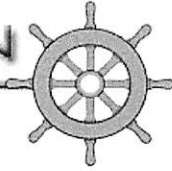


**GARY PAXTON**

**INDUSTRIAL PARK**



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Friday, October 9th, 2015

**MEMORANDUM**

To: Mark Gorman – CBS Administrator

From: Garry White, Director

Subject: Alaska Bulk Water (ABWI) Bulk Water Agreement Amendment Request

**Introduction**

Alaska Bulk Water Inc. (ABWI), formerly True Alaska Bottling Company, is requesting to have its “Purchase Agreement for Raw Water in Bulk for Export” amended for the sixth time. This Amendment will contain the following substantial changes:

- Section 3.1 of the agreement is amended for an additional 36 month extension for ABWI to take delivery and export water.
- Section 3.1 of the agreement is amended to decrease ABWI’s guaranteed water allocation from 27,773 acre-feet to 27,007 acre-feet.
  - Reduction is to allow for increased potential water allocations for proposed bottling operations.

This Amendment contains the following conditions and provisions:

- 2,228 Acre-feet of the remaining CBS Bulk Water allocation will be reserved by the CBS for use in small water operations. This water allocation will only be allowed to be exported from Sitka in package sizes of a 20’ container or less.
  - ABWI will have an opportunity to export water in bulk if water is not allocated contractually to another entity.
- ABWI will pay the CBS a \$1,000,000 dollar non-refundable payment, no later than 12/08/2015 to be applied towards export of water payments within the 36 month extension, but if no export occurs, it shall be retained by the CBS unencumbered. CBS will retain any interest earn from the non-refundable payment.
- The non-refundable payment of \$1 million made by ABWI and the non-refundable payments of \$1,350,000 previously made by ABWI to Sitka will be

credits toward export of water payments within the three-year term of this revised Agreement.

- ABWI will provide to the CBS, at no cost, bathymetric survey completed of the tidelands of the GPIIP.

The GPIIP Board of Directors met on September 24<sup>th</sup> and approved the following motion:

**MOTION: Jones/Wagner** moved to request that the Assembly approve amendment number 6 to the bulk water purchase agreement with Alaska Bulk Water, Inc. (ABWI) to extend the agreement by 3-years based on the following criteria:

1. That the agreement is extended for a term of 3-years to December 8, 2018; and
2. That ABWI shall make a non-refundable payment of \$1,000,000 dollars to the City and Borough of Sitka (CBS) no later than December 8, 2015; and
3. That the \$1,000,000 dollars paid to the CBS shall be held as pre-purchased water credits and shall be retained by the City, unencumbered, if no water is exported during the 36-months of this extension; and
4. That the \$1,350,000 dollars paid to the City under previous agreements be carried forward as pre-purchased water credits for the duration of this extension; and
5. That ABWI provide, at no cost to the CBS, copies of the bathymetric studies done for the tidelands of the Gary Paxton Industrial Park; and
6. ABWI agrees that this Amendment No. 6 to the bulk water purchase agreement include a reduction in the guaranteed amount of water from 27,773 acre-feet per year to 27,007 acre-feet per year; and
7. CBS agrees that if any of the remaining 2,228 acre-feet of the CBS bulk water allocation held aside for proposed water bottling operations is not allocated contractually to another entity, ABWI will have the opportunity to export any or all of this water in bulk.

**ACTION:** Motion passed 5/0 on a roll call vote:

Yeas: Dan Jones, Charles Horan, Scott Wagner, Ptarmica McConnell, Grant Miller

Nays: none

### **Background**

The CBS obtained water permits to export raw water in bulk from the Blue Lake watershed when they acquired the former mill property at the Gary Paxton Industrial Park.

State of Alaska permits LAS 19669 and ADL 43826 allow for the export of 29,235 Acre-feet of water for bulk export. One Acre-foot equals 325,851 US gallons of water. Therefore the CBS has roughly 9.5 billion gallons (BG) of water available for export each year.

The CBS has entered into multiple bulk water export agreements in the past with various entities. Currently the CBS has one active bulk water agreement with ABWI.

### **History of TAB bulk water agreement**

On 12/07/06 the CBS entered into a water purchase agreement with ABWI for a bulk water allocation. The agreement has been amended 5 separate times since its execution. Substantial changes to the agreement are the following:

#### **Section 3**

Section 3 of the agreement is related to water allocations and performance dates to export water. The initial bulk water export agreement required ABWI to export a minimum amount of water within a 24 month period starting 12/07/2006. ABWI failed to export the required water by 12/07/2008. Since that time period ABWI has negotiated with the CBS, 4 separate amendments to Section 3.1 to allow for longer terms to export the required amount of water.

- 2008 – CBS allowed ABWI 12 additional months to export water. ABWI paid the CBS \$100,000 for the extension.
- 2009 – CBS allowed ABWI another 12 months to export water. ABWI paid the CBS \$100,000 for the extension.
- 2010 – CBS allowed ABWI 24 additional months to export water. ABWI paid the CBS \$150,000 for the extension.
- 2012 – CBS allowed ABWI 36 additional months to export water and increased its water allocation from 8,960 acre-feet to 27,773 acre-feet. ABWI paid the CBS \$1,000,000 for the extension and increased water allocation amount

#### **Section 10**

Section 10 of the agreement is related to delivery, loading, and transportation of water. The initial bulk water agreement was vague in detailing where structures would be located and provisions for construction and removal of infrastructure. Two separate amendments have adjusted Section 10 for clarity.

- 2009 – CBS added language to section 10.1 which gave the CBS Assembly authority to approve loading facilities and adjust minor contractual language.
- 2015 – Amendment #5, changed contractual language to reflect normal CBS construction procedures. Additional terms were added that defined ABWI's infrastructure attachment to the CBS owned bulk water pipeline and removal of infrastructure in the event the water purchase agreement was terminated.

## **Basic Terms of TAB's Existing Bulk Water Agreement**

(Note: please see amendments 1-5 for changes to original agreement)

- A minimum amount of water must be exported within a set time period or Stage specified in Section 3.2 of the contract.
  - 50 million US gallons of water must be exported within the time period specified in Section 3.1 of the contract.
- The agreement defines Stages of water volume export to retain water allocation amounts. (Section 3.2)
  - ABWI gains more allocations by exporting more water and can lose allocation amounts by failing to export specified amounts.
- Municipal water uses retain first right and priority to the water. (Section 4a)
- The agreement allows for hydroelectric dam maintenance. (Section 4c)
- The price for water has been set at \$3,258.51/Acre-feet or \$0.01/US gallon. (Section 7.1)
- Defines ballast water discharges and water loading.
- Recently the CBS has been requiring ABWI to pay a non-refundable payment to be applied towards water export payments owed to Sitka within the contract time frame.

## **Additional Information**

- ABWI conducted a bathymetric survey of the GPIIP tidelands in the fall of 2014.
- ABWI obtained a tidelands lease from the CBS in 2014 for 18 acres directly seaward of the CBS bulk water pipeline for a lease amount of \$5,292 annually.
- ABWI installed two mooring buoy in its tideland lease in June 2015.
- ABWI constructed a value at the end of the CBS bulk water pipeline and assembled a floating pipeline system to the mooring buoy in June 2015.
- The original water purchase agreement and all 5 amendments have reviewed by outside legal counsel. Multiple minor contractual language changes have been suggested and a revised purchase agreement has been drafted.

## **Other Bulk Water Export Proposals**

The GPIIP Director frequently receives inquiries regarding Sitka's Bulk Water asset. Many calls are speculative in nature with very few formal proposals being submitted for the GPIIP Board and CBS Assembly consideration.

On October 1st, 2015, a representative of the Amel Group traveled to Sitka to learn more about the CBS bulk water venture and submit a letter of interest to purchase water from Sitka.

### **Attachments**

- ABWI's letter's to the CBS dated 8/13/2015 & 9/23/2015
- Revised purchase agreement for raw water in bulk between ABWI and CBS.
- ABWI's initial agreement to export bulk water
- All five amendments to the original bulk water agreement.
- September 24<sup>th</sup> GPIIP Board minutes

### **Action**

The GPIIP Board requests that the CBS Assembly approve the recommendations made by the GPIIP Board for an amendment to ABWI's "Purchase Agreement for Raw Water in Bulk for Export".