



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### SUBJECT

Adopt a Resolution Approving the 2018 Amendments to the Water Supply Agreement (WSA) between the City and County of San Francisco (SFPUC) and the Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County.

#### BACKGROUND

The City of Sunnyvale purchases approximately 50% of its water supply (9 million gallons per day) from the SFPUC's Hetch Hetchy System under the terms of the WSA. The WSA between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County was approved by the City Council on June 9, 2009 (RTC No. 09-154) and is set to expire in 2034. The WSA delineates the terms under which the City purchases water, including water supply (quantity) and water quality, and all aspects of the SFPUC rate-setting process.

The City is a member of Bay Area Water Supply and Conservation Agency (BAWSCA), a special district that represents the interests of the 26 water agencies that purchase SFPUC water. In the course of implementing the WSA, it became clear to BAWSCA and the SFPUC, that several amendments were needed to address substantive, important, and discrete issues (Attachment 2). These amendments do not diverge from the existing policies and spirit of the WSA and do not change the basic contract structure or concede any of Sunnyvale's rights under the contract.

BAWSCA and SFPUC initially identified eight amendments of the greatest importance to each agency. On September 11, 2018 (RTC No. 18-0630), the City Council adopted a resolution authorizing BAWSCA to negotiate the eight proposed amendments to the WSA with the SFPUC. After 10 weeks of negotiations BAWSCA and SFPUC agreed on seven amendments to the WSA. The eighth amendment on Debt Coverage Ratio (DCR) which was of interest to the SFPUC was dropped.

On December 11, 2018, the SFPUC approved the amended and restated WSA, pending approval by the requisite number of BAWSCA agencies. Eighteen out of the 26 BAWSCA agencies with a combined minimum purchase of 75% of the water, must approve the amendments along with the SFPUC, and any amendment that does not garner such approval will not go into effect.

To facilitate approval of the amendments, Attachment 1 is a resolution for Council's consideration and approval.

#### EXISTING POLICY

##### City of Sunnyvale General Plan-Environmental Management, Chapter 7

**GOAL EM-1 Adequate Water Supplies** - Acquire and manage water supplies so that existing and future reasonable demands for water, as projected in the 20-year forecast, are reliably met.

**Policy EM-1.1 Water Supply** - Manage water supply to meet demands for potable water through the effective use of water supply agreements.

### **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) as is an organizational or administrative activity that will not result in direct or indirect physical changes to the environment.

### **DISCUSSION**

The seven amendments that were of greatest importance to each agency are shown and detailed in Attachment 2. Below is a brief discussion and analysis of each amendment:

#### **1. Oversight of SFPUC's Capital Improvement Program (CIP) (2009 WSA new Section 6.09):**

The Wholesale Customers have had some oversight of the Water System Improvement Program (WSIP), both through the enactment of AB 1823 (2002), and through quarterly meetings and public reporting. As WSIP nears completion, the SFPUC's Capital Improvement Program (CIP) is expanding to achieve a sustainable rate of repair and replacement consistent with overall asset management of the System and SFPUC's adopted Level of Service Goals. This amendment adds a new section to the WSA obligating SFPUC to formally engage with BAWSCA on its 10-year CIP development. This amendment ensures that BAWSCA and the Wholesale Customers are involved in the development of the 10-year CIP, have the opportunity to comment on proposed changes to the Level of Service Goals, requires the SFPUC to create an asset management policy applicable to the Regional Water System by December 31, 2020, and commits the SFPUC to quarterly reporting and meetings on CIP implementation.

#### **2. Tier 1 Drought Allocation Plan (2009 WSA Attachment H Section 2.1):**

The 1984 Agreement required the SFPUC and the Wholesale Customers to develop a Shortage Allocation Plan during droughts. The plan was approved in 2000 for average system wide shortages of up to 20%. Under the plan, the SFPUC allocates the available water supply during droughts between Retail and Wholesale Customers (the "Tier 1 allocation") for incremental shortages of 5, 10, 15 and 20 percent. The Wholesale Customers then collectively allocate the wholesale portion of the available supply among themselves (the "Tier 2 allocations").

Various factors that affect this formula have changed since 2009, particularly the proportionate purchases from the System from San Francisco Retail and Wholesale Customers. If the Tier 1 allocation had been applied during the 2014-2017 drought, San Francisco's retail customers would have received a positive allocation of water. The Tier 1 Drought Allocation Plan amendment includes a modest change to the existing formula to ensure that, in the event of a cutback, San Francisco retail customers do not receive a positive allocation of water and will take a minimum 5% cutback. Any positive allocation of water would be re-distributed to Wholesale Customers; additional water conserved by retail customers up to the minimum 5% level would remain in storage for allocation in future successive dry years.

#### **3. 2018 Decisions (2009 WSA Sections 3.13, 4.01, 4.05, 4.06, 9.06, Attachment Q):**

The 1984 Agreement memorialized the perpetual 184 million gallons per day (mgd) "Supply Assurance" to the Wholesale Customers which survives the expiration or termination of the 2009 Agreement. The Supply Assurance is subject to reduction due to drought, emergencies and system maintenance/malfunction. The Wholesale Customers have allocated shares of the Supply Assurance called "Individual Supply Guarantees." Sunnyvale's Individual Supply Guarantee is 12.58 mgd.

The SFPUC delivers water to the northern portions of the cities of San Jose and Santa Clara on a temporary and interruptible basis in accordance with individual contracts with these cities. To date, the SFPUC has not exercised its contractual right to terminate or reduce water supply to San Jose and Santa Clara, nor has it agreed to make either of the cities a permanent customer. Accordingly, San Jose and Santa Clara do not have Individual Supply Guarantees.

The WSA required that by December 31, 2018, the SFPUC was to decide whether to make San Jose and Santa Clara permanent customers and whether to offer additional supply to other Wholesale Customers. Currently, there is insufficient data for the SFPUC to make these decisions. This amendment will extend the deadline for SFPUC to decide to December 31, 2028 and obligate SFPUC to provide annual updates to its Commission regarding developing permanent supply for San Jose and Santa Clara.

The amendment also expands Santa Clara's service area map for operational purposes.

#### 4. Asset Classification (2009 WSA new Section 5.11 and definitions and Attachment R; revisions to Section 4.07):

A basic principle of the 1984 Agreement involved the classification of Regional Water System assets used to serve Retail and Wholesale Customers. Asset classification is critical to the allocation of Hetch Hetchy Enterprise capital and operating costs to separate out the Power function, the costs for which have never been paid by Wholesale Customers. "Upcountry" Regional Water System assets, which are generally those assets located in the Tuolumne, Stanislaus, and San Joaquin counties, are classified as Water, Power, or Joint. For Joint upcountry assets that have both power and water benefits, costs are split 55% to the Power Enterprise and 45% to the Water Enterprise. Wholesale and Retail Customers then pay for the water portion based on their proportional purchases of water. The 1984 Agreement was a legal settlement that included a list of Hetch Hetchy asset classifications. These classifications were incorporated into the 2009 Agreement without change.

In FY 2010/2011, SFPUC unilaterally changed the classification and the related cost allocation of a small number of assets of the System. BAWSCA disputed this decision and, rather than submit the dispute to arbitration, the parties negotiated a resolution. This amendment documents and fixes the classification of all significant "upcountry" existing assets of the Regional Water System and limits the changes from historical classifications for seven specific and known projects on five assets, without changing the classification of the underlying asset. This facilitates efficient contract administration and limits and mitigates Wholesale Customer exposure to financial risks on certain projects.

#### 5. Wholesale Capital Fund (2009 WSA, Section 6.08 E and Attachment M-3):

Under the 2009 WSA, funds for capital projects are appropriated and placed into the Wholesale Capital Fund upon appropriation. The balance of the Fund is reviewed at 5-year intervals beginning in FY 2014-15, and any excess balance (unexpended, unencumbered amount more than 10% of appropriation) is transferred to the balancing account.

In implementing the reconciliation of the Wholesale Capital Fund, SFPUC discovered that the reconciliation timing did not conform to the SFPUC's budget requirements, appropriation process, and project spending needs. For instance, if funding is appropriated for a project in year four of the 5-year review period, it may result in return of funds after only 1 year even though the project may take several years to complete.

This amendment provides for an annual reconciliation of costs to ensure that SFPUC has the necessary resources for capital improvements, without holding an excessive amount of Wholesale Customer funds.

#### 6. WSIP Completion Date (2009 WSA Section 3.09):

The WSA contained an outdated WSIP completion date. This amendment updates the WSIP completion date to December 30, 2021, as adopted by the SFPUC's Commission in March of 2018.

#### 7. Regional Groundwater Storage and Recover Project (RGSRP) (2009 Agreement, Section 3.17):

This amendment updates the RGSRP contract provisions to better reflect how the RGSRP will be operated and to outline the cost-allocation responsibilities shared by the RGWRP's partner agencies. This project allows the extraction of up to 7.5 mgd from wells located in San Mateo County during a drought.

In addition to the substantive amendments set forth above, the attached amended and restated Water Supply Agreement (Attachment 3) includes several non-substantive updates and "clean-up" revisions, as set out below:

- Updated Attachment A, reflecting new and revised definitions.
- Updated Attachment C, reflecting recent Individual Supply Guarantee transfers.
- Updated Attachment K, reflecting the updated Wholesale Customers' share of Net Book Value of Existing Assets and share of Revenue-Funded Capital Expenditures;
- New section 3.18, reflecting the Hetch Hetchy Amendment approved in 2013.
- Revised section 8.04, reflecting the authority previously delegated by the Wholesale Customers to BAWSCA in 2014 to initiate, defend, and settle arbitration for matters subject to arbitration under the WSA.
- Updates reflecting Cal Water's acquisition of Skyline County Water District.
- Updates to the addresses for both BAWSCA and SFPUC.

#### **FISCAL IMPACT**

There is no adverse fiscal impact associated with adopting the attached Resolution approving the WSA amendments and the restated WSA.

#### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

## **ALTERNATIVES**

1. Adopt a resolution approving the seven amendments and 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 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 and find the Action does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) as it is an organizational or administrative activity that will not result in direct or indirect physical changes to the environment.

2. Take no action

## **STAFF RECOMMENDATION**

Alternative 1: Adopt a resolution approving the seven amendments and 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 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 and find the Action does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) as it is an organizational or administrative activity that will not result in direct or indirect physical changes to the environment.

Prepared by: Mansour Nasser, Water & Sewer Division Manager

Reviewed by: Ramana Chinnakotla, Director, Environmental Services Department

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

## **ATTACHMENTS**

1. A Resolution Approving the 2018 Amendments to the Water Supply Agreement (WSA) between the City and County of San Francisco (SFPUC) and the Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County.
2. The Seven 2018 Water Supply Agreement Amendments
3. 2018 Redlined and Restated Water Supply Agreement