



AGENDA ITEM

Public Utilities Commission

City and County of San Francisco



DEPARTMENT Water Enterprise AGENDA NO. 6
MEETING DATE April 11, 2023

Lift Water Shortage Emergency Declaration and Drought Surcharge and Continue Systemwide Water Use Reduction

Project Manager: Paula Kehoe

Public Hearing: Lift Water Shortage Emergency Declaration and Drought Surcharge and Continue Voluntary Systemwide Water Use Reduction of 11%

Summary of Proposed Commission Action:	Public hearing to consider and possible action to (1) rescind the declaration of a local Water Shortage Emergency adopted by the San Francisco Public Utilities Commission (SFPUC) on November 23, 2021, by Resolution No. 21-0177, that also imposed a mandatory temporary drought surcharge for SFPUC retail customers, and (2) continue the voluntary system-wide water use reduction of 11% compared to baseline water use during Fiscal Year 2019-2020 to remain consistent with State Water Resources Control Board emergency drought regulations still in effect.
Background:	<p>On November 23, 2021, by Resolution No. 21-0177, the Commission approved the declaration of a local Water Shortage Emergency pursuant to the California Water Code (Division 1, Chapter 3, Sections 350-359). In the same action, the Commission: (1) called for a voluntary system-wide 10% reduction in water use compared to baseline water use during Fiscal Year 2019-2020; (2) authorized the General Manager to implement actions consistent with Shortage Level 1 of the SFPUC's 2020 Water Shortage Contingency Plan (WSCP), adopted by the Commission on June 11, 2021, by Resolution No. 21-0100; and (3) implemented a drought surcharge of up to 5% on all retail water and wastewater volumetric rates as of April 1, 2022, in accordance with the Schedule of Retail Water Rates and Wastewater Rates adopted by the Commission on April 10, 2018, by Resolution Nos. 18-0053 and 18-0054, respectively. Per the Schedule of Rates, the drought surcharge remains in effect until the Commission adopts a resolution to rescind the local Water Shortage Emergency declaration.</p> <p>On May 24, 2022, by Resolution No. 22-0098, the Commission adopted an increased system-wide water use reduction of 11% compared to baseline water use during Fiscal Year 2019-2020, consistent with Shortage Level 2 of the SFPUC's WSCP and authorized the General Manager to implement</p>

APPROVAL: _____

COMMISSION
SECRETARY

Donna Hood

	<p>actions under Shortage Level 2 of the WSCP, effective July 1, 2022. This Commission action was taken in response to emergency regulations adopted by the State Water Resources Control Board (State Water Board) by State Water Board Resolution No. 2022-0018, at the direction of the Governor in Executive Order N-7-22 dated March 28, 2022. On February 13, 2023, the Governor issued Executive Order N-3-23, which continued the statewide drought emergency and regulations in effect, but also directed state agencies to provide recommendations on whether any existing provisions in the Governor’s drought proclamations and executive orders are no longer needed to mitigate drought conditions.</p> <p>As of today’s Commission meeting, based on system-wide hydrologic conditions and water storage in the SFPUC’s reservoirs, the SFPUC has determined that a water shortage condition no longer exists. Accordingly, Staff recommends that the Commission rescind the SFPUC’s Water Shortage Emergency declaration and the temporary drought surcharge that the Commission adopted on November 23, 2021, by Resolution No. 21-0177.</p> <p>The voluntary system-wide water use reduction of 11% that the Commission adopted on May 24, 2022, by Resolution No. 22-0098, must remain in effect consistent with State Water Board regulations (Cal. Code of Regulations, title 23, section 996), which continue to require the SFPUC to remain in Level 2 of its drought response in its WSCP. If and when the State Water Board modifies its regulations to no longer require the SFPUC to implement Level 1 or Level 2 actions of its WSCP, the SFPUC may rescind its resolution adopting Level 2 of its WSCP, including the 11% voluntary system-wide reduction. Also, the minimum annual purchase requirements that apply to certain SFPUC wholesale water customers that have other sources of water supply available to them, under Section 3.07.C of the Water Supply Agreement between the SFPUC and its wholesale customers, as amended and restated on January 26, 2021, by Resolution No. 21-0009, with subsequent approval by the wholesale customers, will continue to be waived until the State Water Board modifies or ends its regulations requiring Level 2 implementation, because the State Water Board’s regulations were developed at the direction of the Governor in Executive Order N-7-22 and result in impacts to water supply deliveries from the Regional Water System.</p> <p>The SFPUC believes it is no longer necessary for the State to maintain a statewide requirement that all agencies with a WSCP remain in Shortage Level 2 of their drought response plans. On March 16, 2023, in response to the greatly improved local and statewide hydrologic conditions, the SFPUC submitted a letter to the Chair of the State Water Board and Director of the California Department of Water Resources, requesting they advise the Governor to modify the current drought proclamation to lift requirements for WSCP Level 2 actions from water agencies with sufficient, demonstrated supplies. (See Attachment 1). On March 24, 2023, in response to these improved conditions, the Governor issued Executive Order N-5-23, which rescinded the relevant portions of Executive Order N-7-22 that prompted the State Water Board to require urban water suppliers to implement Level 2 of</p>
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	<p>their drought response plans. While it is likely that the State Water Board will act in response to the Governor’s March 24, 2023 termination, the State Water Board has not indicated if or when it plans to lift this requirement in its regulations.</p> <p>The SFPUC’s temporary water waste restriction on use of potable water to irrigate non-functional, ornamental commercial turf during drought, which the Commission adopted on June 28, 2022, by Resolution No. 22-0126, to align with the State Water Board’s drought requirements, also remains in effect.</p> <p>Pursuant to San Francisco Charter Section 4.104(a)(1), a Notice of Public Hearing was posted at the San Francisco Main Library and on the SFPUC’s website on March 20, 2023.</p>
Description of Action:	<p>This item seeks Commission approval to rescind Resolution No. 21-0177, thereby (1) ending the local Water Shortage Emergency declaration and (2) ending the retail customer drought surcharge effective May 1, 2023, and to rescind the voluntary system-wide water use reduction of 11% (Resolution No. 22-0098) when the State Water Board modifies or ends its drought emergency regulations to no longer require the SFPUC to implement the drought response actions of its WSCP.</p>
Result of Inaction:	<p>A delay in adopting this Action will hinder the SFPUC’s ability to lift its Water Shortage Emergency declaration and end the temporary drought surcharge on retail customers, actions which are no longer needed due to greatly improved systemwide hydrologic conditions.</p>
Schedule:	<p>The local Water Shortage Emergency declaration will end effective immediately upon Commission approval. The retail customer drought surcharge will end effective May 1, 2023. The voluntary system-wide water use reduction of 11% and corresponding waiver of the minimum annual purchase requirements that apply to certain wholesale water customers of the SFPUC will end effective immediately upon State Water Board action to end implementation of Level 1 or Level 2 actions and the SFPUC rescinding its Resolution No. 22-0098.</p>
Environmental Review:	<p>On November 23, 2021, by Resolution No. 21-0177, this Commission declared a Water Shortage Emergency. Prior to this, on November 12, 2021, the Planning Department determined that authorization of the SFPUC General Manager to implement the SFPUC’s WSCP in response to the emergency is statutorily exempt from environmental review in accordance with California Environmental Quality Act (CEQA) Section 21080(b)(4) and CEQA Guidelines Section 15269(c) (Case Number 2021-011567ENV), which exempt specific actions necessary to prevent or mitigate an emergency. The continued voluntary system-wide water use reduction, consistent with State Water Resources Control Board emergency drought regulations, remains within the scope of the project authorized under the Statutory Exemption. The exemption can be found here: https://sfpuc.sharefile.com/share/view/sb0240d712b4f4131aac974730e184b67</p>

Agreement: Rescind Water Shortage Emergency Declaration
Commission Meeting Date: April 11, 2023

Recommendation:	SFPUC staff recommends that the Commission adopt the attached resolution.
Attachments:	<ol style="list-style-type: none">1. SFPUC Letter to State Water Board and Department of Water Resources2. Governor's Executive Order N-5-23 to Ease Drought Restrictions

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. _____

WHEREAS, On November 23, 2021, by Resolution No. 21-0177, the San Francisco Public Utilities Commission (SFPUC) declared a local Water Shortage Emergency and adopted a 10% systemwide water use reduction compared to baseline water use during Fiscal Year 2019-2020, which called for a 5% water use reduction by the SFPUC's retail customers and 13.7% water use reduction by the SFPUC's wholesale customers, to collectively achieve a systemwide water use reduction of 10%, consistent with Shortage Level 1 of the SFPUC's Water Shortage Contingency Plan (WSCP), adopted by the Commission on June 11, 2021, by Resolution No. 21-0100, and the Water Shortage Allocation Plan (WSAP), which is Attachment H of the Water Supply Agreement between the City and County of San Francisco and its Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County, as amended and restated on January 26, 2021, by Resolution No. 21-0009, with subsequent approval by the wholesale customers (Water Supply Agreement); and

WHEREAS, On March 28, 2022, the Governor issued Executive Order N-7-22, which directed the State Water Resources Control Board (State Water Board) to adopt emergency regulations requiring each urban water supplier that has submitted a WSCP to the California Department of Water Resources to implement, at a minimum, shortage response actions adopted under Section 10632 of the California Water Code for a shortage level of up to 20% (Shortage Level 2); and

WHEREAS, On May 24, 2022, the State Water Board adopted such regulations by State Water Board Resolution No. 2022-0018, Resolution to Adopt an Emergency Regulation to Reduce Demand and Improve Water Conservation, 23 Cal. Code of Regulations § 996 (State Water Board Regulations); and

WHEREAS, In response to the State Water Board Regulations, on May 24, 2022, by Resolution No. 22-0098, the Commission adopted an increased system-wide water use reduction of 11% compared to baseline water use during Fiscal Year 2019-2020, consistent with Shortage Level 2 of the SFPUC's WSCP, and authorized the General Manager to implement actions under Shortage Level 2 of the WSCP, effective July 1, 2022; and

WHEREAS, On February 13, 2023, the Governor issued Executive Order N-3-23, which continued the statewide drought emergency and regulations in effect, but also directed state agencies to provide recommendations on whether any existing provisions in the Governor's drought proclamations and executive orders are no longer needed to mitigate drought conditions; and

WHEREAS, on March 24, 2023, the Governor issued Executive Order N-5-23, which among other actions terminated the portion of Executive Order N-7-22 that prompted the State Water Board to adopt Resolution No. 22-0018 and require urban water suppliers to implement, at minimum, Level 2 of their water shortage contingency plans; and

WHEREAS, Based on systemwide hydrologic conditions and water storage in the SFPUC's reservoirs as of the date of this Commission meeting and as projected through the rest of the year, the SFPUC has determined that a water shortage condition no longer exists, and therefore a declaration of a local Water Shortage Emergency is no longer needed; and

WHEREAS, The voluntary system-wide water use reduction of 11% that the Commission adopted on May 24, 2022, by Resolution No. 22-0098, remains in effect, consistent with the State Water Board Regulations that were adopted May 24, 2022, at the direction of the Governor in Executive Order N-7-22, and Resolution No. 22-0098 should be rescinded if and when the State Water Board modifies those regulations to no longer require the SFPUC to implement at Level 1 or Level 2 of its WSCP; and

WHEREAS, The minimum annual purchase requirements that apply to certain SFPUC wholesale water customers under Section 3.07.C of the Water Supply Agreement will continue to be waived until the State Water Board modifies its regulations to no longer require the SFPUC to implement Level 2 of its WSCP implementation, because the State Water Board Regulations were developed at the direction of the Governor in Executive Order N-7-22 and result in impacts to water supply deliveries from the Regional Water System; and

WHEREAS, On November 12, 2021 the San Francisco Planning Department Environmental Review Officer issued a statutory exemption determination under California Environmental Quality Act ("CEQA") Section 21080(b)(4) and CEQA Guidelines Section 15269(c), under Case Number 2021-011567ENV and the continued voluntary system-wide water use reduction, consistent with State Water Resources Control Board emergency drought regulations, remains within the scope of the project authorized under the Statutory Exemption; and

WHEREAS, Pursuant to San Francisco Charter Section 4.104(a)(1), a Notice of Public Hearing regarding the action to rescind the local declaration of a Water Shortage Emergency was posted at the San Francisco Main Library and on the SFPUC website on March 20, 2023, now, therefore, be it

RESOLVED, That the Commission rescinds Resolution No. 21-0177, thereby ending the local water shortage emergency declaration (Cal. Water Code §§ 350-359), and ending the 5% retail customer drought surcharge effective May 1, 2023; and be it

FURTHER RESOLVED, That Resolution No. 22-0098, which adopted a voluntary system-wide water use reduction of 11% and directed the General Manager to take other actions consistent with Level 2 of the WSCP, shall be rescinded effective upon the termination, rescission, or amendment of the State Water Board Regulations to no longer require SFPUC to implement Level 1 or Level 2 actions of the SFPUC's WSCP.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of April 11, 2023.

Secretary, Public Utilities Commission



March 16, 2023

Joaquin Esquivel, Chair
State Water Resources Control Board
1001 I Street Sacramento, CA 95814

Karla Nemeth, Director
California Department of Water Resources
1416 Ninth Street, Sacramento, CA 95814

Dear Chair Esquivel and Director Nemeth,

The San Francisco Public Utilities Commission (SFPUC) is submitting this letter for your consideration of recommended changes to the Governor's emergency drought proclamations and executive orders currently in effect.

The Governor's February 2023 Executive Order N-3-23 extended the duration of existing emergency drought proclamations and orders and requested State agencies to provide recommendations for what further actions, if any, are necessary for ongoing emergency drought response, and whether any existing provisions are no longer needed to prepare for and mitigate the effects of the drought conditions.

Given the dramatic improvement in water supply conditions in much of California, we recommend State emergency drought regulations be modified to rescind requirements for Water Shortage Contingency Plan Level 2 response actions from water suppliers with demonstrated sufficient supplies that face no water shortages.

The SFPUC's regional system serves 2.7 million people in four Bay Area counties. Starting in 2021, to align with the State's escalating drought response actions, the SFPUC adopted a local declaration of drought emergency, seeking systemwide reductions and imposing a drought surcharge on our retail customers and water budgets on our wholesale customers. In 2022, we modified our local declaration to reflect the Governor's March 2022 Executive Order N-7-22, that among other things, directed urban water suppliers to implement Level 2 shortage response actions. We also conducted a major drought outreach campaign across our system and provided extensive conservation assistance through our ongoing programs. Our customers responded positively, and we met our systemwide 11 percent reduction goal.

London N. Breed
Mayor

Newsha K. Ajami
President

Sophie Maxwell
Vice President

Tim Paulson
Commissioner

Anthony Rivera
Commissioner

Kate H. Stacy
Commissioner

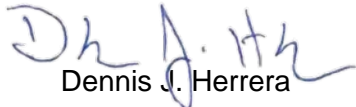
Dennis J. Herrera
General Manager



We expect our regional water system to fill this year. Extremely wet conditions since December 2022 show that hydrologically we are in good shape. Through March 12, 2023 our Sierra precipitation index was 52.86 inches compared to an annual average total of 36.68 inches. Similarly, our Bay Area precipitation index was 37.44 inches compared to an annual average total of 22.80 inches. Our reservoirs, including our Water Bank in Don Pedro Reservoir, after snowmelt will be 100% full this year. But rain or shine, we continue to implement a robust conservation program for our retail service area and across our regional system through the Bay Area Water Supply and Conservation Agency that represents our wholesale customers.

We hope you will consider our recommendation that the State's emergency drought regulations be modified to rescind requirements for Level 2 response actions from suppliers like the SFPUC with ample supplies, no foreseeable water shortages, and ongoing comprehensive demand management programs.

Sincerely,



Dennis J. Herrera
General Manager

cc: Nicole Sandkulla, CEO and General Manager, BAWSCA

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-5-23

WHEREAS on April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, I proclaimed States of Emergency to exist due to drought conditions; and

WHEREAS the multi-year nature of the current drought, which began three years after the record-setting drought of 2012-2016, continues to have significant, immediate impacts on communities across California with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water; and

WHEREAS the March 3, 2023, snow survey conducted by the Department of Water Resources and partner agencies found that most regions of the Sierra Nevada are above average for snow water content, and some regions are nearing record amounts of snow, and snow and rain has fallen across many regions of the state since then, with more precipitation forecasted; and

WHEREAS improved conditions have helped rehabilitate surface water supplies, but have not abated the severe drought conditions that remain in some parts of the State, including the Klamath River basin and the Colorado River basin, and many groundwater basins throughout the State remain depleted from overreliance and successive multi-year droughts; and

WHEREAS continued action by the State is needed to address ongoing consequences of the drought emergency, including groundwater supply shortages, domestic well failures, and drought-related harm to native fishes in the Klamath River and Clear Lake watersheds; and

WHEREAS the drought emergency has required a dynamic and flexible response from the State, and several provisions in my prior Proclamations and Orders have been terminated or superseded already, specifically Paragraphs 4 and 8 of my State of Emergency Proclamation dated April 21, 2021, Paragraphs 2, 4, and 7 of my State of Emergency Proclamation dated May 10, 2021, Paragraphs 3, 4, 5, 6, and 10 of my State of Emergency Proclamation dated July 8, 2021, and Paragraph 9 of Executive Order N-7-22; and

WHEREAS improved conditions warrant an even more targeted State response to the ongoing drought emergency and certain provisions in my State of Emergency Proclamations dated April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, and in Executive Orders N-10-21, N-7-22, and N-3-23 provide authority that is no longer needed to mitigate the effects of the drought conditions or direct actions by state agencies, departments, and boards that have already been completed; and

WHEREAS notwithstanding the rescission of certain emergency authorities for emergency drinking water action, state agencies have existing legal authority and funding to continue expedited work to advance the human right to water, and state agencies will continue all ongoing drought resilience planning work, including through coordination with local agencies and tribes; and

WHEREAS next winter's hydrology is uncertain and the most efficient way to preserve the State's improved surface water supplies is for Californians to continue their ongoing efforts to make conservation a way of life; and

WHEREAS to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of the drought conditions, and under Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay the mitigation of the effects of the drought conditions.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. The orders and provisions contained in my State of Emergency Proclamations dated April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, and Executive Orders N-7-22 (March 28, 2022), N-3-23 (February 13, 2023), and N-4-23 (March 10, 2023), remain in full force and effect, except as modified by those Proclamations and Orders and herein. State agencies shall continue to implement all directions from those Proclamations and Orders and accelerate implementation where feasible.
2. The following provisions of my State of Emergency Proclamation dated April 21, 2021, are terminated:
 - a. Paragraph 2;
 - b. Paragraphs 5-7; and
 - c. Paragraphs 9-14.
3. The following provisions of my State of Emergency Proclamation dated May 10, 2021, are terminated:
 - a. Paragraph 1;
 - b. Paragraph 3;
 - c. Paragraph 5; and
 - d. Paragraphs 9-10.
4. The following provisions of my State of Emergency Proclamation dated July 8, 2021, are terminated:
 - a. Paragraph 2;
 - b. Paragraphs 7-8, except those portions of paragraph 7 withdrawing provisions of prior orders;
 - c. Paragraphs 11-12.


5. The following provisions of my State of Emergency Proclamation dated October 19, 2021, are terminated:
 - a. Paragraph 2;
 - b. Paragraphs 4-5;
 - c. Paragraph 8; and
 - d. Paragraph 10.
6. The following provisions of Executive Order N-10-21 are terminated:
 - a. Paragraph 1; and
 - b. Paragraph 3
7. The following provisions of Executive Order N-7-22 are terminated:
 - a. Paragraphs 1-3;
 - b. Paragraph 6; and
 - c. Paragraphs 14-15.
8. The following provisions of Executive Order N-3-23 are terminated:
 - a. Paragraph 1; and
 - b. Paragraph 3, except those portions of the paragraph withdrawing provisions of prior orders.
9. Paragraph 6 of my State of Emergency Proclamation dated May 10, 2021, and Paragraph 9 of my State of Emergency Proclamation dated July 8, 2021, are withdrawn and replaced with the following text:

To ensure critical instream flows for species protection in the Klamath River and Clear Lake watersheds, the State Water Resources Control Board (Water Board) and Department of Fish and Wildlife shall evaluate the minimum instream flows and other actions needed to protect salmon, steelhead, the Clear Lake Hitch, and other native fishes in critical streams systems in these watersheds and work with water users, tribes, and other parties on voluntary measures to implement those actions. To the extent voluntary actions are not sufficient, the Water Board, in coordination with the Department of Fish and Wildlife, shall consider emergency regulations to establish minimum instream flows to mitigate the effects of the drought conditions. For purposes of state agencies carrying out or approving any actions contemplated by this paragraph, Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division are suspended. Nothing in this Paragraph affects or limits the validity of actions already taken in the Klamath and Clear Lake watersheds or ongoing under Paragraph 6 of my State of Emergency Proclamation dated May 10, 2021, or Paragraph 9 of my State of Emergency Proclamation dated July 8, 2021.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 24th day of March 2023.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, PH.D.
Secretary of State