



**DATE:** March 22, 2022

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT:** Adopt a Resolution Authorizing the City Manager to Execute the Amended and Restated Water Supply Agreement with the City and County of San Francisco and Wholesale Customers and Approving a Minimum Purchase Transfer from the City of Mountain View to the City of East Palo Alto

## **RECOMMENDATION**

That the Council adopts resolutions approving the proposed amendments to the 2009 Water Supply Agreement with the City and County of San Francisco, and authorizes the City Manager to execute the amended and restated WSA:

1. Allowing for the transfer of Minimum Annual Purchase Requirements among Wholesale Customers in conjunction with the transfer of their Individual Supply Guarantees (Attachment II); and
2. Approving a Minimum Purchase transfer from the City of Mountain View to the City of East Palo Alto (Attachment III).

## **SUMMARY**

Hayward receives its water supply from the San Francisco Public Utility Commission (SFPUC) under the terms of a 1962 individual water sales agreement, as well as the 2009 Water Supply Agreement (WSA) between San Francisco and the wholesale water customers (Wholesale Customers). From time to time, the WSA is amended, most recently in 2019. This report describes proposed amendments to establish a process for the expedited and permanent transfer of Minimum Purchase Quantities, to which four wholesale customers are currently subject. This report also addresses a specific request to transfer Minimum Purchase Quantities from the City of Mountain View to the City of East Palo Alto.

## **BACKGROUND**

The City of Hayward purchases all of its potable water supply from the SFPUC's Regional Water System (RWS), governed by two agreements: 1) the 1962 Water Sales Agreement

between the City of Hayward and the San Francisco Water Department; and 2) the WSA between San Francisco and all wholesale customers, including Hayward, and subsequent amendments to the WSA. The 1962 agreement primarily addresses the quantity of water to be delivered to Hayward and is the document that assures Hayward of receiving sufficient quantities to meet its demand as long as water supplies are available.

The WSA focuses on issues of common interest to all Wholesale Customers, such as the calculation of wholesale rates and allocation of system costs. Under the WSA terms, the SFPUC agrees to deliver water to the Wholesale Customers up to the amount of 184 million gallons per day (mgd), known as the Supply Assurance. Wholesale Customers, with the exception of Hayward, have an allocation of this supply, referred to as the Individual Supply Guarantees (ISG). Given the terms of Hayward's 1962 Agreement with San Francisco, the City does not have an ISG. The WSA also includes the rules and requirements for water purchases and transfers of ISGs between the Wholesale Customers.

Hayward is a member of BAWSCA, which represents the interests of the twenty-six entities that purchase water from the SFPUC and administers the WSA on behalf of the member agencies. In 2006, Hayward delegated authority to BAWSCA to negotiate the WSA, which was approved by Council in 2009. The WSA has since been amended twice, in 2013 and 2019, to address substantive issues that arose during implementation of the WSA.

Under the terms of the WSA, four wholesale customers may purchase water from sources other than the SFPUC, but they are each obligated to purchase a specific minimum quantity from the RWS. This requirement was developed to discourage agencies from pursuing the purchase of less expensive sources of water, in lieu of SFPUC supplies, and thereby transferring a greater cost burden to the SFPUC and other wholesale customers. It helps maintain wholesale rate stability (i.e., fewer rate fluctuations from year to year) for all customers and reduces financial risk to the RWS. The four Wholesale Customer agencies are Alameda County Water District, and the Cities of Milpitas, Mountain View, and Sunnyvale (Minimum Purchase Agencies). If a Minimum Purchase Agency does not meet its minimum purchase requirement in a fiscal year, it must pay the SFPUC the difference between its water purchases and its Minimum Purchase Requirement. The total Minimum Purchase Requirement is 30.8 mgd among the four agencies.

The WSA does not currently allow a Minimum Purchase Agency to transfer a portion of its Minimum Purchase Requirement and the associated financial obligation to other Wholesale Customers. This limitation has been considered an obstacle for affected agencies to pursue water supply transfer opportunities because any transfer of a Minimum Purchase Quantity would require each Wholesale Customer's governing body to adopt a new amendment to the WSA. In September 2017, BAWSCA and the Wholesale Customers initiated discussions to create a process by which Minimum Purchase Quantities could be transferred from one agency to another as part of an ISG transfer. As a result of these discussions, a proposed WSA amendment has been developed to provide a procedure for expedited and permanent transfers of Minimum Purchase Quantity requirements.

As discussions regarding the WSA amendment were taking place, the Cities of Mountain View and East Palo Alto developed a proposal to convert the 1 mgd of Mountain View's ISG previously sold to East Palo in 2017 into a transfer of up to 1 mgd of Mountain View's Minimum Purchase Quantity to East Palo in 0.25 mgd increments. Because the 2017 transfer predates the proposed Minimum Purchase Amendment, the proposed interagency transfer must be approved separately by Council.

## **DISCUSSION**

### **Proposed Minimum Purchase Amendment**

Discussions among the Wholesale Customers, in which Hayward staff actively participated, resulted in a proposed WSA amendment that meets the objectives of facilitating water transfers to more effectively use available water supplies while minimizing financial risk to non-participating agencies. The proposed WSA amendment allows for the paired transfer of ISGs and Minimum Purchase Quantities using a specific process that protects non-participating agencies from increased wholesale rates as a result of any transfers. Key parameters of the proposed amendment are:

- Transfers of Minimum Purchase Quantities are limited to 6 mgd in total and up to 50% of the transferring agency's original Minimum Purchase requirement. The total Minimum Purchase Quantity remains unchanged at 30.8 mgd.
- Transferring agency must transfer at least an equivalent amount of its ISG in connection with a Minimum Purchase Quantity transfer.
- The receiving Wholesale Agency, or transferee, is subject to a three-year Temporary Modified Minimum Purchase Quantity (TMMPQ) based on the average of its most recent five-year non-drought year purchases from the SFPUC. The agency must pay for its actual annual deliveries, no less than the transferred TMMPQ.
- The receiving Wholesale Agency is subject to the TMMPQ until actual water demand is developed and water deliveries meet or exceed this quantity for three consecutive years. This allows time for agencies to grow into and demonstrate their ability to sustain the Minimum Purchase Requirements.
- The receiving Wholesale Agency will secure a new Permanent Minimum Purchase Requirement equal to the transferred Minimum Purchase after purchasing the TMMPQ for three consecutive years.

The proposed amendment:

- Removes an administrative barrier to water transfers among Wholesale Customers.
- Facilitates water transfers among Wholesale Customers, which have been identified as one potentially effective measure to address long-term regional water supply reliability.

- Builds procedural safeguards into the process to ensure that the transfers will not result in new or different risks to the water supply and financial interests of non-participating Wholesale Customers.

San Francisco, acting by and through the SFPUC, approved the 2021 Amended and Restated WSA on January 26, 2021, pending approval by the requisite number of the Wholesale Customers, including Hayward.

### **Proposed Mountain View/East Palo Alto Minimum Purchase Transfer Amendment**

As a separate but related matter, staff is recommending that Council also provide approval for the transfer of up to 1.0 mgd of Mountain View's Minimum Purchase to the City of East Palo Alto under terms that mimic the process described above for future transfers of Minimum Purchase Requirements. As a brief overview, in 2017, Mountain View transferred 1.0 mgd of its ISG to East Palo Alto; however, at that time, there was no mechanism in the WSA to transfer any portion of Mountain View's 8.9 mgd Minimum Purchase Requirement. During discussions regarding the proposed WSA Minimum Purchase Amendment described above, the two parties agreed on additional terms that would allow for the transfer of up to 1.0 mgd of Mountain View's Minimum Purchase Requirement to East Palo, in 0.25 mgd increments.

The following are key terms and conditions:

- Mountain View will transfer up to 1.0 mgd of its Minimum Purchase Quantity to East Palo Alto in increments of 0.25 mgd.
- For each incremental transfer, a TMMPQ will be calculated for East Palo Alto based on its five-year average use for the most recent non-drought years prior to 2017. East Palo will be responsible for paying imputed sales associated with the TMMPQ.
- Mountain View will be responsible for paying imputed sales for its current Minimum Purchase Requirement until East Palo's transfer becomes permanent.
- Once East Palo Alto has met the requirements of its TMMPQ for three consecutive years, the incremental portion of the Minimum Purchase Requirement transferred will become East Palo's permanent requirement and Mountain View's Minimum Purchase Requirement will be reduced by an equivalent amount.

Staff believes that approval of this WSA amendment has minimal risk to Hayward and benefits the City through increased long-term water supply reliability.

### **ECONOMIC IMPACT**

No direct economic impacts are anticipated associated with the adoption of the attached resolutions. The Minimum Purchase Amendment provides a procedure for streamlined and

permanent transfers of Minimum Annual Purchase Quantity requirements, while safeguarding the financial and water supply interests of the SFPUC's Wholesale Customers not participating in such transfers. The agreement between the Cities of Mountain View and East Palo Alto likewise provides for the permanent transfer of Minimum Purchase requirements, in connection with an ISG transfer in 2017, without financial risk to SFPUC and other Wholesale Customers.

**FISCAL IMPACT**

The Minimum Purchase Amendment is not anticipated to present any new or different financial risks to Hayward.

**STRATEGIC ROADMAP**

This agenda item is a routine operational item and does not relate to one of the Council's six Strategic Priorities.

**SUSTAINABILITY FEATURES**

Intra-system water transfers allow for greater use of existing regional water supply and are mechanisms that can promote long-term regional water reliability among the SFPUC's Wholesale Customers.

**PUBLIC CONTACT**

There is no additional public contact that is needed or planned for these actions.

**NEXT STEPS**

If the Council approves the 2021 Amended and Restated WSA, staff will forward for the adopted resolutions to BAWSCA, and they will prepare and forward the 2021 Amended and Restated WSA to the City Manager for signature.

*Prepared by:* Cheryl Muñoz, Water Resources Manager

*Recommended by:* Alex Ameri, Director of Public Works

Approved by:



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Kelly McAdoo, City Manager