BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

BOARD POLICY COMMITTEE

June 9, 2021 – 1:30 p.m.

Zoom Video Conference

DUE TO COVID-19, THIS MEETING WAS CONDUCTED AS A TELECONFERENCE PURSUANT TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, WHICH SUSPEND CERTAIN REQUIREMENTS OF THE RALPH M. BROWN ACT.

MINUTES

1. **Call to Order:** Committee Chair, Tom Zigterman, called the meeting to order at 1:32 pm. A list of Committee members who were present (9), absent (1) and other attendees is attached.

   The Committee took the following action and discussed the following topics:

2. **Comments by Committee Chair:** Committee Chair Zigterman welcomed members of the Committee and reviewed the general procedures for conducting the meeting virtually to ensure efficiency in completing the necessary business.

   He noted that there are two actions requested of the Committee which will be done by roll call vote.

3. **Public Comments:** Public comments were provided by Blair Beekman.

4. **Consent Calendar** Approval of Minutes from the April 14, 2021 meeting.

   Director Larsson made a motion, seconded by Director Pierce, that the minutes of the April 14, 2021 Board Policy Committee meeting be approved.

   The motion carried unanimously by roll call vote.

5. **Action Calendar:**

   A. Potential Refunding of BAWSCA's Revenue Bond Series 2013A – Additional Actions Needed to Proceed: Christina Tang, BAWSCA Finance Manager, reported that the previous recommendation of a tax-exempt refunding remains the same, as opposed to a taxable advance refunding. This recommendation is based on the current market conditions.

   The preliminary estimated net present value savings is over $20 M, and the preliminary estimated cost of issuance is approximately between $1 - $1.2 M including the contingent and non-contingent costs.

   Four (4) actions by the Board are needed to proceed with the initiation of the refunding process:

   1. Establishing a new Debt Management Policy;
   2. Authorizing the appointment of Underwriters;

3. Authorizing a contract with Orrick for its bond counsel and disclosure counsel services; and
4. Authorizing a contract with KNN for its municipal advisory services.

Ms. Tang reported that BAWSCA currently does not have a Debt Management Policy and establishing one complies with Government Code section 8855(i), which went into effect January 1, 2017. A draft policy was prepared by BAWSCA's municipal advisor, KNN Public Finance, and is included as Attachment 1 of the staff report. The draft policy serves the purpose of meeting the following objectives:

1. Guide and regulate BAWSCA's issuance of debt;
2. Protect credit rating and minimize borrowing costs; and
3. Incorporate best practices into debt administration.

The second action needed is appointment of Goldman Sachs as the Senior Managing Underwriter and JP Morgan as the Co-Manager. Ms. Tang reported that a Request for Proposals released on April 21, 2021 generated six (6) responses, in which 4 firms were invited for oral interviews. The review team was comprised of a BAWSCA staff, member agency staff, municipal advisors, and legal counsel. The team evaluated each proposal on the basis of overall experience in serving as underwriters for water and wastewater revenue bonds, proposed rating strategy and bond structure, and their experience with forward delivery in the past three years.

The interview panel unanimously recommends Goldman Sachs as the Senior Managing Underwriter based on its capabilities, thoughtfulness of its structuring and credit strategy, and familiarity with BAWSCA's existing bonds due to prior involvement. JP Morgan is recommended to serve as co-manager based on the quality of their proposal, particularly on the structure and credit, and their experience in underwriting water revenue and other California bonds.

The Underwriter's compensation will be paid directly from the refunding bond proceeds, and is estimated to be no more than approximately 0.25% of the principal amount of the refunding bonds.

The third action is authorization of the CEO/General Manager to negotiate a contract with Orrick to provide the contingent portion of bond counsel and disclosure counsel services. Depending on the refunding delivery that BAWSCA determines as appropriate, the not-to-exceed amount will be either $265,000 for a tax-exempt forward refunding, or $295,000 on a tax-exempt forward plus an advance refunding.

The fourth action is authorization of the CEO/General Manager to negotiate and execute a contract with KNN Public Finance to provide the contingent portion of the municipal advisory services in a not-to-exceed amount of $115,000.

The consultant costs will be paid directly from the refunding bond proceeds, contingent upon the successful delivery of the refunding bonds.

In response to board member feedback, Ms. Tang presented the results of the analysis between a conventional refunding at the original final maturity of 2034 versus refunding at a shortened maturity of 2033. The analysis was done based on current market conditions with a cushion for adverse market changes.

Under the conventional refunding method and original maturity in 2034 (Scenario 1), the estimated net present value savings is approximately $21M, or 12.8% of the refunded bonds. The cash flow savings are realized every year, beginning in 2023, at an average savings of approximately $2M/year.

Under the alternative structure of a shortened maturity in 2033 by accelerating the refunding principal amortization by one year (Scenario 2,), the estimated net present value savings are approximately $22 M, or 13.4% of the refunded bonds. The debt service is substantially the same as the existing bonds through FY 2032, with all the cash flow savings deferred by 10 years, between 2033 – 2034.

Ms. Tang noted that the proposed structure with the original final maturity is a common refunding structure, as many agencies prefer to spread the savings out proportionally over the life of the bonds for the purpose of intergenerational fairness. Additionally, the savings starting in 2023 will help offset the projected increase in SFPUC wholesale water rates.

Ms. Tang added that background on the current blended surcharge approach and the alternative allocation methodology is provided in the staff report. The proposed refunding structure is based on the current blended surcharge approach.

The tentative schedule of the next steps that was presented to the Board at the May Board meeting remains the same. Assuming a tax-exempt forward refunding, the recommendation for authorization to issue bonds and approve bond documents is tentatively scheduled for the BPC's consideration in August, and the Board's approval at its September meeting.

The bond pricing and sale, and bond closing is anticipated to occur between October 2021 and January 2022. Final bond settlement is expected in January 2023.

Comments and questions were taken from members of the Committee.

Director Cormack appreciates the establishment of a Debt Management Policy, the analysis of the conventional refunding structure against an alternative accelerated structure, and the explanation on the bond surcharge alternatives.

She expressed her support for Scenario 1 in Table 1 and highlighted that BAWSCA's forfeit of $1M in net present value is the trade-off for stability. She appreciated the background information on the bond surcharge alternative provided on page 27 of the packet and expressed her support for staying consistent with the collection of Wholesale Revenue Requirements.

She inquired about Section 6, Method of Sale, and asked why negotiated sale is better for BAWSCA than competitive sale.

Ms. Tang explained that negotiated sale is the method seen as most appropriate for BAWSCA for this refunding as well as for the original 2013 bond issuance, primarily because BAWSCA is not an active bond issuer. The interests of the member agencies are better served by having multiple experts on the team to provide insights and ideas that are in the best interest of the member agencies.

Dan Cox from KNN, BAWSCA's municipal advisor, added that the policy is not intended to say that a negotiated sale is better for BAWSCA than a competitive sale in a general sense. In addition to what Ms. Tang said, a negotiated sale is seen appropriate for the refunding because we are looking at a forward refunding where the rates are locked in well in advance of the bonds being delivered. This requires a lot of pre-sale work on the part of the underwriter to secure buyer commitments when the time comes to deliver the bonds.

The recommendation of negotiated sale is specific to the current refunding. Mr. Cox noted that there may be a time in the future that BAWSCA issues other debt in which a competitive sale may be the better choice.

Director Cormack appreciated the clarification that the method of sale is customized to the specific issuance. She noted that the wording on page 35 of the policy, last line of the 2nd paragraph under Section VI can imply that negotiated sale is the default method of sale in general, and should be re-worded to reflect Mr. Cox's explanation.

Additionally, she asked what information was learned from the RFP respondents about BAWSCA's ratings and ways to improve it.

Ms. Tang reported that RFP respondents provided positive feedback that were consistent with each other. They all saw a potential for BAWSCA to get an upgraded credit rating because of its consistent surcharge collection history in the past eight years, as well as the recent credit rating upgrade received by a few BAWSCA member agencies and by the SFPUC's Water Enterprise. While there will be challenges with S&P and Moody's rating evaluation and assignments, the team will make an effort to push for a credit rating upgrade.

Mr. Cox agreed with Ms. Tang and added that Goldman Sachs and the other RFP respondents indicated that BAWSCA's credit fundamentals are strong. Even if the rating agencies do not see it fit to upgrade BAWSCA's rating, the refunding will be viewed as a strong AA3/AA-, which will bode well for the marketing. He confirmed that any credit rating upgrade is not factored in the current savings estimates.

Since the BPC's action is to recommend Board adoption of the proposed document to establish a debt management policy at its July meeting, Director Kuta noted typographical clarifications on Sections I and IV.

Discussions ensued on contextual clarifications which staff will incorporate in a redline version for the Board in its July packet.

In response to Director Kuta's inquiry, Mr. Cox confirmed, and Ms. Sandkulla agreed, that the responsibility of forecasting debt services to ensure the revenues necessary to service the debt can be added to Section IV of the policy.

Mr. Cox also clarified that KNN, as BAWSCA's municipal advisor, made a recommendation of a negotiated sale for this transaction to staff. However, the method of sale would be, as always, an item that is ultimately approved by the Board when it comes time to approve the financing.

Legal Counsel, Allison Schutte added that BAWSCA is doing a lot of pre-work and going to the Board for approval before actual work is done; for example, approval of Goldman Sachs as an underwriter without approving the method of sale. This approach reduces the risk premium that would otherwise be folded into the cost of the bond issuance. In order to get the pre-work done and have a fully structured transaction, the team is recommending substantial steps down the road towards a negotiated sale, but the final determination will be approved by the Board and is expected to be in September 2021.

Director Kuta appreciates that the policy is written in a manner that anticipates any of the potential methods. But between the methods of negotiated sale, competitive sale and an alternative method, he wanted to ensure that the Board will be approving the method once it is recommended since the policy is to be applied to this refunding transaction as well as to future transactions. The policy, as written, is not clear.

Ms. Sandkulla suggested for staff to work with KNN to include a higher level of detail indicating that the Board retains the authority to make the final decision on the structure and issuance of any debt that the agency issues. While the CEO/General Manager bears the management responsibilities, the authority that the CEO/General Manager has to act, is derived from Board approval.

Lastly, Director Kuta referenced Section XII, where it states, "…proceeds not held by a 3rd party trustee or fiscal agent, the CEO/GM shall be responsible for approving expenditures in the same manner as the approval for the expenditures of other revenues", Director Kuta asked if there is a limit of authority for the CEO/GM in that section, or is there a thought for having the Board Chair "co-approve" those expenditures?

Mr. Cox explained that the Board would approve an indenture that specifically states what the proceeds can be authorized for. The authorization for individual expenditures is typically a form of requisition that would have to be signed by an authorized officer. The indenture also designates the specific officer or staff authorized to make requisitions for payments.

Director Mendall referenced the $13M in the Stabilization Fund that BAWSCA had to borrow for the first issuance of the bonds to allay investor concerns on the potential difficulties BAWSCA may have in repayment. Having an extra $13M in debt for the next twenty plus years has a significant cost. He is hoping that, in addition to the effort to push for a better credit rating, BAWSCA can push for reducing the extra $13M in debt. He believes BAWSCA's track record of good payment and reduction in annual payments by $2M can reduce the $13M proportionately.

Mr. Cox explained that the plan is to have the same stabilization fund requirement which is half of maximum annual debt service. There are 2 reasons for the requirement: the 2013B bond series is not being refunded and the refunding bonds will be on parity with the Series B bonds. To be on parity requires that BAWSCA follow the existing stabilization fund requirement. Secondly, reserve funds and/or stabilization funds are common and BAWSCA's stabilization fund is a credit factor which helps offset the fact that BAWSCA does not set the surcharges to produce debt service coverage. The lack of a stabilization fund could negatively impact the rating, or it could impact investors' view of the credit; therefore, impacting the ultimate costs of issuing the refunding bonds in terms of the overall borrowing costs.

The $13M would go down as a result of refunding because it is formulaic. However, because of the existing indenture, the only option available to reduce the stabilization fund requirement that represents half of maximum annual debt service is to fully refund the series B bond. Because the series B bonds were structured without an optional call, like that of series A bonds, the cost of refunding the series B bonds to reduce the stabilization fund may be equal to, or absorb much of the savings from removing or reducing the stabilization fund.

Ms. Sandkulla suggested further analysis by the team to obtain information that can be reported back to the BPC in August.

Director Mendall accepted that recommendation and stated that he will rely on the team's knowledge and expertise with the expectation of making every effort possible. He thanked the team for its analysis of the shortened maturity. He agrees with Director Cormack on foregoing the $1M in net present value savings from the shortened maturity given its complexity. He supports maintaining the current maturity and having the savings spread-out over time.

With no further questions or comments from members of the Committee, and no comments from members of the public, the Chair asked for a motion, with Part I of the recommendation reflecting the clarifications discussed by the Committee.

Director Cormack made a motion, seconded by Director Wood, that the Committee recommend Board approval of the following additional actions needed to continue proceeding with BAWCA's potential bond refunding:

1. **With the edits discussed by the Committee, establish a new Debt Management Policy;**
2. **Authorize the CEO/General to appoint Goldman Sachs as BAWSCA's Managing Underwriter and JP Morgan as Co-Manager;**
3. **Authorize the CEO/General manager to negotiate and execute a contract with Orrick, subject to legal counsel's final review, to provide the contingent portion of the bond counsel services and disclosure counsel services, for a not-to exceed amount of $265,000 for a tax-exempt forward refunding or a not-to-exceed amount of $295,000 based on a tax-exempt forward plus an advance refunding; and**
4. **Authorize the CEO/General Manager to negotiate and execute a contract with KNN public Finance, subject to legal counsel's review, to provide the contingent portion of the municipal advisory services, for a not-to exceed amount of $115,000.**

The motion carried unanimously by roll call vote.

B. Approval of Proposed Modifications to the Job Description and Top Step Salary for the Position of Assistant to the CEO/General Manager: Ms. Sandkulla reported that the position's duties and responsibilities have evolved significantly over the past several years. Like the rest of the organization, this position and its responsibilities have grown with the magnitude of work BAWSCA does and the work involved in managing a Board the size of BAWSCA's.

Ms. Sandkulla, as CEO/General Manager, continues to have the role of Board Secretary, but the Assistant to the CEO/General Manager acts as the Deputy Secretary providing significant assistance to the CEO and the Board. This position puts together, in collaboration with staff, Board and Committee meeting agendas and is responsible for its distribution according to Brown Act requirements. The position provides Board Member administrative support including management of term appointments, administration and completion of oaths of office, and acts as filing officer for FPPC requirements. The position also completes special technical projects at the direct request of the CEO. For example, BAWSCA's 15-year anniversary video and updates to the website as a representation of the agency.

These tasks require a higher level of analytical skills and ability to work independently with minimal oversight, and are assigned to the position because of its connection to the CEO/General Manager. The level of support and skills associated with the assigned tasks and the independent discretion exercised are not included in the current job description for the position.

Consistent with BAWSCA's practices as a public agency as well as with its predecessor agency, BAWUA, an independent desk audit and salary survey was conducted. This process is done with the goal of maintaining market competitiveness and to ensure that the job description matches the skills and qualifications needed for that position, independent of the person in that position. This process also provides a competitive and accurate representation of the skills and qualifications required should there be a future recruitment for this position.

The desk audit compared duties and responsibilities to similar positions at BAWSCA's standard comparator agencies; ACWD, Contra Costa Water District, EBMUD, Hayward, Palo Alto, and Valley Water. As typical, there was no single position among the comparator agencies that perfectly fits BAWSCA's position, but the audit evaluated different versions of comparable positions to put together the job description being recommended. The proposed job description includes modifications that match the required job skills and knowledge. A salary survey was used to review salary ranges for comparable positions, consistent with the agency's past practices to maintain market competitiveness.

The audit results recommend changes to both the position description and top-step salary. The results indicate the need for modification to reflect actual work performed by, and duties and responsibilities of, the current assistant to the CEO. The results also recommend an increase to the top step salary range for the position by 17%.

The modification to the top step salary has no impact on the approved FY 2021-22 Operating Budget. Any salary adjustments as a result of the Committee's action will stay within the allowance for merit increases that the Board approved in May.

Director Wood expressed her support for the recommendation.

There were no questions or comments from members of the committee or members of the public.

Director Wood made a motion, seconded by Director Chambers, that the Committee recommend the Board approval or the recommended modifications to the position description and an increase in the top-step salary by 17% for the position of Assistant to the CEO/General Manager.

The motion passed unanimously by roll call vote.

6. <u>CEO Reports:</u>

A. <u>Water Supply Conditions</u>: Ms. Sandkulla reported that Hetch Hetchy's current storage level is 91% which is slightly higher than normal as a result of the early snowmelt. She noted that the water bank storage level is at 55% of normal. San Francisco is capturing as much water as it can at this time and debiting the water bank to provide required water to the irrigation districts while maintaining a "water first" operations. This approach provides the districts their prior rights for instream flows which is a normal course of action typical in the beginning of a drought.

Overall total system storage is about 10% less than normal. Ms. Sandkulla noted that this is not as bad as other conditions across the state. She presented a slide of California Reservoir conditions showing the current levels of other reservoirs being well below historical averages as a result of the dry and warm conditions.

Tuolumne River water available to San Francisco is at 49 TAF in water year 2021 which is well below the 554 TAF needed to achieve full storage.

The SFPUC has asked its wholesale water customers to maintain their summertime use to the pre-pandemic 2019 water use levels. This essentially means continuing water purchases to be below the pre-drought levels of 2013. For water customers, the target is to focus on reducing outdoor water use that are discretionary, and to encourage wise water use outdoors during the summer period.

BAWSCA is prepared to provide support to its member agencies with increased conservation program activities and public outreach. Discussions with member agencies on this matter has already begun through the Water Management Representatives.

To address the drought, BAWSCA is referring to its 2017 Drought Report to look back on what can be anticipated based on experiences from the last drought, and working with the SFPUC and Valley Water in discussing water supply and developing regional messaging for water customers.

During the meeting, Ms. Sandkulla received notification from BAWSCA staff attending the Valley Water Board meeting, that the Board unanimously approved a resolution declaring water shortage emergency. The resolution calls for water use restrictions and urges the Santa Clara County to proclaim a drought emergency. Ms. Sandkulla noted that the action by the Valley Water Board clearly indicates a very critical situation in Santa Clara County and BAWSCA's coordination with them on a regional communication strategy is important.

BAWSCA is currently relying on ACWA's Save Our Water campaign to obtain drought messaging quickly by using existing graphics to speak to water customers. BAWSCA's website will be updated to focus on communicating with customers about the drought, and providing information on BAWSCA member agencies' water conservation programs.

Ms. Sandkulla believes that the focus of the messaging will be on the discretionary outdoor water use and the importance of using water wisely. She emphasized that for the regional water system, the water use reduction during the drought results to water remaining at Hetch Hetchy for our use in the next year.

B. <u>FERC/Bay-Delta Plan Update:</u> Ms. Sandkulla reported that BAWSCA filed to intervene in the coordinated legal actions against the State Board related to the adoption of the Bay Delta Plan. On June 1st BAWSCA intervened in the actions by three parties who want the State Board to provide greater flows on the Tuolumne River than the 40% unimpaired flows in the adopted Bay Delta Plan. BAWSCA and its member agencies continue to support the Bay Delta Plan objectives, and are committed to working with other stakeholders to protect water quality in the Bay Delta for humans, fish, and other wildlife. BAWSCA is continuing to push for the State Board to perform a technical and environmental evaluation of the TRVA as an alternative to the Bay-Delta Plan.

C. <u>CEO/General Manager Evaluation Procedures</u>. Board Chair Larsson reported that the process for the CEO/General Manager evaluation will begin shortly after the July Board Meeting. The CEO's Summary of Annual Activities report along with a web-based evaluation form will be emailed to board members following the July 15th Board meeting.

Director Larsson walked through the online evaluation form that he hopes will simplify the overall process for board members as well as the Chair, and provide the writing space for board members to document their comments. Results of the responses will be presented at the September Board meeting.

In parallel, Director Larsson noted that the Board can begin to consider any changes to the CEO evaluation and objectives for FY 2021-22. Changes can include modifications to the language to provide more clarity, and addition of items or benchmarks for the CEO/General Manager. The BPC can discuss them at the August meeting for the Board's adoption at its September meeting.

Committee members provided comments and questions on the report items.

Director Wood requested for a 1-page document that can be used as reference about drought conditions and available conservation efforts, as well as clarification on the customers' level of water use.

Director Jordan echoed the request for a better understanding of the expectations from the SFPUC and Valley Water. He inquired about BAWSCA's interest in discussing Valley Water's request of the Santa Clara Board of Supervisors to declare an emergency and establish provisions for the county, which would include non-Valley Water retailers.

On the CEO Evaluation form, Director Kuta encouraged consideration of removing the option to exclude a reviewer's name and allow the CEO/General Manager the ability to identify the source of the comments on her performance.

Director Chambers noted that 2019 was a wet year and the switch from 2013 to 2019 as the baseline for water use reduction could have an impact in the way people respond.

Director Pierce encouraged BAWSCA to work closely with the WMRs to develop a coordinated message that would be helpful for water customers to achieve the goal of staying below the 2019 water use levels.

Director Cormack noted that the "Save Our Water" graphic with multiple washing machines and dishwashers on the lawn clearly speaks to how much water it takes to water the lawn and is a very effective visual.

There were no additional comments and questions from members of the committee or members of the public.

7. **Closed Session:** The Committee adjourned to Closed Session at 3:05pm.

8. **Reconvene to Open Session:** The Committee reconvened from Closed Session at 3:24 pm. Ms. Schutte reported that no action was taken during Closed Session.

9. **Comments by Committee Members:** Director Jordan thanked Director Kuta for his years of service on the BAWSCA Board.

   Director Kuta expressed his appreciation for members of the Board and BAWSCA Staff for the ongoing efforts in support of the agency's mission and in the interest of the water customers.

10. **Adjournment**: The meeting was adjourned at 3:28 pm. The next meeting is August 11, 2021 with the anticipated virtual format.

Respectfully submitted,

Nicole Sandkulla

Nicole Sandkulla, CEO/General Manager

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Attachments: 1) Attendance Roster

Bay Area Water Supply and Conservation Agency

Board Policy Committee Meeting
Attendance Roster

Agency	Director	Jun. 9, 2021	Apr. 14, 2021	Feb. 10 2021	Dec. 9 2020	Oct. 14, 2020	Aug. 12, 2020
Stanford	Zigterman, Tom	✓	✓	✓	✓	✓	✓
Daly City	Manalo, Juslyn		✓	✓	n/a	n/a	n/a
Westborough	Chambers, Tom	✓	✓	✓	✓	✓	✓
Palo Alto	Cormack, Alison	✓	✓	✓		✓	✓
Purissima	Jordan, Steve	✓	✓	✓	✓	✓	✓
Cal Water	Kuta, Rob	✓	✓	✓	✓	✓	✓
Sunnyvale	Larsson, Gustav	✓	✓	✓	✓	✓	✓
Hayward	Mendall, Al	✓	✓	✓	✓	✓	✓
Redwood City	Pierce, Barbara	✓	✓	✓	✓	✓	✓
Brisbane	Wood, Sepi	✓	✓	✓	✓	✓	✓

✓: present

☎ : Teleconference

June 9, 2021 Meeting Attendance (*Via Zoom in compliance with Gov. Order #29-20 due to COVID-19***)**

BAWSCA Staff:

Nicole Sandkulla	CEO/General Manager
Tom Francis	Water Resources Manager
Negin Ashoori	Water Resources Engineer
Kyle Ramey	Water Resources Specialist
Christina Tang	Finance Manager
Lourdes Enriquez	Assistant to the CEO/General Manager
Deborah Grimes	Office Manager
Allison Schutte	Legal Counsel, Hanson Bridgett, LLP
Mina Turan	Legal Counsel, Hanson Bridgett, LLP
Bud Wendell	Strategic Communications
Dan Cox	KNN

Public Attendees:

Paul Sethy	ACWD
John Weed	ACWD
Cheryl Munoz	Hayward
Alison Kastama	SFPUC
Blair Beekman	Self