### County of Sonoma

#### Agenda Item

Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

**To:** Board of Directors, Sonoma Water

**Board Agenda Date:** October 9, 2018

**Vote Requirement:** Majority

**Department or Agency Name(s):** Sonoma Water

**Staff Name and Phone Number:** Dale Roberts, 707-547-1979

**Supervisorial District(s):** Fourth

**Title:** Warm Springs Hydropower Non-Disclosure Agreement

**Recommended Actions:**

a) Authorize the Sonoma County Water Agency’s General Manager to execute a Non-Disclosure Agreement with Sonoma Clean Power to enable confidential discussions and negotiations between the parties regarding the potential sale of power from the Agency’s Warm Springs Dam Hydroelectric Power Facility. Selling hydroelectric power to Sonoma Clean Power would increase revenues and allow local renewables to benefit the community.

b) Authorize the Sonoma County Water Agency’s General Manager to terminate the Agreement, if appropriate.

**Executive Summary:**

Staff recommends that the Board authorize the General Manager of Sonoma County Water Agency to execute a Non-Disclosure Agreement with Sonoma Clean Power for the potential sale of power from Sonoma Water’s Warm Springs Dam Hydroelectric Power Facility.

**Discussion:**

Sonoma County Water Agency’s (Sonoma Water) Warm Springs Dam Hydroelectric Power Facility (Hydro Facility) began producing power in 1989. Sonoma Water sold the power under a 20 year contract through 2009 to Pacific Gas and Electric (PG&E). Since 2009, Sonoma Water has sold the Hydro Facility power to our primary power provider, the Power and Water Resources Pooling Authority (Pooling Authority). Pooling Authority aggregates the Hydro Facility into its power portfolio. Recent demands in California power markets have increased the value of baseload, consistent output renewable power sources, such as hydropower. Sonoma Water is exploring other potential buyers of the power from this valuable asset. Sonoma Clean Power is one of those potential power buyers. Sonoma Clean Power has a history of supporting local renewable energy sources and has expressed interest in purchasing power from Sonoma Water’s Hydro Facility. To ensure they keep their power pricing competitive, Sonoma Clean Power
requires Sonoma Water enter into a Non-Disclosure Agreement to ensure shared information remains confidential.

Staff recommend the Board authorize the General Manager of Sonoma County Water Agency to execute a Non-Disclosure Agreement with Sonoma Clean Power to enable confidential discussions and negotiations between the parties regarding the potential sale of power from Sonoma Water’s Warm Springs Dam Hydroelectric Power Facility. If confidential negotiations result in a potential deal, Sonoma Water would return to the Board at a future date to request approval of a formal agreement to sell hydroelectric power to Sonoma Clean Power.

### Prior Board Actions:

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
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<tbody>
<tr>
<td>03/25/2014</td>
<td>Authorize General Manager/Chief Engineer to execute the Renewable Energy Purchase Agreement between the Sonoma County Water Agency and Power and Water Resources Pooling Authority.</td>
</tr>
<tr>
<td>11/03/2009</td>
<td>Authorize General Manager/Chief Engineer to execute the Renewable Energy Purchase Agreement between the Sonoma County Water Agency and Power and Water Resources Pooling Authority.</td>
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### Strategic Plan Alignment

<table>
<thead>
<tr>
<th>Goal 2: Economic and Environmental Stewardship</th>
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</thead>
<tbody>
<tr>
<td>Sonoma Water Strategic Plan Alignment: Energy, Goal 1: Increase carbon free energy use and reduce greenhouse gas (GHG) emissions.</td>
</tr>
</tbody>
</table>

This agreement would allow Sonoma Water to capitalize on its valuable hydropower asset and allow local renewables to benefit the community.
## Fiscal Summary

<table>
<thead>
<tr>
<th>Expenditures</th>
<th>FY 18-19 Adopted</th>
<th>FY 19-20 Projected</th>
<th>FY 20-21 Projected</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td><strong>Budgeted Expenses</strong></td>
<td></td>
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<tr>
<td><strong>Additional Appropriation Requested</strong></td>
<td></td>
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<tr>
<td><strong>Total Expenditures</strong></td>
<td></td>
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</tbody>
</table>

### Funding Sources

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<thead>
<tr>
<th>Source</th>
<th>FY 18-19 Adopted</th>
<th>FY 19-20 Projected</th>
<th>FY 20-21 Projected</th>
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<tbody>
<tr>
<td>General Fund/WA GF</td>
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<tr>
<td>State/Federal</td>
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<tr>
<td>Fees/Other</td>
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<tr>
<td>Use of Fund Balance</td>
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<td>Contingencies</td>
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<tr>
<td><strong>Total Sources</strong></td>
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### Narrative Explanation of Fiscal Impacts:

This agreement would allow Sonoma Water to sell power from this valuable hydropower asset at a higher price than we currently receive, thereby increasing revenues.

### Staffing Impacts

<table>
<thead>
<tr>
<th>Position Title (Payroll Classification)</th>
<th>Monthly Salary Range (A – I Step)</th>
<th>Additions (Number)</th>
<th>Deletions (Number)</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
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</table>

### Narrative Explanation of Staffing Impacts (If Required):

N/A

### Attachments:

- Mutual Confidentiality and Nondisclosure Agreement

### Related Items “On File” with the Clerk of the Board:

None
SONOMA CLEAN POWER AUTHORITY  
MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (this “Agreement”) is entered into as of _________________ (the “Effective Date”) by and between Sonoma Clean Power Authority, a California joint powers authority, with a principal place of business at 50 Santa Rosa Avenue, 5th Floor, Santa Rosa, CA 95404 (“SCPA”) and Sonoma County Water Agency.

The parties to this Agreement intend to enter into discussions regarding a possible purchase by SCPA from ______________ of ______________ (the “Transaction”). In connection with the Transaction, the parties may receive certain Confidential Information (as defined below) from each other, the confidentiality of which the parties desire to protect. For purposes of this Agreement, the party making the disclosure of Confidential Information is referred to as “Disclosing Party” and the party receiving such Confidential Information is referred to as “Receiving Party.” For purposes of this Agreement, “Affiliate” means, as to either party, any person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that party. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. Confidential Information.

(a) Defined. “Confidential Information” means all secret, proprietary, confidential or otherwise nonpublic information of or relating to a party or its Affiliates, in any form whether written, electronic, visual or oral, and all notes, analyses, compilations, studies, reports, interpretations, or other material prepared by Receiving Party or its employees or agents which contain or reflect or are based upon, in whole or in part, the foregoing, including the names, addresses, and other information relating to SCPA customers.

(b) Exclusions. Confidential Information does not include information (i) that is or becomes generally known to the public other than as a result of disclosure by Receiving Party or any of its Representatives (as defined below) in violation of the terms of this Agreement; (ii) that is in the possession of Receiving Party at the time of disclosure by Disclosing Party, as reasonably evidenced by a prior or contemporaneous writing and other than as a result of Disclosing Party’s breach of any legal obligation; (iii) that becomes known to Receiving Party through disclosure by sources other than Disclosing Party which, to the knowledge of Receiving Party, are not subject to any obligation of confidentiality or other duty not to disclose such information; or (iv) that is independently developed by Receiving Party without reference to the Confidential Information and through persons who have not had, either directly or indirectly, access to or knowledge of such Confidential Information, as reasonably evidenced in writing by Receiving Party. Neither the terms of this Agreement nor the fact that this Agreement was entered into shall constitute “Confidential Information.”

2. Obligation of Confidentiality.

Receiving Party will not use or disclose any Confidential Information of Disclosing Party except for purposes of carrying out Receiving Party’s duties and obligations with respect to, and otherwise as reasonably necessary to implement, the Transaction, except that Receiving Party may disclose such Confidential Information where it is under a legal or regulatory obligation to do so. Subject to the foregoing, without the prior written consent of Disclosing Party, Receiving Party will not disclose any portion of the Confidential Information to any person, other than to employees, consultants, Affiliates, advisors, attorneys, auditors, lenders or agents of Receiving Party who have a need to know in connection with the Transaction or otherwise (collectively, to the extent Receiving Party discloses, or provides access to, Confidential Information to any of the foregoing, its
“Representatives”), provided such Representatives are informed of this Agreement and agree to be bound by the terms hereof or are otherwise bound by obligations of confidentiality with regard to the Confidential Information which are at least as protective as the confidentiality obligations set forth herein.

3. **Compliance with the Law.** If Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, or a request to either party under the California Public Records Act (California Government Code Section 6250 et seq.)) to disclose any Confidential Information of Disclosing Party, Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. Provided that Receiving Party gives Disclosing Party such notice, Receiving Party’s disclosure of Confidential Materials pursuant to the preceding sentence shall not be a violation of this Agreement. Receiving Party may also disclose Confidential Information in connection with any arbitration or litigation between the parties concerning any finalized Transaction.

4. **Return of Materials.** Upon termination of the Agreement or upon the earlier written request of Disclosing Party, Receiving Party shall, and shall cause its Representatives to, promptly upon the written request of Disclosing Party to Receiving Party all documents, files or other materials furnished by or on behalf of Disclosing Party to Receiving Party constituting Confidential Information, without retaining any copies of them. Receiving Party shall then and shall cause its relevant Representatives to destroy all other documents, files or materials constituting Confidential Information of Disclosing Party (including all electronic records containing or describing any Confidential Information), and shall confirm in writing to Disclosing Party that all Confidential Information and records have been returned or destroyed. The obligations of Receiving Party contained in this Agreement will survive any return or destruction of documents, files or other materials containing Confidential Information; provided, however, an archival copy of the Confidential Information and copies, notes, summaries, or extracts may be retained (and subsequently destroyed) in the files of Receiving Party in accordance with its record retention policies, so long as such policy does not conflict with the terms of protection of Receiving Party for the periods described in this Agreement.

5. **Governing Law and Jurisdiction.** This Agreement will be governed by and interpreted in accordance with the internal laws of the State of California, without regard to conflicts of laws. The parties hereby consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in San Francisco County for the purposes of adjudicating any matter arising from or in connection with this Agreement. Each party expressly waives any right to a trial by a jury in any proceeding arising directly or indirectly out of this Agreement.

6. **No Representation, Warranty or Obligation.** Disclosing Party makes no representation or warranty, express or implied, as to the Confidential Information, including without limitation to any warranty against infringement, accuracy or completeness, and Disclosing Party shall have no liability based upon the Confidential Information; provided, that Disclosing Party represents it has the right to disclose the Confidential Information to Receiving Party hereunder. Nothing in this Agreement obligates Disclosing Party to make any particular disclosure of Confidential Information or to complete, revise or update any Confidential Information. Nothing herein obligates either party to enter into or continue discussions or transactions related to the Transaction, or prevents Disclosing Party from disclosing its Confidential Information to any other person or entity.
7. **Term.** This Agreement will continue in full force and effect for a term of three years from the Effective Date. This Agreement shall survive any change or termination of the parties’ business relationship.

8. **Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

9. **Miscellaneous.** The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement. This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof. This Agreement supersedes all prior written and oral agreements and all other communications between the parties. Amendments and modifications to this Agreement will be effective only if written and signed by both parties. This Agreement will be binding upon and inure to the benefit of each party’s successors or permitted assigns. Except as expressly stated herein, each party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties hereto, SCPA’s Affiliates, and their successors and permitted assigns. If any provision in this Agreement is invalid or unenforceable in any circumstances, its application in any other circumstances and the remaining provisions of this Agreement will not be affected thereby. All notices, requests, consents and other communications required or permitted to be delivered hereunder must be made in writing and delivered by hand, via overnight delivery service or by registered or certified mail, postage prepaid. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Each party represents and warrants that the individual signing below has the necessary authority to bind the party set forth below.

IN WITNESS WHEREOF, the parties hereto have executed this Mutual Confidentiality Agreement as of the Effective Date.

**SONOMA CLEAN POWER AUTHORITY**  
By: ________________________________  
Name: ________________________________  
Title: ________________________________

**SONOMA COUNTY WATER AGENCY**  
By: ________________________________  
Name: ________________________________  
Title: ________________________________