



**DATE:** May 23, 2017

**CATEGORY:** New Business

**DEPT.:** Public Works

**TITLE:** **Water Supply Transfer Agreement  
with the City of East Palo Alto**

### **RECOMMENDATION**

Authorize the City Manager to execute a water supply transfer agreement with the City of East Palo Alto (“Transfer Agreement”) pursuant to the terms outlined in this Council report.

### **BACKGROUND**

The San Francisco Public Utilities Commission (SFPUC) supplies approximately 85 percent of Mountain View’s (City) potable water. Per the 2009 Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County (Supply Agreement), the City is entitled to purchase a maximum (supply guarantee) of 13.46 million gallons per day (MGD). The Supply Agreement also requires the City to purchase a minimum of 8.93 MGD and allows the SFPUC to charge the City for this quantity, even if the water is not used. The Santa Clara Valley Water District (SCVWD) is the source of approximately 11 percent of the City’s supply, and the remaining 4 percent is provided through local groundwater wells. The California Water Company also serves approximately 600 customers in Mountain View.

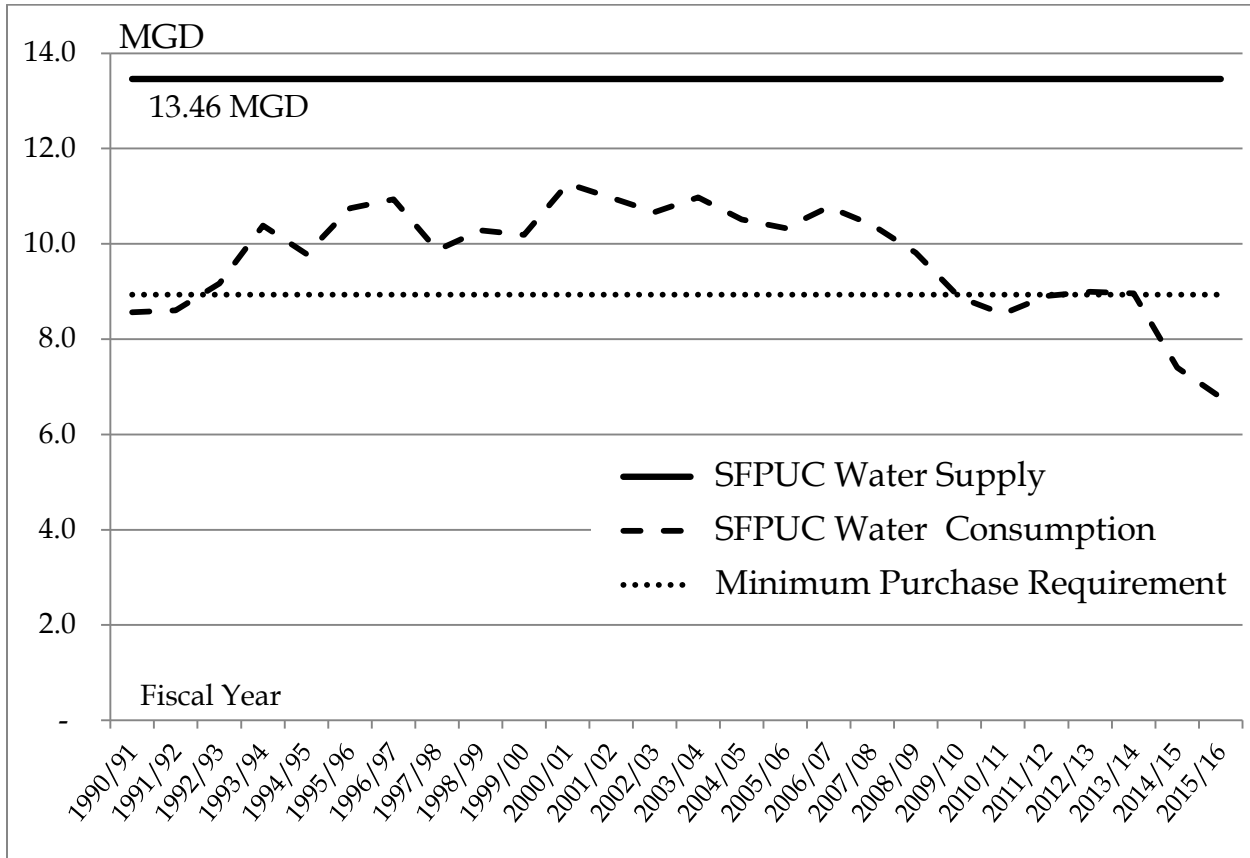
Through the Supply Agreement, the City of East Palo Alto (EPA) is entitled to purchase a maximum of 1.963 MGD from the SFPUC, which is EPA’s only source of potable water. EPA currently has a moratorium on new or expanded water service connections (and, therefore, new development projects) because their current consumption is close to their contractual supply, leaving no supply for new developments. Because the City’s water consumption is significantly below its supply guarantee and minimum purchase requirement, and EPA needs water for new development projects, the City was contacted by staff from EPA in 2015 regarding a possible water supply transfer from the City to EPA.

EPA's water supply shortage is a significant regional concern. The SFPUC has received letters from numerous elected officials and organizations supporting a supply increase, including Richard Gordon (former Assemblymember); State Senator Jerry Hill; Congressmember Jackie Speier; representatives of the Housing Leadership Council of San Mateo County; the San Mateo County Health System; the Midpeninsula Housing Coalition; and several private companies. Additionally, the City of Palo Alto is reviewing options for helping to address EPA's need for additional water supplies beyond the proposed transfer from the City.

### Mountain View Water Consumption

The City's use of SFPUC water varies annually, with peak use in Fiscal Year 1986-87 of 13.5 MGD, compared with 6.78 MGD in Fiscal Year 2015-16. Over the last three decades, water use has decreased as a result of changes in industry, plumbing efficiencies, conservation programs, and recycled water use with the lowest consumption in the last several years due to additional conservation in response to the drought. Consumption has not come within 1 MGD of the supply guarantee since the late 1980s.

In Fiscal Years 2010-11 and 2011-12, the City paid the SFPUC a total of \$444,000 to satisfy the minimum purchase requirement, even though it did not use the water. Although the City's consumption was below its minimum purchase requirement in Fiscal Years 2014-15 and 2015-16 (and will be for Fiscal Year 2016-17), the SFPUC waived the minimum purchase requirement in response to drought-related requests to conserve water. Based on improved water supply conditions, the SFPUC recently confirmed its intention to resume charging the City for its minimum required purchase quantity beginning July 1, 2017. Staff estimates the City's exposure for the minimum purchase costs of water is \$8.5 million over the next four years, after which staff anticipates purchases will exceed the minimum purchase quantity. The chart below shows the City's consumption of SFPUC water (by fiscal year) since July 1, 1990.



**Figure 1 – City of Mountain View Historical SFPUC Water Consumption**

East Palo Alto Water Consumption

Over the past 14 years, EPA’s water use has averaged 95 percent of its supply guarantee, and in some years has exceeded it. EPA’s 2035 General Plan estimates that new public and private development could increase water use by 75 percent over the next 25 years. In July 2016, the EPA City Council adopted an ordinance prohibiting new or expanded connections to the municipal water system until additional supplies are secured. EPA is seeking 1.5 MGD of permanent new supply to provide water for new developments contemplated under its 2035 General Plan. EPA is investigating opportunities for new supplies, including rehabilitation of two unused groundwater wells, supply transfers within the SFPUC Regional Water System, and increased conservation (despite their already low per capita use).

EPA is seeking immediate water supply for several projects, including a 500-student school that would provide comprehensive support services for students from EPA and Belle Haven, and an affordable housing project of 120 units on City-owned land. There have also been other potential projects that have not submitted applications due to the moratorium.

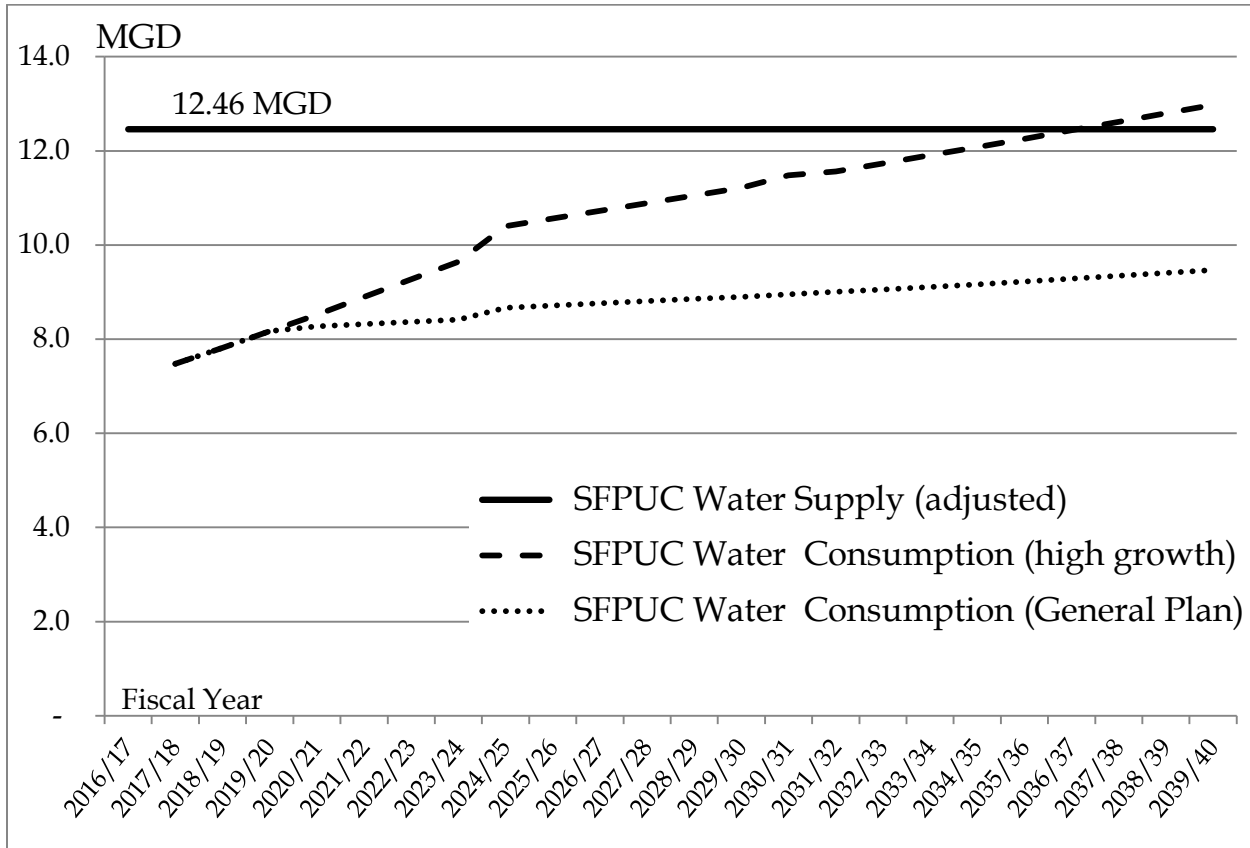
## ANALYSIS

Staff reviewed long-term water supply needs to assess the risk of permanently transferring a portion of the City's supply to EPA.

### Future Water Demand

The City's future water demand is based on many variables that are difficult to forecast with certainty long term. Significant among these variables is the amount and timing of development activity, recycled water use, and conservation due to new technology and behavioral changes by residents and employees in the City. Water demand projections were developed in the City's 2015 Urban Water Management Plan (UWMP) based on the General Plan, Precise Plans, and other land use policies currently under study. Two parallel demand projections were developed: one based on the adopted land use policies and another based on a "higher growth" alternative that includes possible new land use policies such as allowing housing in North Bayshore, Shenandoah, and other properties, plus commercial use in the Whisman Precise Plan area. The UWMP also estimated water savings from plumbing code requirements and conservation programs.

Figure 2 shows the City's projected water demand under two long-term scenarios: a General Plan growth scenario, and an increased growth scenario that reflects the North Bayshore Precise Plan 2.0 beginning in 2020. For comparison purposes, Figure 2 also shows the adjusted SFPUC supply guarantee (after a 1.0 MGD transfer).



**Figure 2 – City of Mountain View Projected SFPUC Water Consumption**

The “General Plan” scenario is based on adopted land use policies and shows projected consumption far below the City’s adjusted supply guarantee through 2039-2040. The scenario titled, “High Growth” is based on policies currently under consideration (e.g., housing in North Bayshore). Although the high growth scenario shows water consumption above the adjusted supply guarantee in Fiscal Year 2037-38, staff believes the City can accommodate the proposed 1.0 MGD transfer to EPA. The high growth projections were developed based on aggressive growth patterns but do not incorporate the impacts of an active conservation program or the recently adopted requirement for dual-plumbing recycled water use. Specific factors that are likely to reduce the high growth consumption projections include:

1. Additional water savings are available (and anticipated) from the City’s active water conservation program, including replacement of older water-using fixtures with newer, more efficient models.
2. Additional potable water savings are available (and anticipated) from recycled water use in dual-plumbed buildings (e.g., for toilets and building cooling systems), and increased recycled water use from system expansion and water

quality improvement projects.

3. The aggressive growth projections likely overestimate consumption. For example, in both scenarios, the UWMP interpolated water use from 2030 (the land use policy horizon) out to 2040 with the same level of growth. The resulting population supported is 93,330 under the General Plan scenario and 135,080 under the High Growth scenario. Employment supported is 99,655 under General Plan scenario and 111,322 under the High Growth scenario. These are compared to a 2015 population of 75,430 and employment of 80,817.

Due to the lack of current certainty regarding the potential for housing in the East Whisman area (which would increase demand) and possible direct or indirect potable reuse of the City's treated wastewater (which would increase supply), these items were not included in the long-term projections. Based on what is known today, staff believes that the evaluation performed provides a reasonable assessment of risk, and staff is comfortable recommending the transfer.

#### Recommended Water Transfer Agreement

Staff believes the agreement is in the best interests of both parties. The City is facing an estimated charge of \$8.5 million over the next four years to comply with the contractually required minimum water purchase, and EPA is working to address a long-term water supply shortage that is preventing approval of several development projects. In order for the Transfer Agreement to become effective, it must be approved by the SFPUC.

Staff from the City and EPA have negotiated the following terms of a water supply transfer:

- The City will permanently transfer 1.0 MGD of its SFPUC supply guarantee to EPA.
- EPA will pay the City \$5 million for the transfer.
- EPA will be the lead agency for the CEQA process.
- EPA will notify the SFPUC of the agreed-upon transfer and request approval of the Transfer Agreement once EPA has completed its CEQA review.
- The Transfer Agreement only becomes effective if the SFPUC approves it and the EPA pays the City for the transfer.

- The Transfer Agreement provides for mutual indemnification and a joint defense obligation.

Staff does not take lightly the implications of permanently transferring water rights but believes the proposed transfer can be accommodated with no negative impact to the City, and will provide benefits to both agencies and the region.

## **CEQA DETERMINATION**

The decision to approve the Transfer Agreement is not a project under CEQA. The Transfer Agreement serves only as the legal mechanism for Mountain View to transfer a portion of its water supply to EPA as authorized by the Supply Agreement. In determining whether CEQA applies in this case, the scope of authority of the transferring agency was evaluated. Under the Transfer Agreement, the City is only agreeing to transfer a portion of its future water allocation to EPA in exchange for a monetary payment. The City has no authority to condition the transfer in a way that would address any significant environmental impacts resulting from EPA's eventual use of the water (i.e., the City cannot impose or enforce mitigation measures on East Palo Alto or on any future East Palo Alto project which might use the transferred water). In addition, the City has evaluated whether the transfer could have any impact on the City itself. The City reviewed its General Plan water policies in connection with the Transfer Agreement and confirmed all development anticipated under the General Plan can move forward based on the water supply available to the City even after the transfer authorized by the Transfer Agreement.

Even if a reviewing court were to disagree with the City's interpretation of the scope of its authority and its determination approval of the Transfer Agreement is not a "project" under CEQA for the reasons given, the City further concludes that even if the action was considered to be a project, it is exempt as a matter of common sense under CEQA Guidelines Section 15061(b)(3). The transfer of water entails the same use of the same quantity of water that was assumed previously under the Supply Agreement, just by a different agency. No new or different impacts are known at this time. At this time it is also too speculative to assume or predict exactly to what purposes or for which projects the transferred water would be used, and CEQA does not require or allow pure speculation regarding potential impacts. For all of these reasons and each of them independently, the City has determined that CEQA does not apply to this proposed action.

**FISCAL IMPACT**

The City will receive a \$5 million payment from EPA. The funds will be placed into the Water Fund Reserve to cover a significant portion of expected minimum purchase charges.

**CONCLUSION**

Based on an analysis of the City's projected water purchases and available supply, and the anticipation of significant costs for not meeting the contractual minimum purchase requirement, staff recommends approving a water transfer of 1.0 MGD to EPA.

**ALTERNATIVES**

1. Do not authorize the City Manager to execute a water rights transfer agreement with EPA.
2. Provide other direction.

**PUBLIC NOTICING** – Agenda posting.

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cc: Bay Area Water Supply and Conservation Agency

City of East Palo Alto

San Francisco Public Utilities Commission