



DATE: June 22, 2021

CATEGORY: Consent

DEPT.: Public Works

TITLE: **San Francisco Water Supply Agreement Amendment and Minimum Purchase Transfer to the City of East Palo Alto**

RECOMMENDATION

1. Adopt a Resolution of the City Council of the City of Mountain View Approving an Amendment to the 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, to be read in title only, further reading waived (Attachment 1 to the Council report).
2. Adopt a Resolution of the City Council of the City of Mountain View Approving a Minimum Purchase Transfer from the City of Mountain View to the City of East Palo Alto, to be read in title only, further reading waived (Attachment 2 to the Council report).

BACKGROUND

The City of Mountain View purchases approximately 84% of its water supply from the San Francisco Public Utilities Commission (SFPUC) Regional Water System under the terms of 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 (Agreement). The Agreement was signed in 2009, expires in 2034 (with two optional five-year extensions), and delineates the terms under which the City purchases water from SFPUC. Pursuant to the Agreement, amendments must be adopted by SFPUC and at least two-thirds of the wholesale customers representing a minimum of 75% of SFPUC's wholesale water deliveries. Amendments affecting fundamental rights of the wholesale customers, such as water supply rights and cost, must be unanimous.

As part of the Agreement, Mountain View has an individual supply guarantee (Supply Guarantee) of 12.46 million gallons per day (MGD) and a minimum annual purchase quantity (Minimum Purchase) of 8.93 MGD. The City is one of four wholesale customers with a Minimum Purchase due to the City having an alternate imported water supply

outside of the City and County of San Francisco (San Francisco), provided by Valley Water. Due to droughts, long-term conservation, development of recycled water, and changes in customer use patterns, the City has not utilized its full Minimum Purchase volume during nine of the past 11 years. Although the Minimum Purchase is waived when SFPUC's water supplies are low, such as during a drought or other emergency, Mountain View was required to pay for unused water during four of the nine years. To date, Mountain View has paid a total of \$9.3 million for unused water because of the Minimum Purchase requirement. SFPUC has indicated it does not plan to waive the Minimum Purchase during the current fiscal year, and staff expects close to \$2 million in unused water charges for Fiscal Year 2020-21.

The City is a member of the Bay Area Water Supply and Conservation Agency (BAWSCA), a special district that represents the 26 water agencies that purchase water wholesale from SFPUC (also referred to as the "wholesale customers"). A primary responsibility of BAWSCA is to represent its member agencies in discussions and negotiations with SFPUC. In 2018, the Agreement was amended to address seven issues that had arisen since 2009. At that time, Mountain View requested an eighth amendment be included to reduce the City's Minimum Purchase costs. BAWSCA and SFPUC did not include the requested amendment in 2018 but committed to discussing a possible future amendment that would allow agencies to transfer their Minimum Purchase in conjunction with Supply Guarantee. Negotiations for this amendment have now concluded, and SFPUC adopted the amended and restated Agreement on January 26, 2021.

In conjunction with the current proposed amendment, Mountain View is requesting SFPUC and the BAWSCA agencies consider a parallel action approving a Minimum Purchase transfer from Mountain View to the City of East Palo Alto (East Palo Alto) consistent with a Supply Guarantee transfer completed in 2017. East Palo Alto approved the terms of this Minimum Purchase transfer on April 20, 2021 and authorized its City Manager to execute a Minimum Purchase transfer agreement with Mountain View. Following action by the City Council, the remaining BAWSCA agencies are scheduled to present both the amendment and the parallel action to their governing bodies in the fall.

ANALYSIS

The proposed amendment to the Agreement and proposed Minimum Purchase transfer with East Palo Alto are described below.

Proposed Amendment to the Agreement

The proposed amendment creates an expedited process by which BAWSCA agencies can transfer Minimum Purchase in conjunction with Supply Guarantee through a two-party agreement, which is not currently allowed. The key terms and conditions of this expedited process are summarized below. Following approval of a combined Supply Guarantee plus Minimum Purchase transfer by two agencies, the following will occur:

1. The transferring agency's Supply Guarantee and Minimum Purchase are both immediately decreased by the transfer volume.
2. The receiving agency's Supply Guarantee is immediately increased by the transfer volume.
3. A temporary minimum purchase is assigned to the receiving agency based on its current water use plus the transfer volume. The receiving agency agrees to purchase this volume of water until its actual water use reaches said volume.
4. Once the receiving agency's actual water use meets the temporary minimum purchase, a permanent Minimum Purchase is assigned. This permanent Minimum Purchase is equal to the original transfer volume.

In addition to the process outlined above, the proposed amendment includes some limits to the expedited Minimum Purchase transfers. These limits are listed below:

1. Minimum Purchase transfers, similar to Supply Guarantee transfers, are allowed only between agencies with a Supply Guarantee. Three of the BAWSCA agencies do not have a Supply Guarantee.
2. The total cumulative volume of Minimum Purchase transfers allowed under the expedited process is limited to 6.0 MGD. The BAWSCA agencies will consider increasing this limit in the future, if warranted.
3. Transfers from the current Minimum Purchase agencies are limited to 50% of each agency's current Minimum Purchase. Mountain View's current Minimum Purchase is 8.93 MGD.
4. Minimum Purchase transfers are still allowed outside of the expedited process but must be approved by SFPUC and the BAWSCA agencies, as is currently required.

The proposed amendment includes a few other modifications to the Agreement, the most notable of which expands the Minimum Purchase waiver to include periods when the Governor of California declares a state of emergency that affects SFPUC's water supplies or deliveries. Currently, the Agreement only specifies a Minimum Purchase waiver during periods when SFPUC's water supply is insufficient to meet demands.

Minimum Purchase Transfer to East Palo Alto

In 2017, Mountain View transferred 1.0 MGD of Supply Guarantee to East Palo Alto. At that time, Mountain View also wanted to transfer a portion of its Minimum Purchase, but this term was not prescribed in the Agreement. Given that East Palo Alto was facing a development moratorium due to insufficient water and approval from the BAWSCA agencies would require lengthy negotiations, Mountain View and East Palo Alto proceeded with the Supply Guarantee transfer. East Palo Alto paid Mountain View \$5 million for the transfer, which was half of Mountain View's expected near-term Minimum Purchase costs in unused water.

In the years since, Mountain View has continued to pursue opportunities to reduce its Minimum Purchase and related charges for unused water, including requesting an amendment in 2018, which led to the proposed amendment discussed in the previous section. As part of these negotiations, the City worked with BAWSCA to identify a mechanism for applying the proposed amendment's concept of a coordinated Supply Guarantee plus Minimum Purchase transfer "retroactively" to the City's previous water transfer with East Palo Alto. In order to maintain cost-neutrality for East Palo Alto, recognizing East Palo Alto has already met their obligations for the 2017 transfer, several modifications were made:

- The Minimum Purchase transfer of 1.0 MGD is separated into four increments of 0.25 MGD, with four discrete temporary minimum purchase volumes.
- East Palo Alto does not pay charges for unused water affiliated with any of the four temporary minimum purchase volumes.
- Mountain View maintains its current Minimum Purchase until East Palo Alto's actual water use reaches its temporary minimum purchase volumes.
- As East Palo Alto's actual water use reaches each of the four temporary minimums for three consecutive years, one increment of 0.25 MGD of Mountain View's Minimum Purchase is transferred permanently to East Palo Alto.

- Each incremental transfer requires separate and specific approval by East Palo Alto and Mountain View, subject to any terms agreed upon by the two agencies.

Mountain View and East Palo Alto request that San Francisco and the BAWSCA agencies preapprove the above terms to convert the City of Mountain View's 2017 Supply Guarantee transfer into a combined Supply Guarantee plus Minimum Purchase transfer. If approved, up to 1.0 MGD of Minimum Purchase could be transferred from Mountain View to East Palo Alto through two-party agreements without further action by the other agencies.

East Palo Alto has agreed to negotiate and execute an agreement to accept the first incremental transfer of 0.25 MGD Minimum Purchase in exchange for a right of first refusal for drought water transfers. Pursuant to Attachment H of the Agreement (entitled the "Water Shortage Allocation Plan"), SFPUC will issue monthly water allocations for each BAWSCA agency during a declared water shortage of 20% or less. These allocations may be transferred between agencies. Unused water is held in a "bank" for future use and may also be transferred to another agency. At the end of each fiscal year, agencies with a negative bank balance incur penalty charges. All "bank" water balances return to zero at the conclusion of the water shortage.

It is important to note that drought water transfers do not affect long-term water rights, such as the Supply Guarantee. It is also worth noting that offering a right of first refusal for drought water transfer does not require the City to transfer water during a drought. Any future decision to transfer drought water would be made at that time, based on the current conditions, and would require action by the City Council.

Other negotiated terms of the Minimum Purchase transfer with East Palo Alto include:

1. The right of first refusal will be linked to the Minimum Purchase transfer volume (currently 0.25 MGD).
2. The transfer agreement between Mountain View and East Palo Alto will remain in effect as long as the Agreement remains in effect (i.e., until 2034 with two optional five-year extensions).

If approved by the City Council, staff will work with East Palo Alto to draft and execute an agreement memorializing the terms outlined above (and detailed in Attachment 2).

Benefits to Mountain View

Benefits of the Proposed Amendment

The primary goal of the proposed amendment is to incentivize water transfers between the BAWSCA agencies by allowing paired transfers of Supply Guarantee plus Minimum Purchase through two-party agreements. Interagency transfers are beneficial to SFPUC and the BAWSCA agencies because they reduce the need to develop new water supplies to meet future demands. As a Minimum Purchase agency, the proposed amendment would allow the City to reduce its Minimum Purchase through a two-party agreement in the future. This was not possible when Mountain View transferred water to East Palo Alto in 2017. Furthermore, by expanding the situations in which the Minimum Purchase may be waived, Mountain View could see reduced unused water charges in one or more future years.

Benefits of the Minimum Purchase Transfer to East Palo Alto

If approved by San Francisco and the BAWSCA agencies, the proposed Minimum Purchase transfer with East Palo Alto benefits Mountain View in the following ways:

1. In the near term, it reduces the City's Minimum Purchase by 0.25 MGD once East Palo Alto's water use reaches East Palo Alto's first temporary minimum.
2. In the long term, it offers an opportunity for the City to further reduce its Minimum Purchase by an additional 0.75 MGD through two-party agreements with East Palo Alto and without further approval from the other agencies.

Staff's opinion is that the proposed transfer, including the right of first refusal for drought water transfers, is a low-risk deal with high potential benefit for both agencies.

Staff projects that Mountain View's water use is likely to remain below the current Minimum Purchase through 2025. East Palo Alto staff projects their water use may reach the first temporary minimum within the next 15 years. That said, forecasting water use is very difficult because of its sensitivity to many unpredictable factors, such as drought. Despite this uncertainty, the proposed transfer is the first opportunity Mountain View has had since 2009 to potentially reduce future unused water costs and the long-term risks associated with the Minimum Purchase.

Resolutions

Staff recommends that Council adopt the attached resolutions approving the proposed amendment to the water supply agreement and the agreement for the Minimum Purchase transfer with East Palo Alto. Both resolutions authorize the City Manager to execute the agreements based on the terms and conditions described above.

FISCAL IMPACT

The proposed amendment to the Agreement and Minimum Purchase transfer do not have an immediate financial impact to Mountain View, but both have the potential to reduce future unused water costs.

CONCLUSION

Mountain View's water agreement with SFPUC and the BAWSCA agencies requires the City to pay for a minimum volume of water each year. Over the past decade, this requirement has cost the City \$9.3 million in unused water charges. The proposed amendment and transfer with East Palo Alto provide opportunities for Mountain View to reduce its Minimum Purchase volume in the future and, in doing so, reduce potential future costs for unused water.

ALTERNATIVES

1. Do not approve the proposed amendment to the Agreement.
2. Do not approve the Minimum Purchase transfer to East Palo Alto.
3. Provide other direction.

PUBLIC NOTICING – Agenda posting.

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EF/EP/6/CAM
703-06-22-21CR
200278

- Attachments:
1. Resolution Approving Amendment to the Water Supply Agreement
 2. Resolution Approving a Minimum Purchase Transfer with the City of East Palo Alto