

Agenda Item: 13.

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Zach Nelson, Project Manager

SUBJECT: Review and Recommendation on providing notice of breach and authority to terminate the Water Purchase Agreement with the City of Fort Calhoun.

DATE: December 3, 2015

On May 20, 1978 the District and City of Fort Calhoun executed an agreement for the sale of water from the District to the City (the "Agreement"). Since then, the Agreement has been amended four times to update project costs, quantities, and the duration of the Agreement.

When the Washington County Rural Water System ("WCRWS") was originally designed and constructed, the City of Fort Calhoun's municipal water distribution system included a functioning water tower. The existence and operation of the water tower was important to the overall operation of the WCRWS because the water tower assisted in leveling off the City's water requirements during peak demands and in the event of emergencies like fire suppression uses. The District has become aware that the City's water tower is no longer functional and has been removed from the City's municipal water distribution system. Therefore, all of the City's water demands are the sole burden of the WCRWS, which creates additional wear and tear on the WCRWS' pumps and facilities. The City has stated that the water tower is no longer functional because the City failed to properly maintain the water tower. The City's failure to maintain the water tower is a material breach of the Agreement.

The District may terminate the Agreement if the City commits a material breach. Prior to terminating the Agreement, the District must provide written notice of the material breach to the City and the Farmers Home Administration (USDA). If the breach continues uncured for sixty (60) days following the written notice, the District is entitled to terminate the Agreement.

Staff and legal counsel recommend that the City be provided written notice of its material breach of the Agreement, and should the City not cure the breach within 60 days that management be authorized to terminate the Agreement. It is important to note that the quality, quantity, and pressure of the water provided to the City by the WCRWS will not be changed as a result of the notice of breach or even upon termination of the agreement, without further action of the Board.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to provide Fort Calhoun and the USDA written notice of the City's material breach of the Fort Calhoun Water Purchase Agreement dated May 20, 1978 and its subsequent amendments, and that the General Manager be further authorized to terminate the Agreement should Fort Calhoun not cure the breach within sixty (60) days of receiving said notice.