

RESOLUTION NO. 2019 - 03

**APPROVING AMENDMENTS TO THE WATER SUPPLY AGREEMENT BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO AND WHOLESALE CUSTOMERS
IN ALAMEDA COUNTY, SAN MATEO COUNTY, AND SANTA CLARA COUNTY**

PURISSIMA HILLS WATER DISTRICT

WHEREAS, 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; and

WHEREAS, the San Francisco Public Utilities Commission (SFPUC or Commission) Water Enterprise 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 (collectively, “the Parties”); and

WHEREAS, the 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; and

WHEREAS, in April 2003, water supply agencies in Alameda, San Mateo and Santa Clara Counties established the Bay Area Water Supply and Conservation Agency (BAWSCA), as authorized by Water Code Section 81300 *et seq.*; and

WHEREAS, 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” (Water Supply Agreement) on July 1, 2009, authorized by SFPUC Resolution No. 09-0069; and

WHEREAS, on August 8, 2018 this Board, by Resolution No. 2018-05, delegated authority to BAWSCA to act as its authorized representative in discussions and negotiations with San Francisco to amend the Water Supply Agreement; and

WHEREAS, each of the other 25 entities which are members of BAWSCA similarly delegated negotiating authority to BAWSCA; and

WHEREAS, BAWSCA has submitted periodic reports to the District on progress during the negotiations and has provided detailed briefings on all significant elements of the amendments; and

WHEREAS, the Parties now desire to adopt an amended and restated Water Supply Agreement in order to:

- (1) require the SFPUC to adhere to a formal program to engage with BAWSCA on its 10-year CIP development;
- (2) adjust the provisions of the Water Shortage Allocation Plan regarding the initial allocation of water during shortages between San Francisco Retail and Wholesale water customers;
- (3) extend the December 31, 2018 deadline for the SFPUC to complete a water supply planning process and decide whether or not to (a) grant permanent customer status to the cities of San Jose and Santa Clara, dedicating a permanent share of the SFPUC water supply to these two wholesale customers, who currently have temporary, interruptible status, and (b) increase the 184 mgd Supply Assurance created as a permanent dedication of water supply in the 1984 "Settlement Agreement and Master Water Sales Contract" and carried forward into the 2009 Water Supply Agreement (collectively "the 2018 Decisions");
- (4) change the classification of certain Hetch Hetchy Water and Power capital projects, adjusting the amount of capital funding to be provided towards these projects by the Parties and the SFPUC Power Enterprise through the term (June 30, 2034) of the Water Supply Agreement;
- (5) modify provisions related to the SFPUC's administration of the Wholesale Capital Fund to more closely align with the historic rate of capital project spending by the SFPUC and prevent volatility in the annual determination of the Wholesale Revenue Requirement;
- (6) extend the estimated timing of the completion of the Water System Improvement Program (WSIP) to reflect the currently adopted program completion date;

(7) clarify the cost allocation and water accounting provisions used for the Regional Water System's Groundwater Storage and Recovery Project; and

WHEREAS, in addition to the substantive modifications set forth above, the amended and restated Water Supply Agreement also includes a number of non-substantive updates and revisions to incorporate previously approved modifications, such as the First Amendment to the Water Supply Agreement, adopted in 2013 as new Section 3.18, prohibiting San Francisco from draining Hetch Hetchy Reservoir or decommissioning O'Shaughnessy Dam without securing Wholesale Customer approval in the form of an amendment; and

WHEREAS, in 2008, through SFPUC Resolution No. 08-0200, San Francisco approved the WSIP to upgrade San Francisco's regional and local water system and achieve Level of Service Goals and Objectives, which include meeting average annual water demand of 265 million gallons per day (mgd) through 2018; reevaluation of forecasted 2030 Regional Water System demand projections and water supply options by 2018, and SFPUC decision in 2018 regarding Regional Water System deliveries after 2018; and meeting dry year delivery needs while limiting rationing to a maximum of twenty percent system wide during droughts; and

WHEREAS, prior to approval of the WSIP, San Francisco prepared a program environmental impact report (PEIR) for the WSIP in compliance with the California Environmental Quality Act (CEQA) and the San Francisco Planning Commission certified the WSIP Final PEIR in Planning Commission Motion No. 17734; and

WHEREAS, the Wholesale Customers reviewed the Final PEIR and CEQA findings and, in conjunction with approval of the Water Supply Agreement in 2009, the Wholesale Customers also adopted CEQA findings that were relevant to each Wholesale Customer's decision to approve the WSA; and

WHEREAS, the amendments considered now are not a "project" for the purposes of CEQA as they involve an administrative activity that does not result in a direct 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)); and

WHEREAS, in the event the amendments are considered a "project," they would be subject to the categorical exemption for operation, repair, and maintenance of existing facilities (see 14 CCR Section 15301) and the amendments do not implicate substantial changes that involve a new significant environmental effect (see 14 CCR Section 15162(a)); and

WHEREAS, the Parties recognize that, both before and after the most recent statewide drought, after meeting drought-related conservation mandates, several BAWSCA member agencies were unable to meet their respective minimum purchase requirements described in Article 3.07 of the Water Supply Agreement, which requires payment for water below the required minimum purchase level even if such water is not delivered and used; and

WHEREAS, BAWSCA and San Francisco have identified intra system water transfers in general as one potential solution to long-term water reliability needs among the Wholesale Customers, and Section 3.04 of the Water Supply Agreement provides a simplified process for permanent Individual Supply Guarantee (ISG) transfers among certain Wholesale Customers; and

WHEREAS, several of the Wholesale Customers with minimum purchase requirements might be interested in transferring water within their respective ISGs, if doing so would also reduce their minimum purchase requirements and corresponding financial impact of paying for water that is not used; and

WHEREAS, the Parties to the Water Supply Agreement have a collective interest in working to promptly identify a resolution to this as part of a future contract amendment; and

WHEREAS, BAWSCA and San Francisco will begin discussions to address this issue commencing in January 2019; and

WHEREAS, San Francisco's currently adopted WSIP program completion date is December 30, 2021; and

WHEREAS, one of the remaining final projects in the WSIP, the Alameda Creek Recapture Project, is the subject of a revised environmental impact report that has not yet been published for public review and comment; and

WHEREAS, on April 3, 2018, the Wholesale Customers provided formal comment to the SFPUC, as part of its action to adopt the most recent WSIP completion date, that the proposed WSIP completion date and accompanying construction schedule extension date for the Alameda Creek Recapture Project to December 30, 2021, may not be sufficient to accommodate any project modifications that might be necessary as a result of the ongoing revised environmental analysis, increasing uncertainty associated with the adequacy of the Project schedule as proposed by the SFPUC; and

WHEREAS, the SFPUC has indicated that its Hetch Hetchy Local Simulation Model (HHLSM) hydrologic modeling identifies the supply yield anticipated by the Alameda Creek Recapture Project as critical to achieving and maintaining drought year reliability and achieving the WSIP Water Supply Level of Service Goal; and

WHEREAS, the Wholesale Customers acknowledge that the Alameda Creek Recapture Project cannot proceed to construction until environmental review under CEQA is successfully completed, and the past practice of BAWSCA has been to support extensions of individual WSIP project schedules and overall WSIP scheduled completion, including past extensions for the Alameda Creek Recapture Project, if supported by technical and other analysis as necessary to successfully complete the project and achieve project objectives; and

WHEREAS, BAWSCA intends to act in a manner that represents the best interests of all of its member agencies' water supply while avoiding any harm alleged by any one member agency's water supply as a result of any future action by SFPUC; and

WHEREAS, the Wholesale Regional Water System Security and Reliability Act (AB 1823, Water Code Section 73500 *et seq.*) continues the Legislature's oversight of SFPUC's implementation of the regional projects included in WSIP through January 1, 2022; and

WHEREAS, BAWSCA intends to ask the Legislature again to extend its oversight of the WSIP program in anticipation of the SFPUC's need to extend the WSIP completion date to accommodate individual project schedules with reasonable delays, such as the Alameda Creek Recapture Project; and

WHEREAS, an amended and restated Water Supply Agreement, in the form negotiated by BAWSCA, was presented to and approved by the Commission on December 11, 2018.

NOW, THEREFORE, BE IT RESOLVED that the Purissima Hills Water District Board of Directors finds as follows:

1. The analysis contained in the WSIP PEIR, and the CEQA findings adopted by the District in connection with the adoption of the Water Supply Agreement in 2009 remain adequate for purposes of this approval action because there are no substantial changes proposed in the WSIP that was approved in 2008, and there are no substantial changes in circumstances that would require major revisions to the WSIP PEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the WSIP PEIR.

2. The Board of Directors approves the modifications included in the attached amended and restated "Water Supply Agreement Between the City and County of San Francisco Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County" dated November 2018 (Amended and Restated Water Supply Agreement).


3. The General Manager and Board President are authorized and directed to sign the Amended and Restated Water Supply Agreement, in the form previously approved by the San Francisco Public Utilities Commission and attached hereto.

Passed and adopted this 13th day of February, 2019, by the following votes:

AYES: Directors Evans, Solomon, Holtz, Jordon


NOES: None

ABSENT: None



President, Board of Directors
Purissima Hills Water District

ATTEST:



Secretary of the District