

POSSIBLE MOTION

I MOVE TO approve a Purchase Agreement for Raw Water in Bulk for Export between the City and Borough of Sitka and Arctic Blue Waters Alaska Inc. as recommended by the Gary Paxton Industrial Park Board and authorize the Municipal Administrator to execute the document.


Note – this item was postponed at the February 23 meeting.



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Tuesday, March 2, 2021

MEMORANDUM

To: John Leach, CBS Administrator 
From: Garry White, Director
Subject: Arctic Blue Waters Alaska Inc. Water Purchase Agreement

Introduction

Arctic Blue Waters (Alaska) Inc. (Arctic) is requesting to establish a water purchase agreement with the CBS to export raw water in bulk.

The Gary Paxton Industrial Park (GPIP) Board met on October 29th, 2020 and recommended that the Assembly approve the water purchase agreement between the CBS and Arctic Blue as presented.

The CBS Assembly met on February 23rd to discuss the water purchase agreement. The Assembly had some concerns about the water purchase agreement including; the length of the water contract and the effects of climate change and the ability for the CBS to have sufficient water to meet contractual obligations. Additionally, the Assembly had questions regarding the CBS's water export permits and the ability of the CBS to keep the permits in good standing with the State of Alaska. The Assembly asked that the contract be brought back to the GPIP Board for additional review and discussion.

The GPIP Board met on March 1st and discussed the Assembly's concerns and recommended approval of the water purchase as previously present with the addition of an additional performance bench mark requiring Arctic to provide design and construction documents within 48 months of execution of the agreement.

The GPIP Board discussed the Assembly's concerns with the following justifications to recommend the water purchase agreement:

1. 20 year agreement term length. (more detail below)
 - The inclusions of performance benchmarks in the agreement require Arctic to perform or the agreement can be terminated in 48 months or 60 months.
 - Section 10.2 – Requires Arctic to submit design and construction documents within 48 months.
 - Section 3.1 – Requires Arctic to export at least 50 million gallons within 60 months.

- Additionally, the stages 2-5 in Section 3.2 give the CBS Administrator sole discretion to allocate water volumes. This allows the CBS to enter into multiple water purchase agreements.
2. Effects of Climate Change on water levels. (more detail below)
 - Sections 4 and 6 of the agreement contain language to protect the CBS for low water years, natural disasters, and turbidity issues.
 - The permits and water availability are tied to the “Rule Curve”, which are related to historic Blue Lake water levels.
 3. CBS Water permits
 - Alaska Statute 46.15.140 (attached) outlines the ability of the State of revoke or amend water certificates.
 - The CBS has demonstrated beneficial use with their water export permits.
 - The CBS has petitioned the State for dual use of the water permits for hydroelectric and public industrial water uses, which further demonstrates beneficial uses.

Bulk Water Export Background

The City and Borough of Sitka (CBS) has permits to export 29,235 Acre-feet (~9.5 billion gallons) of raw water annually. *(This volume represents just under 9% of the average annual rain fall into the Blue Lake Watershed)*

The CBS has entered into multiple water purchase agreements with multiple entities for bulk export since 1996.

The CBS currently has one raw water export agreements:

The CBS entered into a 20 year water purchase agreement with Eckert Fine Beverages in the October of 2017 for 100 million gallons of water annually. This agreement was renewed for another 3 years in the fall of 2020. Eckert is required to export at least 75 thousand gallons of water within 36 months from the execution of the agreement or the agreement terminates. The price of water is set at \$0.01/gallon. The point of delivery for the water is from the Blue Lake penstock. Eckert is required to make a non-refundable payment of \$1,250 annual to the CBS to keep the agreement in good standing.

<u>Permit</u>	<u>Acre Feet</u>	<u>Gallons</u>
LAS 19669	14,000	4,561,914,000
<u>ADL 43826</u>	<u>15,235</u>	<u>4,964,339,985</u>
Total Available	29,235	9,526,253,985
<u>Eckert Agreement</u>	<u>0.31</u>	<u>100,000,000</u>
<u>Phase 1 Arctic Proposal</u>	<u>6,138</u>	<u>2,000,073,438</u>

<u>Phase 2 Arctic Proposal</u>	<u>20,869</u>	<u>6,800,257,957</u>
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Available for water bottling Contracts	2,227.69	725,895,0142
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Note: The GPIIP Director recommends the CBS retain between 700-750 million gallons of annual water allocation to accommodate a potential future bottling operation and other low volume uses.

Water Purchase Agreement

The attached Purchase Agreement for Raw Water in Bulk for Export has been developed over many years. The agreement has been reviewed and modified by multiple CBS Attorneys and outside council to ensure that the CBS water assets are protected and to allow private entities the ability to market and sell Sitka's water. Below is a brief description of some of the more material sections of the contract.

Terms (Section 1)

The term of the contract is 20 years with four 5-year extensions with consent of both parties.

Arctic is asking for a 20 year term to allow it to have an opportunity to receive a return on the major capital investment to complete the water export venture. Arctic will need to complete the necessary infrastructure it will need to load water to a ship from the Blue Lake Power House after bay, acquire ships to transporting the water, and to off-load and storage the water at final destination.

The agreement includes performance bench marks at 48 months and 60 months after contract execution that allow the CBS to terminate the contract for non-performance.

- 48 months – submittal of design and construction documents for loading of water (Section 10.2)
- 60 month – requirement for Arctic to export 50 million gallons. (Section 3.1)

Water Volume and nonrefundable fees

Arctic is asking for an initial volume of water to market and then an increased amount of water if/when it enters into a guaranteed third part contract.

Phase 1

- 6,138 Acre-feet (~2 billion gallons) annually (Section 1.1)
 - Arctic must pay a non-refundable fee of \$10,000 to execute agreement within 15 days of Sitka Administrator signature.
 - Arctic must purchase and export a total of 50 million gallons of water within a 60-month period or Sitka can terminate agreement. (Section 3.1)

Phase 2

- Arctic has the first right of refusal acquire an additional 20,869 Acre-feet (~6.8 billion gallons) annually. (Section 1.1)

- Arctic must pay a \$100,000 non-refundable fee to acquire additional rights.
- Arctic must pay an additional \$250,000 non-refundable fee at intervals of \$50,000 per year to be prorated based on when first right of refusal is executed.
- Arctic has 60 months to execute its first right of refusal from execution of the agreement. (Section 3.1)

Post 60 months (Section 3.2)

After 60 months, Arctic no longer has a guaranteed volume of water. The agreement defines Stages of water volume export to retain water allocation amounts. Arctic gains more allocations by exporting more water and can lose allocation amounts by failing to export specified amounts.

Example: If Arctic exports 150 million gallons of water in the 12 month period following 60 months from contract execution. Arctic's available water allocation would be 4,000 acre feet or ~1.3 billion gallons of water (Stage 4).

The CBS is free to enter into multiple water purchase agreements at any time during the contract, but has much more latitude after 60 months. Per the contract water allocations after the 60 month period are at the Administrator's sole discretion.

Water Export Limitations (Section 3.5)

Arctic is only allowed to remove 33.6 million gallons of water per day from the CBS Power House After Bay.

CBS Rights and Protections (Section 4)

Different sections of the agreement contains language to ensure that the CBS water asset is protected for municipal uses and other environmental factors.

- Ensures municipal drinking and hydroelectric water uses retain first right and priority to the water. (Section 4.1 (a))
- Allows for hydroelectric dam and water system maintenance. (Section 4.1 (c))
- Ensure water levels do not drop below critical levels to support the local biological environment. (Sections 4.1 (b) (e) (f)) *(These sections would protect the CBS if climate change affects historic rainfall amounts.)*
- Protection to the CBS against water quality issues due to routine hydroelectric alternations and environmental events. (Section 4.1 (f), Section 6.2 & 6.3)
- Arctic is responsible to follow all regulations in regards to ballast water discharge. (Section 11)

Water Pricing (Section 7)

- The price for water from the CBS power house after bay will be \$1,629.26/Acre-feet or \$0.005/US gallon.
- Arctic will receive 50,000 gallons of water free of charge for wash-down, washout, or other non-export applications per each loading event. After the first 50,000 gallons per loading event, the price is \$.001/gallon.
- After 60 month, the price will be adjusted by a CPI Adjustment, not to exceed 3%. (Please see attached sheet showing price adjustments over time.)

- Arctic is allocated water credits for non-refundable fees paid during the 60 month period.

Point of Water Delivery (Section 10.1)

The point of delivery for water delivered by Sitka will be water in the Blue Lake Power House After Bay. The after bay is the preferred point of delivery for water as the CBS has already produce electricity from the water.

Water Loading and Transportation (Section 10)

The CBS currently **cannot** deliver raw water in bulk from Blue Lake. Investigations into the CBS raw water pipeline post the Blue Lake Expansion project has determined that the system no longer operates due to new water pressures on the system.

- Arctic is solely responsible for designing and construction of any infrastructure it deems necessary to load and transport water for export. Arctic is required to acquire bonding to perform work.
 - Arctic has 48 months from the execution of the agreement to submit documentation for loading and transportation or the agreement can be terminated. Arctic has stated that it expects it will take 8-12 months to construct the water loading infrastructure.
- Arctic is solely responsible for arranging transportation of water for export at its own expense, including installing a water based water-loading station.
 - Arctic has stated that it wishes to establish a tideland-loading facility similar to the one installed in the CBS tidelands by Alaska Bulk Water Inc.
 - Recommended that tideland-loading system be addressed via a separate permit or amendment to agreement at a later date.

Action

- Assembly approval of a water purchase agreement between the CBS and Arctic Blue.