

DECEMBER 2021

KEY AMENDMENT BENEFITS

- ✓ Provides an Expedited Process for Certain Types of Transfers
- ✓ Removes a Barrier to Maximizing Local Supplies
- ✓ Allows for Increased Purchases of RWS Supplies Resulting in a Reduced Unit Cost of Water to All Wholesale Customers
- ✓ Overcomes a Hurdle for Greater Use of Existing RWS Supply
- ✓ Protects the Financial and Water Supply Interests of All Wholesale Customers

MINIMUM ANNUAL PURCHASE QUANTITY (MGD):

| | |
|---------------|--------|
| ACWD | 7.648 |
| Milpitas | 5.341 |
| Mountain View | 8.930 |
| Sunnyvale | 8.930 |
| Total: | 30.849 |

PROPOSED CONTRACT AMENDMENT

Regarding the Minimum Annual Purchase Quantity

What Contract is Being Amended and Who Are the Parties?

The 2018 Amended and Restated Water Supply Agreement between the City and County of San Francisco and the Wholesale Customers in Alameda, San Mateo, and Santa Clara Counties (WSA).

What Does the WSA Govern? The WSA governs the supply of 184 million gallons of water per day (MGD), on an annual average basis, from the San Francisco Regional Water System (RWS) to the Wholesale Customers. The WSA also establishes rules and requirements for water purchases and transfers between the Wholesale Customers.

Why is This Amendment Proposed? In 2019, the Wholesale Customers directed BAWSCA to draft a proposed WSA amendment to provide a procedure for expedited and permanent transfers of Minimum Annual Purchase Quantity (Minimum Purchase) requirements, while safeguarding the financial and water supply interests of Wholesale Customers not participating in such transfers.

What is a Minimum Purchase Requirement? When the WSA was developed, four agencies with access to sources of supply not available to either San Francisco or the other Wholesale Customers at the time were required to purchase a “minimum annual quantity of water” from the RWS. Those four multi-source agencies are Alameda County Water District (ACWD), Milpitas, Mountain View, and Sunnyvale (Minimum Purchase Agencies).

These four Minimum Purchase Agencies are subject to a “take or pay” Minimum Purchase requirement, which guarantees an ongoing financial stake in the RWS and ensures financial stability for all Wholesale Customers as well as San Francisco retail customers that rely on the RWS. The total Minimum Purchase requirement is 30.849 MGD. Any change to the Minimum Purchase requirement necessitates an amendment to the WSA.

Why Amend the Minimum Purchase Requirement? The Wholesale Customers desire to remove obstacles to water transfers between individual member agencies. One such obstacle is the Minimum Purchase requirements. Establishing a means by which a Minimum Purchase requirement could be linked to a proposed water transfer would effectively remove that obstacle.

What Does the Proposed Minimum Purchase Amendment Do? The proposed amendment provides a contractual vehicle for Wholesale Customers with an Individual Supply Guarantee (ISG) to participate in a paired, expedited, and permanent transfer of a portion of ISG and Minimum Purchase.

Is There a Limit to the Quantity of Minimum Purchase That Can Be Transferred? Only 6 MGD of the total Minimum Purchase requirement may be transferred pursuant to this “pre-approved” pathway.

Additionally, Minimum Purchase Agencies may transfer no more than 50% of their total Minimum Purchase requirement. A future WSA amendment may increase these caps if demand for additional transfers exceeds these limits.

What Are the Benefits of the Minimum Purchase Amendment? The proposed amendment offers several benefits and solutions for the Wholesale Customers:

- ✓ Removes an existing barrier for a Minimum Purchase Agency to reduce the financial liability associated with the cost of imputed sales for Minimum Purchase water that is not use.
- ✓ Overcomes a hurdle for greater use of current RWS supply by enabling additional transfers between eligible Wholesale Customers.
- ✓ Increased purchases from the RWS result in reduced unit costs for all Wholesale Customers.
- ✓ Water transfers between Wholesale Customers offer potential water supply to meet needs for new developments within the BAWSCA service area.
- ✓ As indicated by the San Francisco Public Utilities Commission (SFPUC), maximizing the use of existing supplies through transfers facilitates the development of new supplies necessary to support San Jose and Santa Clara as permanent customers.

Will the Proposed Amendment Result in New or Increased Risks to the Wholesale Customers?

No. The proposed amendment protects the financial and water supply interests of Wholesale Customers not participating in transfers.

- ✓ The total Minimum Purchase remains the same regardless of transfers.
- ✓ Transferees must pay imputed sales for any transferred Minimum Purchase that is unused once the transfer becomes effective.
- ✓ Transferees must prove long-term demand for the transferred Minimum Purchase, beyond their average use over the five years prior to the transfer, for a period of three consecutive years before taking on a permanent Minimum Purchase requirement.
- ✓ Absent unchecked unlawful conduct, there is no new or different water supply reliability risk to non-participating agencies given (1) existing water use and (2) legal and contractual obligations.
- ✓ Absent unchecked unlawful conduct, there is no new or different financial risk as a result of this proposed amendment in the event of significant economic downturn based on (1) available transfer market and water use patterns and (2) current risks based on existing contract provisions that will remain unchanged by the proposed amendment.

What Are the Risks of Not Approving the Minimum Purchase Amendment? Neglecting to adopt the proposed amendment may hinder SFPUC's ability to implement new water supply projects necessary to (1) support San Jose and Santa Clara as permanent customers and (2) offset Bay Delta Plan/Tuolumne River Voluntary Agreement implementation. The development of new water supplies will be subject to CEQA. Showing that existing water available in the RWS is underutilized could hinder environmental approvals.

Without this proposed amendment, any transfer of a portion of Minimum Purchase among Wholesale Customers would require a new amendment to the WSA adopted by each Wholesale Customer's governing body in a separate action. This significant barrier to implementing transfers may prevent Minimum Purchase Agencies from pursuing these more challenging water transfers, reduce opportunities to provide cost-effective water supplies to new developments within the service area, and discourage maximum use of local supplies and conservation.