



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

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**DATE:** May 24, 2022

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Jovan Grogan, City Manager

**PREPARED BY:** Matthew Lee, Director

**SUBJECT:** Adopt Resolution Approving the “2021 Amended and Restated Water Supply Agreement Between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County”; and Authorize the City Manager to Execute such Agreement when Final Execution Copies are Prepared and Distributed by the Bay Area Water Supply and Conservation Agency (BAWSCA)

**BACKGROUND:** Historically, water supply agencies in Alameda, San Mateo, and Santa Clara Counties have purchased water from the City and County of San Francisco (San Francisco) for many years. The San Francisco Public Utilities Commission (SFPUC or Commission) operates the Regional Water System, which delivers water to communities in Alameda, San Mateo, and Santa Clara Counties, as well as to customers within San Francisco. These Parties entered into the “Settlement Agreement and Master Water Sales Contract between the City and County of San Francisco and Certain Suburban Purchasers in San Mateo County, Santa Clara County and Alameda County in 1984. Upon expiration of the 1984 Settlement Agreement and Master Water Sales Contract, the Parties entered into the “Water Supply Agreement between San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County” simply referred to as the Water Supply Agreement (WSA) on July 1, 2009, authorized by SFPUC Resolution No. 09-0069, dated April 28, 2009.

The Water Supply Agreement (WSA) establishes the terms by which the twenty-six Wholesale Customers purchase water from the San Francisco Regional Water System. The WSA builds upon the 1984 "Settlement Agreement and Master Water Sales Contract between the City and County of San Francisco and Certain Suburban Purchasers in San Mateo County, Santa Clara County and Alameda County."

In September 2017, the Bay Area Water Supply and Conservation Agency (BAWSCA) and the Water Management Representatives (WMRs) of the BAWSCA member agencies began reviewing the issue of Minimum Purchase Quantities, as described in Section 3.07.C of the WSA, and discussing the creation of a process to transfer Minimum Purchase Quantities. Throughout 2017 and 2018, the WMRs held multiple meetings during which the agencies currently subject to Minimum Purchase Quantity requirements and the other Wholesale Customers shared their interests and concerns regarding changes to the Minimum Purchase Quantity requirements and allowing transfers of Minimum Purchase

Quantities.

Under Article 3 of the Amended and Restated WSA, the San Francisco Public Utilities Commission (SFPUC) agrees to deliver water to the Wholesale Customers up to the amount of 184 million gallons per day (MGD), referred to as the "Supply Assurance," and the Wholesale Customers have allocated shares of the Supply Assurance among themselves, referred to as Individual Supply Guarantees (ISG). Section 3.04 of the Amended and Restated WSA enables a Wholesale Customer that has an ISG to transfer a portion of its ISG to one or more other Wholesale Customers, subject to several conditions.

Section 3.07 of the Amended and Restated WSA provides that four Wholesale Customers (Alameda County Water District and the Cities of Milpitas, Mountain View, and Sunnyvale, collectively, the "Minimum Purchase Customers") may purchase water from sources other than the SFPUC, but they are each obligated to purchase a specific minimum annual quantity of water from the SFPUC, referred to as a "Minimum Purchase requirement". If a Minimum Purchase Customer does not meet its minimum purchase requirement in a particular fiscal year, it must pay the SFPUC for the difference between its metered water purchases during the fiscal year and its minimum annual purchase quantity set forth in the Amended and Restated WSA. The Amended and Restated WSA does not currently allow a Minimum Purchase Customer to transfer a portion of its minimum purchase requirement and the associated financial obligation to another Wholesale Customer.

In 2019, the Wholesale Customers directed BAWSCA to draft a proposed amendment to the Amended and Restated WSA to provide a procedure for expedited and permanent transfers of Minimum Purchase Quantities that safeguards the financial and water supply interests of Wholesale Customers not participating in such transfers.

**DISCUSSION:** The proposed amendment, shown in Attachment 3, allows Wholesale Customers with ISGs to permanently transfer a portion of Minimum Purchase Quantity through an expedited procedure. The proposed amendment offers the following benefits:

1. Procedural safeguards built into the process by which a Wholesale Customer transfers a portion of its Minimum Purchase Quantity and ISG ensure that such transfers will not result in new or different risks to the water supply and financial interests of Wholesale Customers not participating in a transfer.
2. A Minimum Purchase Customer may transfer a portion of its Minimum Purchase Quantity within its respective ISG to reduce its financial obligation to pay for imputed sales for Minimum Purchase water that it did not use.
3. Intra-system water transfers are one potential solution to long term water reliability needs among the Wholesale Customers. This expedited, permanent transfer procedure will allow intra-system water transfers of Minimum Purchase Quantity to occur without a contract amendment approved by the Wholesale Customers, thus removing administrative obstacles to such transfers.

4. The Wholesale Customers may increase the 6 MGD cap on the total aggregate amount of Minimum Purchase Quantity that may be transferred by all the Minimum Purchase Customers over the course of one, or multiple, transfers if demand for Minimum Purchase Quantity transfers exceeds 6 MGD in the future.

San Francisco, acting by and through the SFPUC, approved the 2021 Amended and Restated Water Supply Agreement, as negotiated by BAWSCA, on January 26, 2021, pending approval by the requisite number of the Wholesale Customers.

This Amendment removes an existing barrier for certain agencies to transfer Minimum Purchase obligations with a water transfer and will allow certain agencies to reduce their financial liability related to the cost of water supplies they do not need.

SFPUC has also indicated that approval of this action will assist them in successfully completing CEQA for any future water supply project.

Unanimous approval by the Wholesale Customers is not needed to adopt the modifications in the 2021 Amended and Restated Water Supply Agreement. This action requires supermajority approval by the BAWSCA agencies (2/3 of number (out of a total 26) and 75% in volume of water).

As of May 2022, two thirds of BAWSCA agencies have approved the 2021 Amended and Restated Water Supply Agreement.

**FISCAL IMPACT:** There is no fiscal impact with approving this Agreement Amendment

**ENVIRONMENTAL IMPACT:** This amendment is not a "project" for the purposes of CEQA as it involves an administrative activity that does not result in a direct or indirect physical change to the environment (see 14 CCR Section 15378(b)(5)), and would not result in a direct or reasonably foreseeable indirect physical change in the environment (see 14 CCR Section 15060(c)(2)).

In the event the amendment is considered a "project," it would be subject to the categorical exemption for operation, repair, and maintenance of existing facilities (see 14 CCR Section 15301), and the amendment is covered by the "common sense exemption" because there is no possibility that the activity in question may have a significant effect on the environment (see 14 CCR Section 15061(b)(3))

**RECOMMENDATION:** Adopt Resolution approving the "2021 Amended and Restated Water Supply Agreement Between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County"; and authorize the City Manager to execute such Agreement when final execution copies are prepared and distributed by the Bay Area Water Supply and Conservation Agency (BAWSCA).

**ALTERNATIVES:**

1. Approve the Agreement Amendment.
2. Do not approve the Agreement Amendment.

**ATTACHMENTS:** 1. Resolution

2. 2021 Proposed Water Supply Agreement (WSA) Amendment Summary Description
3. Redline Comparing the 2018 WSA to Minimum Purchase Amendment Excerpts