

Item 6b.



STAFF REPORT

Meeting Date: February 16, 2016
To: Honorable Mayor & City Council
From: Trish Rhay, Assistant Director of Public Works Services, Infrastructure & Field Operations 
Caitlin Sims, Senior Management Analyst 
Subject: b. Penalty Surcharge Framework
Attachments: 1. Resolution 15-R-13045

INTRODUCTION

At its May 5, 2015, Formal Meeting, the City Council approved Resolution 15-R-13037, declaring a Stage D (30%) water use reduction. Stage D allows the City Council to assess a penalty surcharge on water usage in excess of the 70% baseline. At its June 30, 2015, meeting, the City Council adopted Resolution 15-R-13045, which established the penalty surcharge framework. All single-family and multi-family customers not in Tier 1 and all commercial customers would be required to reduce their water usage to 70% of their 2013 usage or be subject to penalty surcharges. The penalty surcharge was applied to bills beginning in early November 2015.

The purpose of the penalty surcharge is to change behavior and to incentivize high water users to reduce their consumption and, to the extent that this is not achieved, to cover the City's drought-related costs. Staff worked with HF&H Consultants LLC ("HF&H"), with input from the Public Works Commission's Conservation Subcommittee, to develop a penalty framework and associated multipliers based on costs likely to be imposed for failure to meet Stage D conservation goals.

In keeping with the effort to support the penalty surcharge multiplier calculations, staff, in consultation with HF&H and the Public Works Commission's Conservation Subcommittee, revisited the assumptions that were included in the initial analysis to assess how they may be modified based on several months of data. The results of this analysis are presented in this report.

DISCUSSION

Resolution 15-R-13045, adopted by the City Council at its June 30, 2015, meeting, established a penalty surcharge framework that required all single-family and multi-family customers not in Tier 1 and all commercial customers to reduce their water usage to 70% of their 2013 usage or be subject to penalty surcharges. The penalty framework relates penalties to the costs that would likely be imposed on the City if water users fail

to meet the conservation goals established by Stage D. Staff identified the potential risk costs that the City may be subject to if it did not meet its conservation target and developed a multiplier that was allocated to those customers that triggered the costs.

Staff identified three potential risk costs, which totaled \$6,585,605:

- 1) City Costs – Accelerated Conservation Measures:
If the City fails to meet the State-ordered conservation goal of 32%, State regulators may require the City to accelerate the current 10-year conservation strategy that is outlined in the Water Enterprise Plan and require such programs to be implemented over Year 1, rather than Years 2-10 as outlined in the Water Enterprise Plan. In the initial calculation, the projected risk cost for accelerated conservation measures was \$1,763,708.
- 2) State Water Resources Control Board (“State Water Board”) Fines:
The State Board can fine water providers a penalty of \$10,000 per day for not meeting the 32% conservation target. The potential \$1,000,000 fine assumes that the State Board will begin to impose fines if the City fails to achieve compliance with the conservation target within a reasonable period. In the initial calculation, the projected risk cost for fines from the State Water Board was \$1,000,000, based on an assumption that the City could be subject to fines of up to \$10,000 per day for 100 days.
- 3) Metropolitan Water District of Southern California (“MWD”) Costs:
MWD required each of its member agencies to reduce water consumption by 15% starting July 1, 2015. Water purchases in excess of the reduction target will be assessed at the MWD Tier 2 rate of \$2,960 per acre-foot. Based on 2014 water use data, if the City fails to reduce consumption, it is projected that 1,291 acre feet of water purchased from MWD will be assessed at the Tier 2 rate. In order for the City to avoid paying the higher MWD Tier 2 rate, the City would need to reduce MWD water use by 12%. In the initial calculation, the projected risk cost for increased MWD costs was \$3,821,897.

Staff then made assumptions about the City’s overall average water conservation. Staff assumed that approximately 50% of customers would reduce water use by 30% compared to 2013 usage, approximately 25% of customers would reduce water use by 15% compared to 2013 usage and approximately 25% of customers would not reduce water use compared to 2013 usage. This would equate to a City-wide average water use reduction of 18.8%. If the City collectively reduced water use by 18.8%, the City would recover the full amount of risk costs over 12 months. The penalty surcharge framework was based on the best information and assumptions available at that time.

Staff now has several months of data that can be used to re-evaluate the penalty surcharge. Based on this data, staff has adjusted the assumptions about how many customers will comply with the conservation targets. Staff has also adjusted the overall risk costs, based on additional information regarding the State Water Board’s risk costs and the extension of the Emergency Water Conservation Regulation and updated drought regulation through October 2016. These revised costs, which reflect the additional potential risk costs through the end of October 2016, can be found below:

1. City Costs – Accelerated Conservation Measures: \$1,763,708
2. State Water Resources Control Board (“State Water Board”) Fines: \$600,000
3. MWD Costs: \$1,928,628

The total estimated risk costs from now until October 2016 are \$4,292,336.

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A 5% water rate increase is currently scheduled to become effective on March 1, 2016, as adopted by the City Council at its October 20, 2015, meeting.

Less than 30% Conservation		Less than 12% Conservation	
For excess usage above 70% baseline, the penalty-only multiplier is:		For excess usage above the 88% baseline, the penalty-only multiplier is:	
Current	Proposed	Current	Proposed
0.59times the Base Rate	0.25 times the Base Rate	Additional 3.08 (Cumulative 3.67 times the Base Rate)	Additional 1.60 (Cumulative 1.85 times the Base Rate)

If the 5% water rate increase does not become effective, the multipliers will be modified as follows:

Less than 30% Conservation		Less than 12% Conservation	
For excess usage above 70% baseline, the penalty-only multiplier is:		For excess usage above the 88% baseline, the penalty-only multiplier is:	
Current	Proposed	Current	Proposed
0.59 times the the Base Rate	0.27 times the Base Rate	Additional 3.08 (Cumulative 3.67 times the Base Rate)	Additional 1.68 (Cumulative 1.95 times the Base Rate)

The above multipliers assume no changes to the City's water rates. However, water rates are scheduled to increase by 5% on March 1, 2016.

To date, the City has been fined \$61,000 by the State Water Board for non-compliance with the 32% reduction mandate from the period from June 1, 2015, to September 30, 2015. While no action has been taken by the State Water Board relating to the period from November 1, 2015, to present, the City may still face enforcement action from the State Board for that period. The City has also accelerated its conservation programs and incurred costs beyond those that were originally budgeted in FY 2015-16, in an effort to achieve its State Water Board target. In addition, while the City has not incurred any MWD Tier 2 costs to date, these costs will be assessed based on water purchases for an entire year.

FISCAL IMPACT

The City has updated the risk cost estimates for the period from March to October 2016 to be \$4,292,336. The funding collected will be used to pay past and potential future fines from the State Water Board, potential MWD Tier 2 rates, and for the accelerated implementation of the City's water conservation programs.

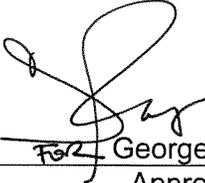
RECOMMENDATION

Staff recommends that the City Council modify the penalty surcharge multipliers contained in Resolution 15-R-13045. Should the City Council move forward with the recommendation, a resolution to modify the penalty surcharge multipliers would be on the agenda at the March 1, 2016, Formal Session meeting. The implementation date for the new multipliers would be immediately after the March 1, 2016 meeting.

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Don Rhoads
Finance Approval



George Chavez
Approved By

Attachment 1

RESOLUTION NO. 15-R- 13045

RESOLUTION OF THE COUNCIL OF THE CITY OF
BEVERLY HILLS ESTABLISHING A PENALTY
SURCHARGE FOR WATER USAGE CONTRARY TO THE
PROVISIONS OF THE STAGE D WATER CONSERVATION
MEASURES

RECITALS

WHEREAS, during calendar year 2014, the Governor declared a drought in the State of California and the State Water Resources Control Board enacted emergency water conservation measures. As a result, the City of Beverly Hills declared the Stage B shortage, which is currently in effect, mandating a 10% reduction in potable water use.

WHEREAS, in April 2015, the Governor issued an Executive Order directing the State Water Board to impose restrictions to achieve an aggregate statewide 25% reduction in potable urban water use through February 2016. As a result, the State Water Board released a preliminary framework, outlining reduction targets from 8% to 36% for each water supplier, with Beverly Hills having a reduction target of 36%. Upon additional review of information submitted by the City of Beverly Hills, the State Water Board reduced the reduction target to 32%.

WHEREAS, on May 5, 2015, the City Council adopted its resolution No. 15-R-13037 declaring and implementing Stage D water conservation measures pursuant to Beverly Hills Municipal Code Section 9-4-304 and authorizing a penalty surcharge for water usage contrary to the provisions of the Stage D water conservation measures.

WHEREAS, pursuant to Beverly Hills Municipal Code Section 9-4-302, the City Council desires to establish a penalty surcharge for water usage contrary to the provisions of the Stage D water conservation measures.

NOW THEREFORE, the City Council of the City of Beverly Hills does hereby resolve as follows:

Section 1. The City Council hereby establishes a penalty surcharge for water usage contrary to the provisions of Stage D as follows:

a. For a customer who reduces water use by less than thirty percent (30%) of the amount in the baseline period, the penalty surcharge is 1.59 times the basic water rate for water usage in excess of seventy percent (70%) of the amount in the baseline period.

b. For a customer who reduces water use by less than twelve percent (12%) of the amount in the baseline period, the penalty surcharge is an additional 3.08 times the basic water rate for water usage in excess of eighty-eight percent (88%) of the amount in

the baseline period (for a cumulative 4.67 times the basic water rate for water usage in excess of eighty-eight percent (88%) of the amount in the baseline period).

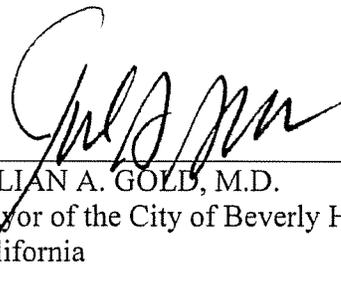
c. The baseline period shall be the days in the 2013 calendar year against which water use is compared for those same days in the current year (for example, the baseline period is July 1, 2013 through August 31, 2013 for determining the amount water use reduction for July 1, 2015 through August 31, 2015).

d. The penalty surcharge established by this section shall be effective October 15, 2015.

Section 2. In accordance with Beverly Hills Municipal Code Section 9-4-303, the City Council hereby directs the City Clerk to publish this Resolution within 10 days of its adoption at least once in a newspaper of general circulation within the city and to post this Resolution in at least three (3) public places and continue to post this Resolution until such time as the restrictions set forth herein are repealed by resolution of the City Council.

Section 3. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Council of the City.

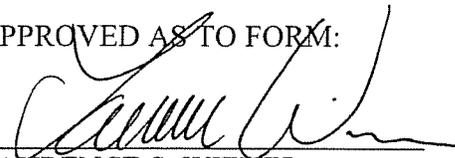
Adopted: June 30, 2015



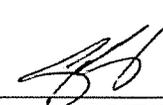
JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills,
California

ATTEST:


BYRON FODE (SEAL)
City Clerk

APPROVED AS TO FORM:


LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:


GEORGE CHAVEZ
Director of Public Works Services