

JOHN GLESS
PRESIDENT

DAVID AUSTIN
VICE PRESIDENT

DEBRA BURNS
SECRETARY

ERIC JOHNSON
TREASURER

THE GAGE CANAL COMPANY

7452 DUFFERIN AVENUE
RIVERSIDE, CALIFORNIA 92504
951 780-1333
FAX 951 780-1973

RECEIVED

MAY 18 2019

May 14, 2019

City of Riverside
City Clerk's Office

Honorable Mayor and Members of the City Council
CITY OF RIVERSIDE
3900 Main Street
Riverside, CA 92522

Board of Public Utilities
CITY OF RIVERSIDE
3901 Orange Street
Riverside, CA 92501

Re: Riverside Ad-Hoc Agricultural Water Rate Task Force

Honorable Mayor Bailey, Members of the City Council
and Members of the Board of Public Utilities:

The Gage Canal Company ("Gage") Board of Directors ("Board") is supportive of the efforts of the City of Riverside ("City") and its charge to the Ad-Hoc Agricultural Water Rates Task Force ("Task Force") to evaluate and recommend appropriate changes to Riverside Public Utilities' ("RPU") agricultural water rates, to the extent permitted under the *Stipulation for Judgment in Eminent Domain and Final Order of Condemnation* ("Stipulation"), including the Agreement for Operation of the Gage Canal Facilities ("Operating Agreement"), Prop R, Measure C and the goals of GrowRIVERSIDE. The Board is pleased with the WA-Hybrid recommendation and supportive of its adoption by the City; however the Board remains concerned that sufficient agricultural water remain available to Gage shareholders under the *Stipulation* and Operating Agreement.

It is requested that this letter be made a part of the public record at the proceedings at which it is presented. Director Carl Pongs is authorized to present this letter and to make public comments consistent with the same.

Position Summary:

The City established the Task Force in the Spring of 2018 to study the City's Agricultural Water Rates (specifically WA-3 and WA-9), and to recommend changes that would promote a fair and equitable distribution and pricing of water for local agriculture, providing that the recommendations are consistent with Prop R, Measure C and the goals of GrowRIVERSIDE.

Because Gage water is available only to Gage's shareholders and the holders of contracts with Gage, and that it be first used for agricultural purposes, the Gage Board is concerned that the Task Force is considering the use of Gage water in a manner that is not consistent with the spirit and language of the *Stipulation*, the Operating Agreement, Prop R, Measure C and the goals of GrowRIVERSIDE, and/or that could negatively impact the agricultural water available to Gage's shareholders.

Gage / City Relationship:

Gage was established in the mid-1880s to produce water from natural springs in the Santa Ana River channel near present day Tippecanoe Avenue in the City of San Bernardino ("San Bernardino"), and deliver it for the irrigation of citrus groves in Riverside and Arlington Heights. By the early 1960s, fears that San Bernardino was considering condemning Gage prompted the City to initiate its own condemnation proceedings in order to ensure that Gage water would continue to be available to the residents of the City. The City condemnation action was not a hostile proceeding. In fact, the City and the Gage negotiated and agreed to the specific terms, conditions and provisions that govern the relationship between the City and Gage, to the present day.

Those terms, conditions and provisions are set forth in the *Stipulation* that was executed by the City and Gage on June 9, 1965, and in the concurrently executed Operating Agreement, that was attached to the *Stipulation* as Exhibit "F." The Operating Agreement has been amended seven times, most recently in 2010 to exclude portions of the canal for which Gage previously had operational responsibility.

The result of the condemnation was that the City now owns all but a few of the assets previously held by Gage, including water rights, the canal, easements, canal right-of-way, and most production, storage and distribution facilities. Gage continues to survive as an independent legal entity, and the City contracts with Gage (by means of the Operating Agreement) to operate and maintain the City's assets for the benefit of the City and the remaining Gage shareholders. (Operating Agreement, Section 4, etc.) The City is the largest single shareholder in Gage (at 8,569 shares out of 14,055 shares), having acquired certain shares outright at the time of the condemnation, and having subsequently contracted to acquire additional shares in exchange for a former shareholder's entitlement to receive water deliveries pursuant to Exhibit "D-1" to the *Stipulation*.

Right to Receive Gage Water:

Under the Operating Agreement, the expressly intended beneficiaries of Gage water are Gage Canal Company shareholders and third parties who hold contractual rights to receive Gage water.

"... in particular for the benefit of the shareholders and contractual obligees who possess water delivery and other contractual rights which the City ... assumed and ... recognized." (Agreement for Operation of the Gage Canal Facilities, Section 3).

The express purpose of the Operating Agreement was to assure the delivery of Gage water to Gage shareholders and third parties contractually and lawfully entitled to receive irrigation water within the Gage service area, and to make “excess flowage capacity” available to the City which, under the Operating Agreement, Prop R and Measure C, is to be given first priority for agricultural purposes.

“[I]t is the purpose of this agreement to assure that all persons lawfully entitled to receive water pursuant to the ownership of shares in The Gage Canal Company on the date of the Judgment will be protected in their respective rights to have and receive for use upon their lands irrigation water delivered in the manner to which they have become accustomed, for so long as the water is put to beneficial use on lands within the [Gage Canal Company] Service Area.” (Operating Agreement, Section 3.)

though, the City has “... the right to utilize any excess Canal flowage capacity that is not required to meet the delivery obligations to shareholders and contractual obligees and in accordance with existing carrying rights agreements.” (Operating Agreement, Section 12.)

The Gage Canal Company shares the City’s responsibility for delivering Gage water to Gage shareholders and contractual obligees. (Operating Agreement, Section 17.)

Because these provisions are set forth in the *Stipulation* and its exhibits, they can only be modified by a written amendment that is agreed to by the City and Gage.

Riverside’s Agricultural Water.

The City gets its water supply from the Bunker Hill Basin, Riverside North Basin, the Riverside Canal and the Olivewood and DeBerry wellfields. The original Gage Canal entitlement from the Bunker Hill and Riverside North Basins was just shy of thirty thousand (30,000) acre feet, which was adjusted downward by roughly four and one-half percent (4½%) in the 1969 Judgment.

According to RPU’s 2015 Urban Water Management Plan, the City’s water supply from the Bunker Hill Basin approximates fifty-five thousand (55,000) acre feet, of which roughly one-half (½) of that supply is attributable to the condemned Gage water. As the holder of approximately sixty-one percent (61%) of the Gage shares, the City is entitled to receive that percentage of the current Gage deliveries. That leaves the Gage shareholders with roughly nine thousand five hundred (9,500) acre feet of water, though it is unclear whether this number reflects the adjustments made by the 1969 Judgment, the modified growing season and the covering of the canal.

The *Stipulation* and Operating Agreement provide for water to be delivered to Gage shareholders for agricultural purposes; and, Prop R and Measure C, prioritize agriculture as the highest priority for Gage water, including the water delivered to the City.

RPU facilitates the delivery of water for domestic, industrial, commercial, recycled and agricultural uses both within and outside of the City of Riverside. The Gage Board believes that the first priority for the water delivered to the City pursuant to its shares in Gage, is that it be used by the City, including the Gage water delivered by RPU to its customers, for agricultural purposes.

The Gage Board recognizes that water produced from the City's Gage facilities, including the headworks, may be exchanged for a greater quantity of water produced by RPU from other City production facilities, in order to maximize the availability of higher quality potable water to the Riverside residents, while maintaining the delivery of irrigation water to Gage shareholders and contract holders. Gage does not believe that the Exchange Agreement can or should be used as a shield for the use of the City's Gage water, for other than agricultural purposes, when agricultural needs exist.

The Gage Board is pleased that the Task Force's AG-Hybrid Rate proposal appears to address what has been long perceived as an over-commitment of agricultural water deliveries for ornamental landscaping rather than true agricultural and nurseries.

Conclusion:

Gage is supportive of the Task Force's AG-Hybrid recommendation to the City, and encourages the City to proceed with the adoption process, giving due consideration to the rights and interests of Gage shareholders and Riverside agriculture in the process.

Respectfully submitted,



JOHN GLESS
President, Board of Directors

cc: Mayor
City Council
City Manager
City Attorney
ACMs
DCMs
RPU Director