

COUNCIL AGENDA: 06-16-09  
ITEM: 7.3

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Lee Price, MMC  
City Clerk

**SUBJECT:** SEE BELOW

**DATE:** 06-03-09

---

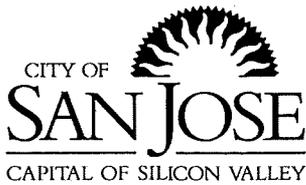
**SUBJECT: WATER SUPPLY AGREEMENT AND WATER SALES CONTRACT  
WITH THE CITY AND COUNTY OF SAN FRANCISCO**

## RECOMMENDATION

As referred by the Transportation and Environment Committee on June 1, 2009 and outlined in the attached memo previously submitted to the Transportation and Environment Committee:

- (a) Adopt a resolution approving 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, and authorizing the City Manager to negotiate and execute the Agreement on behalf of the City of San José.
- (b) Adopt a resolution authorizing the City Manager to negotiate and execute San José's Individual Water Sales Contract with the City of San Francisco.
- (c) Adopt a resolution making findings for purposes of the California Environmental Quality Act in connection with approval of Water Supply Agreements with the City and County of San Francisco.





# Memorandum

**TO:** TRANSPORTATION AND  
ENVIRONMENT COMMITTEE

**FROM:** John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** 05-15-09

Approved

Date 5/20/09

**COUNCIL DISTRICT:** 4

**SUBJECT: WATER SUPPLY AGREEMENT AND WATER SALES CONTRACT  
WITH THE CITY AND COUNTY OF SAN FRANCISCO**

## RECOMMENDATION

The Committee accepts the staff report and refer to the full Council the following three recommendations:

1. Adopt a resolution approving 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, and authorizing the City Manager to negotiate and execute the Agreement.
2. Adopt a resolution authorizing the City Manager to negotiate and execute San José's Individual Water Sales Contract with the County of San Francisco.
3. Adopt a resolution making findings for purposes of the California Environmental Quality Act in connection with approval of Water Supply Agreements with the City and County of San Francisco.

## OUTCOME

Approval of a contract with San Francisco will allow continued water delivery to the City's North San José/Alviso area after the current Hetch Hetchy water supply contract expires on June 30, 2009.

## BACKGROUND

The San Jose Municipal Water System (Muni Water) purchases wholesale water from San Francisco under the Agreement and Master Water Sales Contract, signed in 1984 with San Francisco. This water is purchased and distributed in Muni Water's North San José/Alviso

service area. The current agreement, along with the individual water supply contract between San Francisco and San José, expires in June 2009.

The Bay Area Water Supply and Conservation Agency (BAWSCA) was formed in the spring of 2003 in order to represent the collective interests of the 27 local retailers who purchase water wholesale from the San Francisco system, commonly referred to as the "Wholesale Customers." On October 17, 2006, Council approved a resolution appointing BAWSCA as the authorized representative of the City in discussions and negotiations with San Francisco for the development of a new Water Supply Agreement (WSA). All other BAWSCA agencies adopted similar resolutions, and since that time, BAWSCA has been working aggressively with San Francisco to ensure a new contract is in place by July 1, 2009. The WSA addresses the "global" issues common to all agencies, including water supply reliability, water quality, cost allocation, efficient contract administration, and increased collaboration. The general goal of the negotiation process can be summarized as the obtainment of an agreement that provides for a reliable supply of high-quality water at a fair price.

## ANALYSIS

On April 28, 2009, the San Francisco Public Utilities Commission (SFPUC) voted to approve the WSA, to authorize the SFPUC General Manager to execute the WSA with the Wholesale Customers, and to negotiate and approve the Individual Water Sales Contracts with individual Wholesale Customers. Highlights of the WSA include the following:

### *Article 2. Term; Amendments During Term*

- The WSA will be in effect, unless it is extended, for 25 years from July 1, 2009 to June 30, 2034.

### *Article 3. Water Supply*

- Reconfirms the wholesale customers' collective supply assurance of 184 million gallons per day (MGD) as well as individual "supply guarantees" for most individual agencies. The supply guarantees are transferable between agencies. San José does not have a supply guarantee within the WSA.
- Commits the wholesale customers to implement water efficiency programs and practices to ensure that the SFPUC is eligible to receive state and federal grants. San Francisco and the wholesale customers agree to explore support for water conservation and recycling outside the Bay Area to benefit the Tuolumne River.
- San Francisco agrees to deliver water that meets all applicable drinking water standards. This has been the historical practice, but is now in the WSA.
- San Francisco agrees to complete the Water System Improvement Program (WSIP) by 2015 and requires the SFPUC to maintain the regional water system and submit reports on the status of the system.

- San Francisco agrees to operate the regional water system to give priority to water supply over electric power generation. This has been the practice since the 1987-1992 drought, but is now in the WSA.
- In water shortages, the available water will be divided between San Francisco and the wholesale customers as agreed to in the Interim Water Shortage Allocation Plan (IWSAP). The method of allocating the available water between individual wholesale customers is not part of the WSA, and will need to either need to be negotiated among the all of wholesale customers or approved by the BAWSCA Board.
- Allows individual wholesale customers to transport, or “wheel” water through the regional water system during water shortage periods subject to water quality considerations.
- San Francisco agrees to not enter into a supply contract with any agency which is not a current wholesale customer before committing San José as a permanent customer with an individual supply guarantee.

*Article 4. Implementation of Interim Supply Limitation*

- Implements the decision made by the SFPUC when it adopted the WSIP in conjunction with San Francisco’s approval of the Program Environmental Impact Report of the WSIP with respect to the Interim Supply Limitation in effect until December 31, 2018.
- The Interim Supply Limitation limits water sales from San Francisco’s watersheds to 81 MGD for San Francisco and 184 MGD for the wholesale customers, including San José, for a total limitation of 265 MGD. The WSA requires San Francisco to decide if it will increase the 184 MGD supply assurance by December 31, 2018.
- San Francisco must decide how to divide up the wholesale customers’ 184 MGD Interim Supply Limitation among individual customers by December 2010. These allocations are separate from the 184 MGD supply assurance and individual supply guarantees described in Article 3.
- The cities of San José and Santa Clara will remain temporary and interruptible customers until 2018, and will receive a maximum collective delivery of 9 MGD until that time. The interim limitations described above may result in deliveries lower than 9 MGD. The allocation of the total amount between San José and Santa Clara will be specified in their Individual Water Sales Contracts, and may only be used in existing defined service areas.
- If water usage for the regional water system exceeds the 265 MGD Interim Supply Limitation, then an “environmental enhancement surcharge” will be levied on those agencies (including San Francisco) that exceed their individual limitations. Receipts from the surcharge will be used for environmental restoration or enhancement projects on San Francisco watersheds.
- Starting in December 2010, SFPUC will prepare an annual report of water demand projections and conservation work plans through 2018. If SFPUC finds that the 265 MGD limit may be exceeded in 2018, it may issue a conditional notice of reduction or

interruption in supply to San José and Santa Clara. The notice may be rescinded if subsequent reports indicate that the Interim Supply Limitation will be met by 2018.

- Actual deliveries to San José and Santa Clara will not be reduced to either agency until SFPUC has completed the required CEQA process, and will not occur for the longer of five years from the notice, or two years from completion of the CEQA process.
- The SFPUC will decide by December 2018 whether to make San José and Santa Clara permanent customers.

*Article 5. Wholesale Revenue Requirement*

- Describes the basis for determination of the Wholesale Revenue Requirement, the amount of money the wholesale customers are required to pay to the SFPUC for ownership, operation, and maintenance of the regional water system. In general, the provisions in this section are the same as those in the current contract, which relate to appropriate allocation of costs for facilities and programs of the regional water system.
- Establishes the methodology to allocate capital costs for the regional water system. In the current contract, the “utility method” of recovering capital costs is used, which requires the wholesale customers to pay depreciation and a rate of return on the net book value of the assets. The WSA discontinues this method and replaces it with the “cash method” for new assets, which requires wholesale customers to pay their share of debt service payments and capital improvements funded from reserves. In addition, wholesale customers will pay their remaining share of existing assets built and in service as of June 30, 2009, through a series of level payments over 25 years.

*Article 6. Integration of Wholesale Revenue Requirement with SFPUC Budget Development and Rate Adjustments*

- Continues the existing requirement that SFPUC send its proposed annual budget to BAWSCA.
- Allows SFPUC to establish wholesale rates to recover the Wholesale Revenue Requirement, and requires additional coordination and consultation with BAWSCA during the process.
- Requires the use of a balancing account for the difference between the amounts charged to wholesale customers and the total amount that the wholesale customers are required to pay. This is similar to provisions in the current contract, but adds more flexibility so that rates do not fluctuate greatly.

*Article 7. Accounting Procedures; Compliance Audit*

- Requires maintenance of a rigorous accounting system for SFPUC to implement the calculation of the Wholesale Revenue Requirement and rate setting, similar to the requirements in the current contract.
- Provides for an annual compliance audit of the calculation of the Wholesale Revenue Requirement, similar to the requirements in the current contract.

*Article 8. Other Agreements of the Parties*

- Delegates administrative tasks to BAWSCA.
- Continues the commitment that SFPUC meet annually with the wholesale customers.
- Requires that disputes be resolved by mandatory binding arbitration as in the current contract.

In general, the agreement objectives as originally set by BAWSCA were achieved during the negotiation process and are reflected in the new agreement. One particular item of interest to San José was not completely met, namely the City's desire to negotiate for a permanent, non-interruptible supply.

In addition to approving the Water Supply Agreement, the City will have an individual Water Sales Contract directly with San Francisco. The contract will include contract details specific to San José, including locations and descriptions of the service connections and a map of the service area supplied by water purchased from San Francisco. The contract will also include San José's temporary supply limit, which will be equivalent to San José's portion of the 9 MGD combined annual water supply limit of the cities of San José and Santa Clara.

**EVALUATION AND FOLLOW UP**

In 2010, staff will coordinate with BAWSCA and San Francisco in the determination of the Interim Supply Limitation that will limit individual agencies' supplies until 2018. Staff will also coordinate with San Francisco and other applicable agencies to negotiate permanent customer status with an uninterruptible supply guarantee by December 31, 2018.

**POLICY ALTERNATIVES**

**Alternative #1:** Stop purchasing water supplies from San Francisco, and pump groundwater to supply water to the North San José/Alviso area.

**Pros:** None

**Cons:** Increased potential for overdraft of groundwater aquifer and land subsidence, water quality concerns.

**Reasons for not recommending:** Historic pumping activities have shown that the area is highly susceptible to overdraft of the groundwater aquifer, resulting in land subsidence. Completely supplying the area with groundwater would also be detrimental to many industrial customers in the area who rely on high purity water with low mineral content for their manufacturing. Recommended alternative is the most environmentally beneficial option.

**PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item does not meet any of the above criteria. San Francisco held numerous public hearings as part of the WSIP's Program Environmental Impact Report process during 2008.

**COORDINATION**

This item has been coordinated with the City Attorney's Office and Department of Planning, Building and Code Enforcement.

**CEQA**

Resolution to be adopted.



JOHN STUFFLEBEAN  
Director, Environmental Services

For questions please contact Mansour Nasser, Deputy Director, at (408) 277-4218