by representatives of the water rights holders identified above, and has been submitted for approval to their governing boards.

The Water Diversion Agreement, attached hereto as Exhibit B, provides for the following:

1. Consent Must Be Requested. The Water Diversion Agreement requires the City to notify the water right holder of an anticipated need to divert water out of the Kaweah River, and to request consent to do so. It does not require that the consent be granted. Therefore, it may be that the water right holder will not consent to the temporary diversion into the upstream basins; however, the agreement provides that consent can be withheld only if allowing the diversion and retention would damage the water right holder. It is anticipated that in the vast majority of circumstances in which the City would request that diversions be made, the water rights holders will not have a high demand for the water it would otherwise be taking, and therefore would not be damaged by the diversion.
2. Return Flows. The City would be responsible for returning any flows that have been diverted back into the Kaweah River or Mill Creek at the City's cost.
3. Accounting. The City, together with KDWCD, will be responsible for accounting for the water into and out of the basins, as well as assigning the amount of water that is recharged in the basins to the respective water rights holders. The agreement recognizes that any groundwater recharged in the basins will be considered a beneficial use by the entity whose water was brought to the basins.

Conclusion

Staff is requesting the Council grant the City Manager the authority to enter into the attached agreements.

Prior Council/Board Actions: None

Committee/Commission Review and Actions: None

Alternatives: Direct staff to work with Kaweah Delta to modify the Agreement.

Attachments:

Exhibit A, Basin Agreement
Exhibit B, Water Diversion Agreement
Exhibit C, Location Map for Oaks and Peoples Basin

City Manager Recommendation:

Recommended Motion (and Alternative Motions if expected):

Move to grant the City Manager the authority to enter into the proposed agreements with Kaweah Delta Water Conservation District, Kaweah St. Johns Rivers Association, and the respective water rights holders.

Financial Impact

Funding Source:

Account Number: _____ (Call Finance for assistance)

Budget Recap:

Total Estimated cost:	New Revenue:
Amount Budgeted:	Lost Revenue:
New funding required:	New Personnel:
Council Policy Change: Yes_____ No_____	

Environmental Assessment Status

CEQA Review:

Required? Yes ☒ No ☐ Prior to executing easement and constructing project.

Review and Action: Prior:
Required:

NEPA Review:

Required? Yes ☐ No ☒

Review and Action: Prior:
Required:

Tracking Information: *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date).*

Review and Approval - As needed:

Department Head Review (Signature):

Risk Management Review (Signature):

City Attorney Review (Signature):

Administrative Services Finance Review (Signature):

Others:

Exhibit A
Location Map