

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 18-0212

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 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 dated April 28, 2009; and

WHEREAS, through SFPUC Resolution No. 08-0200, San Francisco approved the Water System Improvement Program (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, the San Francisco Planning Department 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, in its Resolution 08-0200, this Commission reviewed and considered the WSIP PEIR and made findings about the identified significant impacts, mitigation measures and alternatives, as well as a statement of overriding considerations, as required by CEQA, and adopted a Mitigation Monitoring and Reporting Program as part of its approval of the WSIP; and

WHEREAS, subsequent to the certification of the WSIP PEIR, the San Francisco Planning Department conducted more detailed, site-specific review of two of the significant and unavoidable water supply impacts identified in the WSIP PEIR. In the case of **Impact 5.5.5-1**, the project-level fisheries analysis in the Lower Crystal Springs Dam Improvement Project Final EIR modified the WSIP PEIR impact determination based on more detailed site-specific data and analysis and determined that impacts on fishery resources due to inundation effects would be less than significant, and the SFPUC adopted CEQA Findings with respect to the approval of the Lower Crystal Springs Dam Improvement Project in Resolution No. 10-0175. In the case of **Impact 5.4.1-2**, also identified in the WSIP PEIR, the project level analysis in the Calaveras Dam Replacement Project Final EIR modified the WSIP PEIR determination and concluded that the impact related to stream flow along Alameda Creek between the diversion dam and the confluence with Calaveras Creeks would be less than significant based on more detailed, site-specific modeling and data. The SFPUC adopted CEQA Findings with respect to the approval of the Calaveras Dam Improvement Project in Resolution No. 11-0015; and

WHEREAS, the CEQA Findings in SFPUC Resolution No. 10-0175 and the CEQA Findings in SFPUC Resolution No. 11-0015 related to the impacts on fishery resources due to inundation effects are incorporated into these findings by this reference, as though fully set forth in these CEQA Findings; and

WHEREAS, the Environmental Review Officer concluded that the analysis contained in the WSIP PEIR, as updated in the Lower Crystal Springs Dam Improvement Project Final EIR and the Calaveras Dam Replacement Project Final EIR, remains 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 and this determination is included in San Francisco Public Utilities Commission File; and the Amendments to the Water Supply Agreement also are not defined as a "project" under CEQA because the amendments do not result in any physical changes to the environment that are different than those considered in the 2009 Water Supply Agreement; and

WHEREAS, this Commission has reviewed the WSIP PEIR, the Mitigation Monitoring and Reporting Program, the Findings contained in SFPUC Resolution Nos. 08-0200, 10-0175, and 11-0015 as well as the written and oral analysis provided by SFPUC experts and the memorandum dated November 19, 2018, prepared by the SFPUC Bureau of Environmental Management and with the concurrence by the Environmental Review Officer on November 2018; and

WHEREAS, the WSIP PEIR files and the Lower Crystal Springs Dam Improvement Project Final EIR and the Calaveras Dam Replacement Project Final EIR files have been made available for review by the SFPUC and the public, and those files are part of the record before this Commission; and

WHEREAS, the Planning Department Jonas Ionin, is the custodian of records, located at 1650 Mission Street, Fourth Floor, San Francisco, California for the Planning Department CEQA files, and the SFPUC, Donna Hood, is the custodian of records for this approval action, at 525 Golden Gate Avenue, 13th Floor, San Francisco, California; and

WHEREAS, the Parties desire to adopt an amended and restated Water Supply Agreement in order to (1) 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; (2) extend the estimated timing of the completion of the WSIP to reflect the currently adopted program completion date, as well as improve the exchange of information between the Parties related to the SFPUC's capital programs; (3) clarify the cost allocation and water accounting provisions used for the SFPUC's Groundwater Storage and Recovery Project approved on August 12, 2014 in Commission resolution no. 14-0127; (4) 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; (5) adjust the provisions of the Water Shortage Allocation Plan regarding the initial allocation of water during shortages between

SFPUC Retail and Wholesale Customers; and (6) 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; and

WHEREAS, when the SFPUC approved the WSIP in its Resolution No. 08-0200, it allowed all of the WSIP projects to move forward, to ensure continued delivery of water in accordance with adopted level of service goals for water quality, seismic reliability and delivery reliability, but deferred the question of additional water supply development by creating an Interim Supply Limitation of 265 mgd average annual deliveries for surface water supplies from the Tuolumne River and the SFPUC's Alameda and Peninsula watersheds, plus an additional 20 mgd of local resource development such as recycled water and groundwater within the Regional Water System service area; and

WHEREAS, in approving the WSIP in Resolution No. 08-0200 on October 30, 2008, the SFPUC anticipated a reevaluation of long-term demand projections, potential regional system demand (purchase requests), and water supply options by the end of 2018, followed by SFPUC decisions in 2018 regarding whether or not to increase the Supply Assurance and to assign permanent status to the cities of San Jose and Santa Clara (collectively, "the 2018 Decisions"); and

WHEREAS, on October 30, 2008 the Commission also approved selected Water Supply Elements for the Water Supply Agreement as part of its approval of the WSIP in Commission Resolution No. 08-0201, finding that the Water Supply Elements were consistent with the WSIP approved in Resolution No. 08-0200, resulting in the incorporation of the Interim Supply Limitation into Article 4 of the Water Supply Agreement; and

WHEREAS, the SFPUC's December 4, 2017 Water Supply Development Report issued in accordance with section 4.05 of the Water Supply Agreement concluded that it is not necessary to issue a conditional notice of termination or reduction in service to San Jose and Santa Clara because total wholesale demands (including San Jose and Santa Clara, who are not included in the 184 mgd Supply Assurance) are estimated to be 173.9 mgd in 2040, which, in addition to forecasted retail demands, will not exceed the Interim Supply Limitation; and

WHEREAS, in light of (1) continued regulatory uncertainty regarding the outcome of the Don Pedro Federal Energy Regulatory Commission relicensing proceeding; (2) continued regulatory uncertainty regarding the outcome of the California State Water Resources Control Board's Lower San Joaquin River Water Quality Control Plan, which may be subject to change as a result of negotiations between the City, the State of California, environmental stakeholders and other water right holders; (3) ongoing review of water system operations due to climate change; and (4) lower than expected water demands following the 2011-2015 drought, it would not be a prudent use of ratepayer funding to embark on a large scale water supply development program in order to make the 2018 Decisions at this time; 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; now, therefore, be it

RESOLVED, that this Commission finds that the analysis contained in the WSIP PEIR, as updated by the Lower Crystal Springs Dam Improvement Project Final EIR and the Calaveras Dam Replacement Project Final EIR, remains 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, for the reasons set forth in the SFPUC Bureau of Environmental Management memorandum dated November 19, 2018, and the Environmental Review Officer concurrence dated November 20, 2018; and be it further

RESOLVED, that this Commission finds that the Mitigation Monitoring and Reporting Program adopted in its Resolution No. 08-0200 remains applicable to the WSIP, not-yet-completed WSIP projects and on-going WSIP water supply actions, and adopts such Program as applicable to this Water Supply Agreement and any actions undertaken pursuant to such Agreement; and be it

FURTHER RESOLVED, That this Commission adopts the Findings contained in SFPUC Resolution No. 08-0200, and the findings set forth in SFPUC Resolution Nos. 10-0175, and 11-0015 insofar as such subsequent findings modify the environmental impact findings contained in Resolution No. 08-0200, and incorporate those findings in this Resolution as though set forth in their entirety; and be it

FURTHER RESOLVED, That this Commission authorizes the General Manager, or his designee, to approve any necessary technical amendments or corrections to the amended and restated Water Supply Agreement that the General Manager, in consultation with the City Attorney, determines are in the best interests of the SFPUC, do not materially decrease the benefits to the SFPUC, and do not materially increase the obligations or liabilities of the SFPUC; and be it

FURTHER RESOLVED, that the Commission approves the modifications included in the amended and restated Water Supply Agreement.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of December 11, 2018.

A handwritten signature in black ink, appearing to read "Donna Wood". The signature is fluid and cursive, with the first name "Donna" and the last name "Wood" clearly distinguishable.

Secretary, Public Utilities Commission