



## 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 D. Grogan, City Manager

**PREPARED BY:** Matthew Lee, Public Works Director

**SUBJECT:** Adopt Resolution Approving a Minimum Water Purchase Transfer Between the City of East Palo Alto and the City of Mountain View regarding 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

### **BACKGROUND:**

At this meeting, the Council is also considering 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" ("2021 WSA") as amended to allow Wholesale Customers with ISGs to permanently transfer a portion of Minimum Purchase Quantity through an expedited procedure.

In conjunction with consideration of the 2021 WSA, East Palo Alto and Mountain View propose the Wholesale Customers and San Francisco approves, in advance, the terms and conditions for converting up to 1.0 MGD of Mountain View's ISG purchased by East Palo Alto in 2017 into at transfer of 1.0 MGD of Mountain View's Minimum Purchase Quantity to East Palo Alto, in 0.25 MGD increments, if Mountain View and East Palo Alto mutually agree to such incremental transfers in the future and provided the conditions outlined below are met. Because the 2017 Mountain View/East Palo Alto ISG transfer pre-dates the Minimum Purchase Amendment, the Mountain View/East Palo Alto Minimum Purchase Transfer must be accomplished separately from the adoption of the Minimum Purchase Amendment.

This action primarily affects the transfer of Minimum Purchase Quantity between the agencies of East Palo and Mountain View and does not have a direct impact on the water supply guarantees or operations for the City of San Bruno.

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.

In June 2009, San Bruno, entered into a Water Supply Agreement with the City and County of San Francisco (San Francisco) and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County (WSA). The 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.

In 2017, the City of Mountain View ("Mountain View") and the City of East Palo Alto ("East Palo Alto") were interested in transferring 1.0 million gallons per day ("MGD") of Mountain View's Minimum Purchase Quantity to East Palo Alto, however, at the time, there was no procedure in the WSA to effectuate such a transfer without amending the WSA. Therefore, the parties elected to execute a water rights transfer agreement by which East Palo Alto agreed to pay Mountain View \$5 million for the permanent transfer of all rights, title, interest to 1.0 MGD of Mountain View's Individual Supply Guarantee (ISG) to East Palo Alto.

BAWSCA agencies approved the Amended and Restated WSA in 2019, at which time the Wholesale Customers expressed a collective interest in working together to develop a process for the expedited and permanent transfer of Minimum Purchase Quantities. 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. In 2020, Mountain View and East Palo Alto began discussing a possible future transfer of a portion of Mountain View's Minimum Purchase Quantity to East Palo Alto.

The Councils of East Palo Alto and Mountain View each approved the conversion of the 1.0 MGD of Mountain View's ISG sold to East Palo Alto in 2017 into a transfer of up to 1.0 MGD

of Mountain View's Minimum Purchase Quantity to East Palo Alto, in increments of 0.25 MGD, subject to the City Councils' approval of an agreement for each incremental transfer and the approval of the Wholesale Customers and San Francisco. East Palo Alto and Mountain View are authorized and prepared to execute a negotiated agreement memorializing a 0.25 MGD transfer of Mountain View's Minimum Purchase Quantity to East Palo Alto.

#### **DISCUSSION:**

The proposed amendment would provide advance approval for the conversion of up to 1.0 MGD of Mountain View's ISG, sold to East Palo Alto in 2017 into a transfer of up to 1.0 MGD of Mountain View's ISG plus up to 1.0 MGD of Mountain View's Minimum Purchase Quantity to East Palo Alto, in 0.25 MGD increments, if all the following terms and conditions are satisfied:

- a. Mountain View will transfer up to 1.0 MGD of its Minimum Purchase Quantity to East Palo Alto, in increments of 0.25 MGD, subject to the Mountain View City Council's and the East Palo Alto City Council's approval of an agreement for each incremental transfer.
- b. For each incremental transfer, a Temporary Modified Minimum Annual Purchase Quantity will be calculated for East Palo Alto that is equal to the City's five-year average water use from the SFPUC for the most recent non-drought years prior to the 2017 ISG purchase, plus the incremental transfer amount(s).
- c. For each incremental transfer, Mountain View will maintain, and be responsible for paying any imputed sales for, its current Minimum Purchase requirement in effect at that time, as set forth in Attachment E of the WSA, including up to 1.0 MGD ISG transfer to East Palo Alto, until East Palo Alto's water use meets the Temporary Modified Minimum Annual Purchase Quantity for three consecutive years.
- d. East Palo Alto will not be required to pay imputed sales associated with the Temporary Modified Minimum Annual Purchase Quantity for any incremental transfer of the 1.0 MGD of Mountain View's Minimum Purchase requirement.
- e. For each incremental transfer, once East Palo Alto has met the Temporary Modified Minimum Annual Purchase Quantity for three consecutive years, the incremental portion of Mountain View's Minimum Purchase Quantity transferred to East Palo Alto will become East Palo Alto's Minimum Purchase Quantity, and Mountain View's Minimum Purchase Quantity will be reduced by an equivalent amount. East Palo Alto's new Minimum Purchase Quantity will be included in Attachment E and both cities' Individual Water Sales Contracts will be updated to reflect this transfer. (See Attachment 3)
- f. With exception of the incremental transfers that are the subject of this resolution and the agreement between East Palo Alto and Mountain View described herein,

any additional transfers of Minimum Purchase Quantity, either from another Wholesale Customer or from Mountain View in excess of the 1.0 MGD, are subject to Section 3.04 of the 2021 WSA. (See Attachment 2)

Unanimous approval of Wholesale Customers is not needed to pass, this action requires supermajority approval by the BAWSCA agencies (2/3 of number (out of a total 26) and 75% in volume of water).

If San Bruno does not approve the Minimum Water Purchase Transfer and 2/3 of the remaining BAWSCA agencies approve it, then the Minimum Water Purchase Transfer will proceed.

**FISCAL IMPACT:**

There is no fiscal impact with approving this Minimum Water Purchase Transfer.

**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 a Minimum Water Purchase Transfer between the City of East Palo Alto and the City of Mountain View.

**ALTERNATIVES:**

1. Approve the Minimum Water Purchase Transfer.
2. Do not approve the Minimum Water Purchase Transfer.

**ATTACHMENTS**

1. Resolution
2. Minimum Water Purchase Transfer Agreement Between the City of East Palo Alto
3. Attachment E "Minimum Purchase Quantities" of the Revised 2021 Amended and Restated Water Supply Agreement