

# **BAWSCA Pilot Water Transfer Efforts**

**May 2022**

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**Documenting BAWSCA's efforts  
to pursue and pilot a water  
transfer opportunity including  
lessons learned**

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## Acknowledgements

BAWSCA is grateful for the assistance of the staff at the following participating agencies who took part in the Pilot Water Transfer:

- Amador Water Agency
- City of Hayward
- East Bay Municipal Utility District
- San Francisco Public Utilities Commission
- Yuba County Water Agency

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## Limitations

To prepare this report, information obtained from, and documents developed by, participating agencies served as reference sources. BAWSCA's interpretation of that information is BAWSCA's perspective and not necessarily a common perspective shared by all the parties to the Pilot Water Transfers.

# I. Executive Summary

## Introduction and Purpose

The Bay Area Water Supply and Conservation Agency (BAWSCA) was formed in 2003 via legislative action (AB 2058) to represent the water interests of 26 member agencies in Alameda, Santa Clara, and San Mateo Counties. Each member agency purchases water supplied by the San Francisco Regional Water System (RWS), which is owned and operated by the San Francisco Public Utilities Commission (SFPUC). Collectively, BAWSCA agencies purchase roughly two-thirds of the water supplied by the RWS and pay roughly two-thirds of the costs to operate the RWS.

BAWSCA member agencies have long-term contracts for water with the City/County of San Francisco (San Francisco). BAWSCA is the only entity authorized to 1) directly represent the needs of the cities, water districts and private utilities (Wholesale Customers) that depend on the RWS, and 2) perform regional water supply reliability planning on behalf of its member agencies. BAWSCA also provides the vehicle for member agencies to work with SFPUC on a collective basis, ensuring greater accountability and influence.

BAWSCA's member agencies are heavily reliant on water from the RWS as their supply source, which can be cut back during a drought. For BAWSCA member agencies that rely solely on the RWS, those cutbacks can result in significant rationing. In 2009, and at the request of the BAWSCA Board of Directors (Board) and member agencies, BAWSCA initiated work on a Long-Term Reliable Water Supply Strategy (Strategy). As follow up to a key Strategy recommendation, BAWSCA began a process to review and identify alternative water supply sources and strategies to help lessen the degree of rationing during a drought. One such strategy was to secure water via long-term, dry-year transfers with agencies outside of BAWSCA and SFPUC. Water system inerties, between select Bay Area water agencies and SFPUC, could serve as a conveyance linkage to transfer the water. To further develop this concept, BAWSCA recommended conducting a one-time pilot water transfer.

The purpose of the pilot was to gain further knowledge and operational experience to help identify the merits of a long-term transfer deal with willing sellers and associated conveyance system access with willing wheeling agencies.

BAWSCA made two attempts at a pilot water transfer between 2012 and 2020. While neither were ultimately implemented, much was learned through the process, which will inform future attempts to secure water transfers, either as a pilot or as long-term, dry-year transfers.

## Pilot Water Transfer I – First Attempt

Beginning in 2012, BAWSCA and the East Bay Municipal Utilities District (EBMUD) partnered to investigate water transfer projects to improve the future water supply reliability of each

agency, including the development of a short-term, one-year pilot water transfer. Yuba County Water Agency (YCWA) was the proposed seller for the first pilot water transfer attempt (Pilot Water Transfer I or First Attempt). EBMUD, the City of Hayward (Hayward), SFPUC, and the U.S. Bureau of Reclamation (USBR) were identified as having facilities needed to complete the water delivery.

YCWA water from the Sacramento River would be diverted at the Freeport Regional Water Project’s (FRWP) Freeport Intake where it would be directed to USBR’s Folsom South Canal, then east to EBMUD’s Mokelumne Aqueduct and distribution system. Transfer water would then flow through the SFPUC-EBMUD-Hayward Intertie (Hayward Intertie) where it would enter the SFPUC system and BAWSCA service area. The Hayward Intertie is jointly owned by EBMUD and SFPUC and is operated by Hayward.

In 2014, BAWSCA, YCWA, EBMUD, Hayward, and SFPUC began drafting, negotiating, and finalizing necessary agreements, and preparing environmental compliance documentation. Unfortunately, several challenges prevented implementation of the Pilot Water Transfer I. Those challenges are detailed in this report, but two stand out. First, drought conditions in 2015 made it difficult to obtain contracts required by USBR for use of the Folsom South Canal, which was necessary to transfer water purchased from the YCWA, and increased State and Federal environmental compliance requirements. Second, Hayward had significant concerns about a pilot water transfer and needed more time for discussion and investigation. Specifically, Hayward was concerned about the quality of the transfer water compared to its typical supplies, pressure changes in its distribution system, and required environmental compliance.

In the summer of 2015, BAWSCA determined it would not be feasible to implement the Pilot Water Transfer I. Due to ongoing drought conditions, EBMUD required the full capacity of the FRWP to deliver dry year only supplies and water transfers to meet demand. EBMUD informed BAWSCA that the FRWP facilities could be available to BAWSCA for a pilot water transfer in the spring of 2016, which would be

**Figure 1: BAWSCA Pilot Water Transfer Timeline**



dependent on BAWSCA Board authorization, availability of water from YCWA, and several other factors.

While the First Attempt was not implemented, BAWSCA continued to work toward a second pilot water transfer (Pilot Water Transfer II or Second Attempt), utilizing agreements drafted and applying lessons learned from the First Attempt when scoping the Second Attempt so that it could be more easily permitted, and address identified obstacles.

### **Pilot Water Transfer II – Second Attempt**

BAWSCA continued discussions with Hayward and EBMUD in 2016 and 2017 to determine how best to structure the Second Attempt. When identifying a willing seller, BAWSCA sought out source water that was (1) similar in quality to Hayward's typical water to address its concerns, and (2) on the Mokelumne River, EBMUD's primary source of supply, to avoid use of the Folsom South Canal. The Mokelumne River also has higher water quality than the water sourced via EBMUD's FRWP, with an intake on the Sacramento River.

In early 2018, BAWSCA began discussions with Amador Water Agency (AWA) to purchase up to 1,000 acre-feet (AF) of water for a one-time pilot water transfer. AWA would make the transfer water available to BAWSCA at the Electra Powerhouse on the Mokelumne River. From there, the pilot transfer water would flow downstream to EBMUD's Pardee Reservoir. EBMUD would use its facilities to wheel and treat the water, delivering it to BAWSCA, via the Hayward Intertie, for ultimate use primarily within Hayward, a BAWSCA member agency.

During the Second Attempt, Hayward agreed to switch its water supply source and modify operation of its water system to take delivery of the pilot transfer water through the Hayward Intertie. Transfer water in excess of Hayward's demands would be pumped into the RWS, using the Hayward-owned Hesperian Pump Station, and delivered to other BAWSCA member agencies.

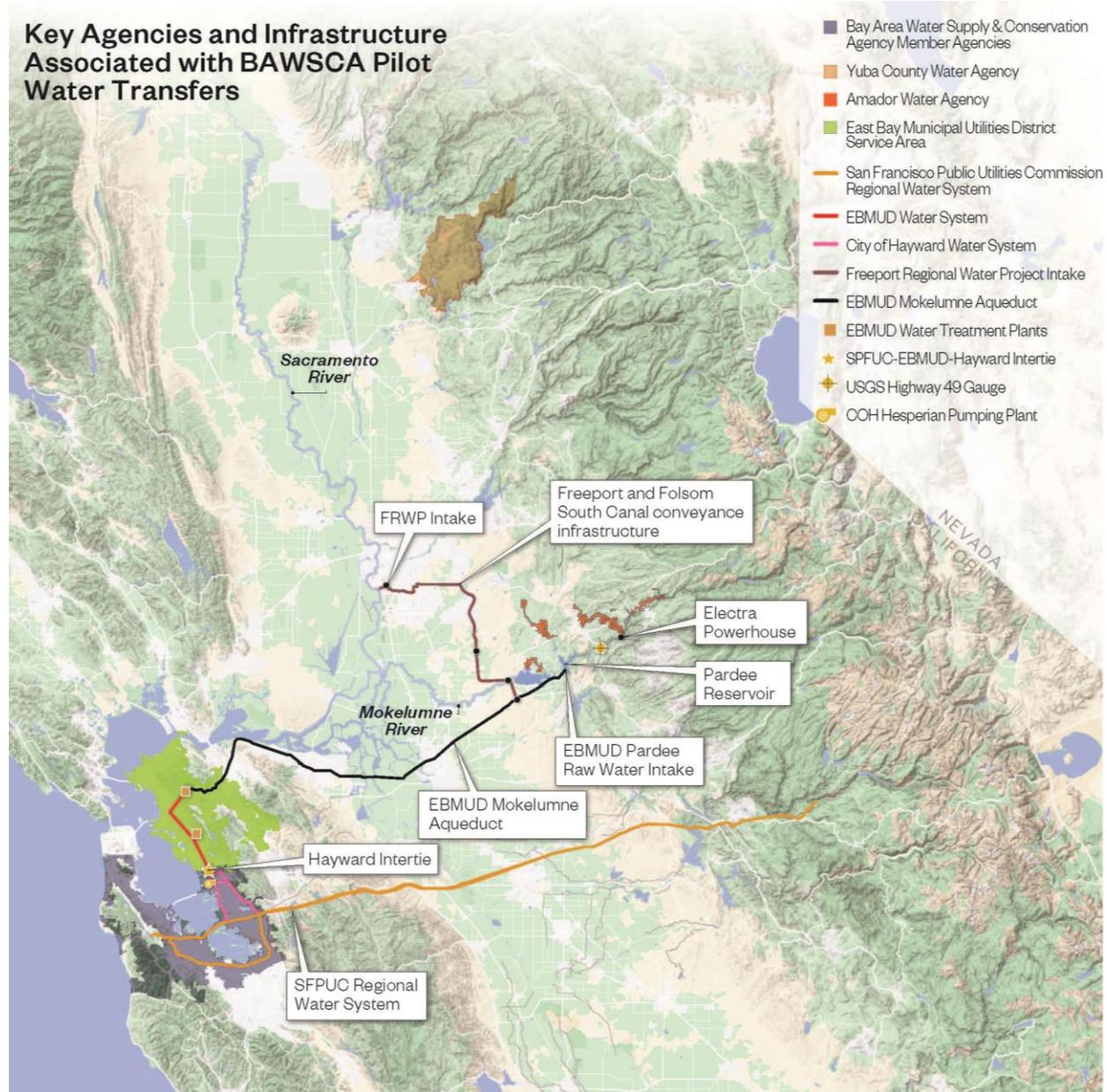
The Second Attempt was scheduled for January of 2020 and timed to coincide with a temporary shutdown of the Hetch Hetchy conveyance portion of the RWS, at which time SFPUC already intended to prepare the Hayward Intertie for potential use.

BAWSCA negotiated agreements with its partner agencies (AWA, EBMUD, Hayward, and SFPUC) to implement this one-time pilot water transfer under a narrow set of conditions. However, challenges arose during agreement negotiations. Specifically, EBMUD expressed a water rights concern regarding the potential use of the water made available by AWA. EBMUD and AWA took approximately two months to resolve this issue and arrive at a mutually agreeable approach. By December 2019, all the agreements had been finalized and approved by the agencies' governing boards. However, as an element of the agreement between Hayward and BAWSCA, Hayward required BAWSCA to obtain a \$10 million limited-term insurance policy to protect against any risk to the Hayward water system during the Second Attempt.

After initial indications that such insurance would be available, BAWSCA discovered that this was not the case, nor could it obtain like insurance coverage. Without time for further negotiations, the January 2020 transfer window closed, and the transfer could not move forward as planned.

Figure 2 below provides an overview of the route and parties to both pilot water transfer attempts.

**Figure 2: Water Transfer Routes and Agencies Party to the Pilot Water Transfer I and II**



## Lessons Learned

The First Attempt at a pilot transfer was a learning process for BAWSCA. It became clear that necessary steps in the process were more complex than originally envisioned. Complications arose related to securing transfer water, negotiating the required agreements needed to wheel and treat the transfer water, and making arrangements to take delivery of the transfer water. While BAWSCA became more proficient at identifying the necessary steps, BAWSCA also became more aware of what problems may limit its ability to secure and execute a transfer in the future. BAWSCA identified the following complicating factors and lessons learned:

- Transfers that require State or Federal approval, or use of State or Federal facilities, are difficult to execute. Identify transfers that minimize, to a degree, possible approvals from those bodies.
- Partner agencies may have little incentive to cooperate. Seek partner agencies that commit to engaging and see some benefit to their own organization by doing so.
- Transfer costs may be greater than what they may appear to be on the surface. Include budgets that consider not simply the cost of the water, but a reasonable estimate of the cost to wheel, treat, and deliver the water.
- It is best to prioritize transfers that involve a limited number of partner agencies.

While many of the lessons learned from the First Attempt allowed BAWSCA to better prepare for the Second Attempt, three new issues emerged during the Second Attempt.

- First, water rights disputes, which may not be immediately evident, can impact the willingness of transfer partners to move a plan forward. Specifically, water rights associated with the source of the transfer water (i.e., the Mokelumne River) proved to be a matter of dispute that, while ultimately resolved for the purpose of the pilot, were a point of disagreement between AWA (the seller) and EBMUD (the wheeling entity). The time required to resolve those differences pushed back the established schedule to get the agreements finalized. Since the issue was between AWA and EBMUD, BAWSCA played a lesser role in those discussions. A clearer understanding and communication of concerns at an earlier stage in the agreement development effort could have led to a resolution of the matter sooner.
- Second, the interests of all parties to a transfer should be identified and well defined. BAWSCA and AWA's direct interests were well defined and understood by all parties. BAWSCA was interested in testing the viability of a water transfer and AWA was interested in establishing itself as a seller of transfer water. The other entities (EBMUD, Hayward, and SFPUC), while willing participants, did not have a strong independent interest in the effort. They would recoup the costs of their participation in the pilot and be part of its success, but did not see a direct benefit from the effort.
- Third, the allocation of risk should be balanced and acceptable to all parties. The fact that certain participating agencies believed the risks outweighed the benefits from the pilot significantly impacted the agreement negotiations and the willingness of those

agencies to accept a more even allocation of risks related to the pilot transfer. EBMUD and Hayward were unwilling to accept liability for damages arising from the transfer except to the extent caused by their own agencies' negligence or willful misconduct. Therefore, the agencies sought to allocate most, if not all, of the risk to BAWSCA. Furthermore, Hayward sought additional protection in the form of an insurance policy to protect its system during the transfer. The risk allocation and insurance requirements proved to be problematic for BAWSCA. The failure to execute the agreement with Hayward was, to a substantial degree, the result of an unbalanced approach to the allocation of risk. The lesson learned was the need to obtain, to the greatest degree possible, a fair risk sharing approach. Requiring one party to shoulder a significant majority of the risk will be an obstacle to reaching an acceptable agreement.

Several challenges experienced during the First and Second Attempt are summarized in Figure 3 below.

**Figure 3: Challenges Encountered During the Pilot Water Transfer I and II**



## **Moving Forward**

This report documents the work performed on the First and Second Attempts and will help guide future transfer attempts. All agreements negotiated, both draft and final, are included in the appendices. Additionally, BAWSCA has embarked upon a new effort with SFPUC and Alameda County Water District (ACWD) to pilot a water transfer as part of the Bay Area Regional Reliability (BARR) Partnership that was formed to address water resources issues of regional (Bay Area wide) concern.

## **Legal Counsel Feedback**

The proposed Pilot Transfer appeared to be straight forward with minimal complexities. Although it involved a lot of parties, making contract negotiations difficult, the source of the water was established senior water rights and the transfer path would use existing facilities with minimal permitting requirements. However, the devil is in the details. What ultimately derailed the Transfer attempt was an existing disagreement over the source and use of the water rights as proposed in the Transfer, and to a larger extent, the willingness of the parties to equitably share risks associated with the Transfer operation.

There were legal bases to press these issues. In particular, the policy favoring water transfers and the wheeling statutes' requirement of reasonableness for such transfers. However, a confrontational approach to the Pilot to test the ability to transfer alternative water supplies into the Bay Area would have been counterproductive. The parties to the proposed transfer have long working relationships and would need to continue to work collaboratively in the future. Given its nature as a one-time project, BAWSCA was willing to pay the cost and assume some risks to effectuate the Transfer. Ultimately, however, BAWSCA was unable to procure the required insurance coverage or negotiate contract terms that lessened the costs and risks to an acceptable level, and the Pilot Transfer did not proceed. Furthermore, while BAWSCA was willing to accept an unbalanced risk allocation for a short, one-time transfer, the negotiated costs and risk allocation would likely be untenable in a long-term transfer scenario.

## **2. Background**

BAWSCA was formed in 2003 via legislative action (AB 2058) to represent the water interests of 26 member agencies in Alameda, Santa Clara, and San Mateo Counties that purchase water from the RWS. Collectively, BAWSCA agencies purchase roughly two-thirds of the water supplied by the RWS and pay roughly two-thirds of the costs to operate the RWS.

The SFPUC owns and operates the RWS. BAWSCA member agencies have individual long-term water supply contracts with San Francisco. Additionally, all 26 BAWSCA member agencies are parties to the 2018 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 (WSA). BAWSCA provides the vehicle for its member agencies to work with SFPUC on an equal basis.

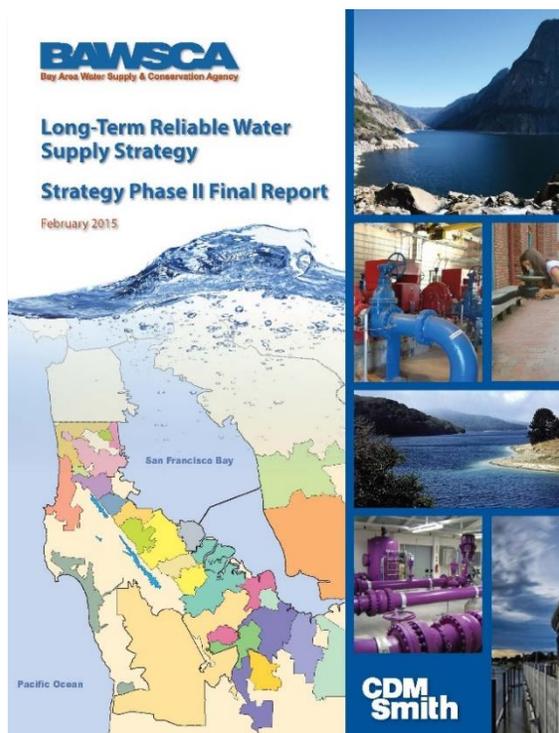
BAWSCA is the only entity with the authority to (1) directly represent the needs of the Wholesale Customers that depend on the RWS, and (2) perform regional water supply reliability planning on behalf of its member agencies. Water transfers were identified as a potential option to improve supply reliability through BAWSCA's Long-Term Reliably Water Supply Strategy.

## 2.A. Long-Term Reliable Water Supply Strategy

At the request of the BAWSCA Board of Directors (Board) and member agencies, BAWSCA initiated work on a Long-Term Reliable Water Supply Strategy (Strategy) in 2009 in response to the following circumstances:

1. Demand forecasts by the BAWSCA member agencies as part of their 2005 Urban Water Management Plans suggested that additional supply would be needed to meet projected normal and drought year demand, even after accounting for aggressive conservation.
2. In October 2008, SFPUC made the unilateral decision to establish a 184 million gallon per day (mgd) limitation on what the BAWSCA member agencies could purchase collectively from the RWS through at least 2018.
3. In October 2008, SFPUC adopted a 20% level of service goal for the RWS. Based on the rules for drought allocation between SFPUC and its Wholesale Customers that are documented in the 2009 WSA, this would result in up to a 29% cutback to the BAWSCA member agencies during droughts.<sup>1</sup> This had an estimated economic impact of up to \$7.7 billion per year in the BAWSCA service area.
4. The reliability of SFPUC supplies could also be impacted by climate change and future regulatory actions or policy changes. For these reasons, the BAWSCA member agencies expressed an interest in developing a source of supply that was independent of SFPUC.

The Strategy was developed in phases to provide BAWSCA and the BAWSCA Board with the opportunity to confirm the direction of the Strategy at key decision points, and redirect (reprogram) efforts as appropriate to ensure that the goals of the Strategy were met.



<sup>1</sup> BAWSCA and the SFPUC identified an issue with the Tier I formula, which allocates available supplies during a drought, that unfairly benefited SFPUC retail customers to the detriment of the Wholesale Customers. The 2018 Amended and Restated Water Supply Agreement adjusted the Tier I formula to address this issue.

Phase I of the Strategy was completed in May 2010. The Phase I Scoping Report identified the range of anticipated demand and supply needs for the BAWSCA member agencies, described over 65 different potential projects that could be developed in some combination to meet the identified needs, and provided the framework to evaluate those projects as part of the Strategy.

Phase IIA of the Strategy was completed in 2012 and identified water transfers from sources (sellers) outside the BAWSCA service area as a promising option to address the dry year reliability needs of the BAWSCA member agencies.

BAWSCA's Long-Term Reliable Water Supply Strategy – Strategy Phase II Final Report (Strategy Report) was completed in 2015. That Strategy Report incorporated updated water supply and demand projections and further development of agency identified projects, such as rainwater harvesting, stormwater capture, graywater reuse, regional groundwater and desalination projects, and evaluated water transfers.

The Strategy Report identified provided several recommendations and an associated implementation plan. Permanent, dry-year water transfers were identified as a key strategy to reduce the supply shortfalls present in the RWS during those periods. BAWSCA recommended conducting a pilot water transfer as a step toward implementing the Strategy.

Since 2012, BAWSCA has been working toward developing concepts for how a long-term transfer may be structured. It was clear that other agencies, such as EBMUD or the Santa Clara Valley Water District (Valley Water), would be necessary partners in order to wheel (transport) water secured through a transfer agreement to the BAWSCA service area. Moreover, agreements would need to be entered into with San Francisco to allow transfer water to be introduced into the RWS. The above factors helped cement the concept that a pilot water transfer could be used to explore the issues that surround securing a permanent dry-year water transfer.

## 3. Pilot Water Transfer I – First Attempt

### 3.A. Pilot Description

#### Initial Development Efforts

In September 2012, EBMUD and BAWSCA entered into a Memorandum of Understanding (MOU) to prepare the BAWSCA–EBMUD Short-Term Pilot Water Transfer Plan (Pilot Plan). The purpose of the Pilot Plan was to evaluate the feasibility of partnering as buyers on long-term water transfer projects to improve future water supply reliability for the respective agencies. The Pilot Plan, published in September 2013, studied the potential to conduct a one-year pilot water transfer of 1,000 AF in a dry-year when EBMUD would operate the FRWP. The Pilot Plan concluded that a short-term pilot water transfer would be both feasible and

beneficial for BAWSCA and EBMUD.<sup>2</sup> Conducting a one-year pilot water transfer with a willing seller would provide important information needed to evaluate the costs and benefits of a long-term water transfer partnership. The Pilot Plan developed the basics of the pilot water transfer timing, rate, duration, potential costs, necessary agreements and approvals, and next steps. From that basis, a proposed pilot water transfer, referred to as the ‘Pilot Water Transfer I’ or ‘First Attempt’ in this document, moved forward.

The Pilot Plan reviewed several potential water transfer partners with water supplies available for sale and transfer; and included a recommendation that BAWSCA and EBMUD meet with both Yuba County Water Agency (YCWA) and the Placer County Water Agency to determine their interest in participating in the Pilot Water Transfer I. EBMUD had preliminary discussions with both agencies related to its own interests in acquiring transfer supplies. During those discussions, EBMUD determined that YCWA was also interested in participating in the Pilot Water Transfer I. In December 2013, BAWSCA, EBMUD, and YCWA met and confirmed their interest in partnering on the Pilot Water Transfer I and agreed to continue discussions about the potential for a pilot transfer in 2014.

In January 2014, BAWSCA and EBMUD signed the MOU for the Development of the Second Phase of a Short-Term Pilot Water Transfer Plan to implement the Pilot Plan. Implementing the Pilot Plan involved confirming a willing seller; drafting, revising, and finalizing necessary agreements between BAWSCA, YCWA, EBMUD, Hayward, and SFPUC; preparing environmental compliance documentation; and ongoing coordination between BAWSCA and each of the other agencies involved in the Pilot.

BAWSCA and EBMUD began these tasks shortly after publication of the Pilot Plan in 2013 and anticipated that it would take approximately one year to complete the agreements between (1) BAWSCA and SFPUC, and (2) BAWSCA and Hayward. It was anticipated that the "First Amended Joint Exercise of Powers Agreement Between the City and County of San Francisco Public Utilities Commission, East Bay Municipal Utility District, and City of Hayward for Long-Term Operation and Maintenance of the Emergency/Maintenance Water System Intertie Project" (Hayward Intertie Agreement) could be amended to accommodate the Pilot Water Transfer I.

**Figure 4: Pilot Water Transfer I Timeline**



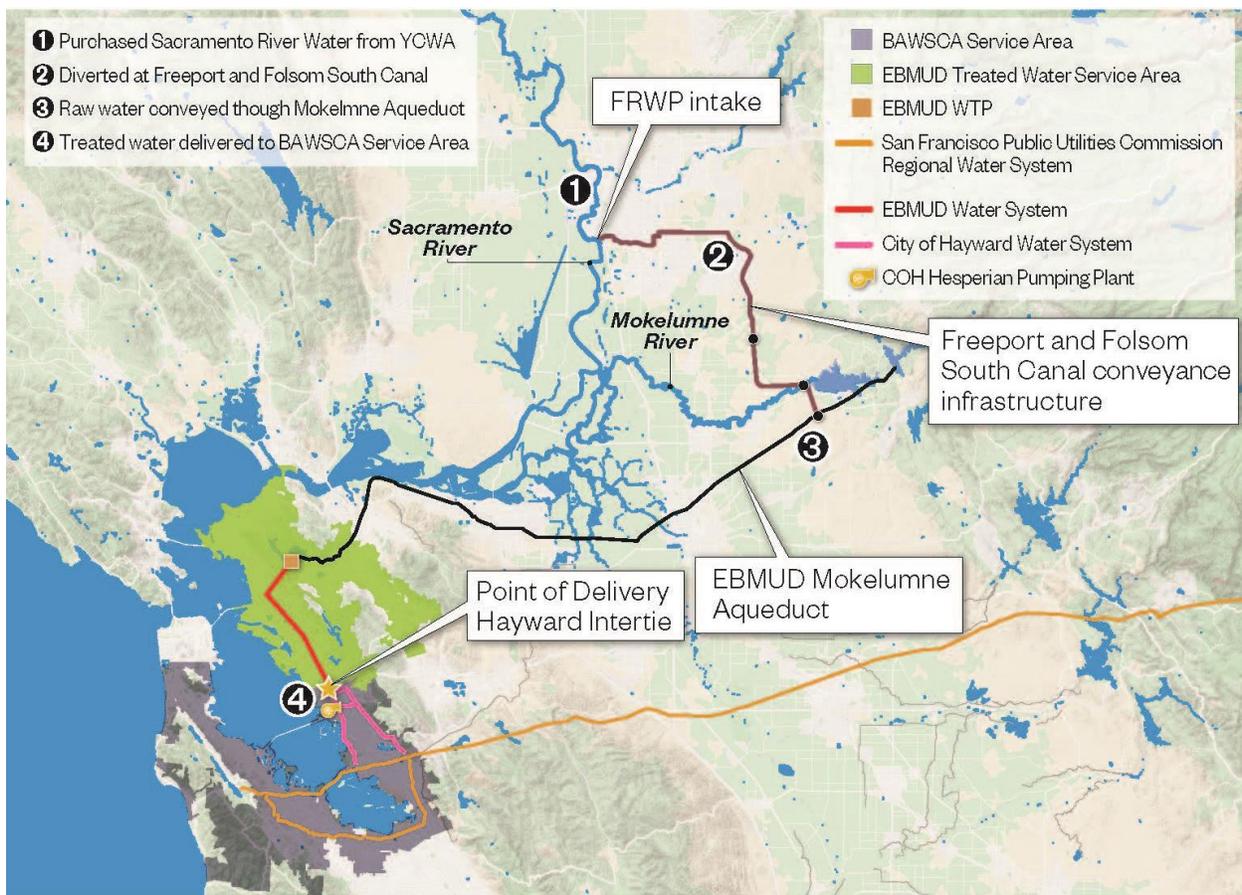
<sup>2</sup> In the time since the development of the Pilot Plan, EBMUD secured alternative buyers.

The Pilot Plan anticipated that finalizing a water purchase agreement, the BAWSCA-EBMUD wheeling agreement, and preparing documentation necessary for environmental review and regulatory agency approvals would be pursued in a drought year, when it was anticipated that EBMUD would operate the FRWP. Instead, in 2015, it became clear that drought conditions were worsening such that EBMUD immediately initiated use of the FRWP. As such, all the documentation needed to implement the pilot transfer were pursued concurrently.

**Proposed Pilot Water Transfer I Route**

BAWSCA would purchase water from YCWA in a dry year and when EBMUD would operate the FRWP. YCWA transfer water from the Sacramento River would be diverted at the FRWP’s Freeport Intake where it would be directed to the Folsom South Canal, then east to EBMUD’s Mokelumne Aqueduct. Transfer water would be conveyed through the EBMUD system to the Hayward Intertie, where it would enter the BAWSCA service area. Figure 5 illustrates the route of transfer water for the First Attempt.

**Figure 5: Pilot Water Transfer I Route and Agencies Party to the First Attempt**



### Elements of the Pilot Water Transfer I

- Water Transfer Amount: 1,000 AF
- Source of Supply: YCWA
- Type of Water Right: Post-1914 water right
- Point of Diversion: Freeport Regional Water Project
- Losses through EBMUD: Undetermined
- Rate of Deliveries: 0.89 MGD
- Timing of Deliveries: Over a 22-day period, exact start and end date undetermined

### Parties

- BAWSCA: Pilot water transfer purchaser
- YCWA: Pilot water transfer seller
- USBR: Wheeling facility owner/operator (Folsom South Canal)
- EBMUD: Wheeling facility owner and operator (FRWP and Mokelumne Aqueduct)
- Hayward: Facility owner (Hayward distribution system) and operator (Hayward Intertie)
- SFPUC: Facility owner and operator (RWS)
- SWRCB: Regulatory agency

### Pilot Water Transfer I Costs

The estimated costs for the Pilot Water Transfer I are provided in Table I below. Note that due to the one-time nature of the Pilot Water Transfer I, some costs that might typically be charged for water transfers were reduced, absorbed, or omitted by the transfer partners.

**Table I: Estimated Costs of the Pilot Water Transfer I**

<b>Type of Cost</b>	<b>Recipient</b>	<b>Est. Total Costs <sup>(1)</sup></b>	<b>Est. Total Costs <sup>(1)</sup></b>
Water Purchase	YCWA	\$50-\$350	\$50,000 - \$350,000
Wheeling	EBMUD, USBR	\$360 - \$550	\$360,000 - \$550,000
Hayward Facilities <sup>(2)</sup>	Hayward	\$100 - \$200	\$100,000 - \$200,000
RWS	SFPUC	\$420-\$620	\$420,000 - \$620,000
<b>Total Estimated Costs</b>		<b>\$930-\$1,720 / AF</b>	<b>\$930,000-\$1,720,000</b>

<sup>(1)</sup> Costs were not finalized. The estimates provided in this table were presented to the BAWSCA Board on July 16, 2015.

<sup>(2)</sup> Costs for Hayward facilities were not finalized.

### Agreements Necessary

The Pilot Plan identified the following five key agreements necessary to implement the Pilot Water Transfer I:

- BAWSCA-YCWA Water Transfer Agreement: An agreement for BAWSCA to purchase water from YCWA.

- BAWSCA-EBMUD Wheeling Agreement: An agreement that outlined the terms and conditions for EBMUD to wheel the transfer water, secured and purchased by BAWSCA, through EBMUD and USBR facilities to the Hayward Intertie.
- BAWSCA-Hayward Pilot Transfer Agreement: An agreement that outlines the procedures for documenting and reimbursing Hayward for appropriate costs incurred to implement the transfer and identifies terms of use for Hayward's system beyond the EBMUD point of delivery.
- BAWSCA-SFPUC Pilot Transfer Agreement: An agreement that outlines the operational and water accounting guidelines between BAWSCA and SFPUC for conveying purchased water to member agencies by in-lieu means through the RWS.

Additionally, the following agreement, to which BAWSCA was not a party, was necessary to implement the Pilot Water Transfer I:

- Hayward Intertie Pilot Transfer Agreement: Modifications and/or an amendment to an existing three-party agreement for the operation of the Hayward Intertie. This amendment defined terms for the use of the Hayward Intertie for the Pilot Water Transfer I among EBMUD, SFPUC, Hayward, and BAWSCA.

### **3.B. BAWSCA-YCWA Water Transfer Agreement**

The Pilot Plan provided a detailed description of the Lower Yuba River Accord (Yuba Accord), a 17-party agreement implemented in 2008 that resolved decades of disputes over instream flows, and which corresponded with the addition of the State Water Project (SWP) and Central Valley Project (CVP) service areas as approved places of use to YCWA's water rights through the year 2025. The Yuba Accord also includes a water purchase agreement that creates a long-term water transfer program, under which water can be transferred to the environment and a group of SWP and CVP contractors during a drought.

The Yuba Accord originally included the Delta export pumps as the approved points of diversion, but in March 2014, YCWA added the FRWP intake as a point of diversion for the YCWA water rights. In December 2014, YCWA entered into a new agreement with a group of SWP and CVP contractors to stipulate timing and pricing of YCWA water transfer supplies through 2025. After YCWA added the FRWP intake as a point of diversion, BAWSCA conferred with EBMUD and YCWA to confirm continued interest by both parties in the Pilot Water Transfer I.

A draft Temporary Transfer Petition (TTP) to the State Water Resources Control Board (SWRCB) and associated forms for the Pilot Water Transfer I were prepared and reviewed by YCWA and BAWSCA. A draft water transfer agreement, prepared in June 2014, included terms proposed by YCWA for the purchase and delivery of pilot water transfer supplies.

In the spring of 2015, YCWA revised the draft TTP for the BAWSCA Pilot Water Transfer I to reflect changed conditions in the Yuba Accord over the prior year (i.e., adding the FRWP intake

as a point of diversion for YCWA water rights). The progress on the TTP positioned BAWSCA and YCWA to submit the TTP paperwork when both parties were ready to sign a water transfer agreement. An overview of the terms of the TTP and the draft water transfer agreement is provided below.

### **Overview of Agreement Terms**

The draft TTP and BAWSCA-YCWA Water Transfer Agreement contained specific information and terms related to the following elements:

- Water rights
- Timing
- Roles and responsibilities for required regulatory approvals and environmental documentation
- Cost reimbursement agreements
- Notification requirements
- Point of delivery
- Other implementation details

The draft water transfer agreement specified that YCWA, as the seller of water, was responsible for obtaining regulatory approvals and environmental documentation from the origin of the transfer water to the point of delivery. BAWSCA was responsible for all regulatory approvals and environmental documentation from the point of delivery to the place of use, the BAWSCA service area. In addition, the draft water transfer agreement specified that BAWSCA must reimburse YCWA for work obtaining regulatory approvals and environmental documentation for the Pilot Water Transfer I. As described in the Pilot Plan, reimbursement costs are a normal term of a water transfer agreement.

The Yuba Accord water supplies that YCWA proposed to sell to BAWSCA had an authorized place of use in the service areas of the SWP and CVP. While some BAWSCA member agencies do have rights to use SWP and/or CVP supplies, the SWRCB needed to issue a Temporary Transfer Order (TTO) to temporarily change the place of use of the YCWA transfer supplies to incorporate the entire BAWSCA service area and enable the rest of the member agencies to access the

### **A Model for Other Agreements**

In March 2015, YCWA entered into a water transfer agreement with Dublin San Ramon Water Services District (DSRSD). DSRSD proposed to purchase water from YCWA in the spring of 2015, wheel the water through the EBMUD service area, store the water in EBMUD's local reservoirs, and have the water delivered during the late summer and early fall. Because this was the first water transfer agreement YCWA had entered into for water that would travel through the FRWP, the YCWA-DSRSD agreement built upon the draft that YCWA and BAWSCA were developing in 2014. YCWA sent the signed YCWA-DSRSD water transfer agreement to BAWSCA for reference in moving forward on a water transfer agreement between YCWA and BAWSCA.

transfer supplies. As stipulated in the draft water transfer agreement, YCWA would submit the TTP to the SWRCB requesting the TTO. Both agencies would have the opportunity to review the TTO before moving forward with the Pilot Water Transfer I.

The draft water transfer agreement anticipated that the TTP would be valid for up to one year to allow flexibility in implementing the Pilot. Additionally, the parties could request that the timeframe start at some point in the future rather than upon submittal of the TTP.

### **Lessons Learned and Outstanding Issues**

The following list presents a summary of the lessons learned and outstanding issues for the water transfer agreement:

- The purchase price of transfer supplies from YCWA increased, reaching \$500 per AF during extreme drought.<sup>3</sup>
- Changes to the Yuba Accord required additional work by BAWSCA and YCWA to ensure that all BAWSCA member agencies could access transfer supplies.
- Due to scheduling constraints regarding the availability of YCWA supplies, allowing for a broad window for scheduling delivery of pilot transfers supplies would increase the likelihood of a successful transfer.

Under the terms of both the original and renegotiated water transfer agreements with SWP and CVP contractors under the Yuba Accord, the price of water transfer supplies would fluctuate depending on the type of water year (i.e., wet or dry) and thus the value of these supplies to potential purchasers. The Pilot Plan recognized this variability in price and estimated that the cost of transfer water would range between \$75 and \$275 per AF. With unprecedented drought conditions in 2014-16, prices for transfer water increased significantly. Changes to the price schedule were included in the renegotiated transfer agreement under the Yuba Accord. While the pilot transfer under discussion, and as had been negotiated, would not be subject to the new terms, the prices proposed by YCWA in 2014 and 2015 reflect the unprecedented demand for transfer supplies at that time, with asking prices from YCWA as high as \$500 per AF during the extreme drought that was taking place.

Another change to transfer agreements under the Yuba Accord specified who had rights to purchase Yuba Accord transfer water during different months of the year. This change specified that agencies with SWP and CVP rights that participate in the Yuba Accord are the only agencies authorized to purchase transfer water from July 1 through September 30. Other agencies not participating in the Yuba Accord may purchase outside of that limited window, when Yuba Accord water was available to transfer. BAWSCA member agencies fall into both categories, and thus special arrangements were needed to allow some member agencies to receive the Yuba Accord transfer water at any time of the year.

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<sup>3</sup> This cost is for the purchase of transfer water only and does not include other costs associated with delivering the transfer water to the BAWSCA service area (e.g., wheeling, treatment, etc.).

Scheduling constraints were identified regarding the availability of YCWA supplies that added complexity to the transfer. The broader window to schedule supplies afforded by both a one-year TTP and a potentially delayed submittal of the TTP would increase the likelihood of a successful pilot transfer.

However, work implementing the Pilot Plan positioned BAWSCA to enter into a water transfer agreement with YCWA when conditions for pilot water transfer implementation were right.

### **3.C. BAWSCA-EBMUD Wheeling Agreement**

In October 2013, EBMUD and BAWSCA began drafting a scope of work for implementing the Pilot Plan. BAWSCA and EBMUD confirmed in a November 2013 meeting that both parties intended to continue efforts to implement a pilot water transfer. In January 2014, BAWSCA and EBMUD signed a second MOU to implement the Pilot Plan, including preparation of the draft EBMUD-BAWSCA Wheeling Agreement. Unfortunately, BAWSCA and EBMUD did not conclude the negotiations on the terms of the draft wheeling agreement.

#### **Overview of Agreement Terms**

During the Pilot Water Transfer I, EBMUD would wheel BAWSCA-purchased transfer water through the EBMUD transmission and water treatment system. The BAWSCA-EBMUD Wheeling Agreement defined:

- Quantity of the transfer
- Timing
- Notification requirements
- Roles and responsibilities for required regulatory approvals and environmental documentation
- Cost reimbursement agreements
- Point of delivery
- Key operational considerations of the pilot water transfer

The draft wheeling agreement also specified roles and responsibilities of both parties related to the environmental compliance and regulatory approvals needed to complete the Pilot Water Transfer I. In addition to specifying which party would be responsible for securing and preparing documentation, the wheeling agreement discussed cost reimbursement for environmental compliance and regulatory approval activities.

The estimated costs of wheeling water through the EBMUD system were also included in the draft wheeling agreement. After actual implementation of a pilot water transfer, BAWSCA would be responsible for reimbursing actual costs incurred by EBMUD to transfer water to BAWSCA. The final wheeling agreement specified what types of costs were reimbursable by BAWSCA to EBMUD and estimated ranges for these costs. BAWSCA intended to implement

the Pilot Water Transfer I when EBMUD was already operating the FRWP to deliver its own supplemental supplies so that significant costs for FRWP startup and shutdown would be shared between the two agencies.

### **Lessons Learned and Outstanding Issues**

The following list summarizes lessons learned and outstanding issues that were not resolved by the wheeling agreement:

- The timing of the use of EBMUD's FRWP operations is variable and was not as predictable when developing the Pilot Plan.
- It was determined that EBMUD water treatment plants needed upgrades to treat water at a rate that would more closely match demand and prevent local reservoirs from filling too quickly.
- Access to storage would greatly improve the viability of water transfers to BAWSCA, but it was uncertain if BAWSCA could use EBMUD facilities for water storage.
- The historic drought conditions present at the time created difficulty for agencies in securing Warren Act contracts<sup>4</sup> for use of the Folsom South Canal.
- Capacity in EBMUD's system is a serious constraint in drought years. EBMUD expressed the need to use the entire capacity of the FRWP to deliver its own supplies.
- During extreme droughts, BAWSCA and EBMUD might be in competition for the same water supplies.

The timing of EBMUD's FRWP operations turned out to be different than originally assumed in the Pilot Plan. The Pilot Plan stated that after a water year had been determined to be dry, the FRWP operations would begin in October, with planning beginning in approximately April of the same year. However, after the Pilot Plan was released in 2013, EBMUD realized that the FRWP would need to operate in April every three years, beginning in April 2014, to test the fish screens and meet regulatory compliance obligations. This mandate provided a regular opportunity for FRWP operations and a window for water transfers between EBMUD and BAWSCA.

EBMUD took the opportunity of the fish screen testing in April 2014 to also deliver drought supplies from the CVP and some additional transfer water through the FRWP to the EBMUD service area.

EBMUD identified challenges during this initial operation of FRWP that provided key information for both its future operation and the Pilot Water Transfer I. EBMUD is required to treat all water that passes through the FRWP in a conventional water treatment plant. EBMUD only has two of these facilities, which are located at the EBMUD terminal reservoirs. During EBMUD's spring-summer 2014 operation of FRWP, they experienced operational

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<sup>4</sup> The Warren Act is a federal statute passed in 1911 that allows local water agencies to contract with federal agencies to store and convey non-CVP project water.

difficulty due to the treatment plants' abilities to only treat at two specific flow rates. EBMUD found that the local reservoirs which receive the FRWP supplies were filling too fast due to this inflexibility in water treatment flow rate, thus prompting EBMUD to slow down the diversion from FRWP. EBMUD proposed upgrading these facilities to add operational flexibility and address this issue. It should be noted that EBMUD did not receive any taste or odor complaints from customers during the period that FRWP water was being delivered.

To move water to the EBMUD service area from the FRWP, EBMUD must move Sacramento River water through a portion of the USBR's Folsom South Canal. In 2014 and 2015, EBMUD obtained the required Warren Act contracts to move non-CVP/USBR transfer water into the EBMUD service area, in addition to EBMUD's CVP contract drought-year supplies. A Warren Act contract between BAWSCA and the USBR would also be necessary to implement this pilot water transfer. According to EBMUD, due to the historic drought conditions, the environmental compliance requirements have increased substantially, making costs of environmental review and analysis for these contracts more expensive.

EBMUD and BAWSCA contemplated implementing the Pilot Water Transfer I in the spring of 2014, but the timeframe for completing all the agreements, obtaining all the regulatory approvals, and fulfilling all environmental compliance obligations was too short. BAWSCA and EBMUD forecasted that the development of the agreements would take at least six months to one year to execute.

On April 15, 2015, EBMUD began operation of the FRWP with the intention of delivering at least 65,000 AF of supplemental supplies to the EBMUD service area. EBMUD had declared a Stage IV drought, its most critical category and intended to operate the FRWP to deliver its own supplemental supplies through the remainder of 2015. As it started the FRWP operations, EBMUD informed BAWSCA that it would not have additional capacity to wheel water for BAWSCA for the rest of the 2015 calendar year. Additionally, EBMUD was looking to purchase available supplies north of the Delta on the Sacramento River, including any available YCWA supplies.

EBMUD and BAWSCA made significant progress on a draft wheeling agreement to define the operational and cost reimbursement terms. Issues that remained to be resolved included potential capacity issues, prioritization, and availability of supply.

### **3.D. BAWSCA-Hayward Pilot Transfer Agreement**

To conduct the Pilot Water Transfer I, BAWSCA and Hayward proposed to enter into a cost allocation and operations agreement that specified the terms of the use of Hayward's facilities, the operation of those facilities, and the associated cost reimbursement during the Pilot.

Early on, Hayward expressed major concerns about the Pilot Water Transfer I, including:

- Pilot transfer water would be of a different quality than the RWS supplies that Hayward normally receives.
- The potential for customer complaints and public relations issues about different water quality for both residential and commercial customers.
- Hayward would rely solely on pumped water during the Pilot Water Transfer I, which was different from normal operations where water was delivered almost completely by gravity.
- Concerns related to costs to keep water pressures up in Hayward during the Pilot Water Transfer I.
- Concerns related to Hayward water system pressures being different than usual.
- Liability issues if there was damage to the Hayward system during the Pilot Water Transfer I.
- Additional environmental documentation could be required to use the Intertie for a pilot water transfer.

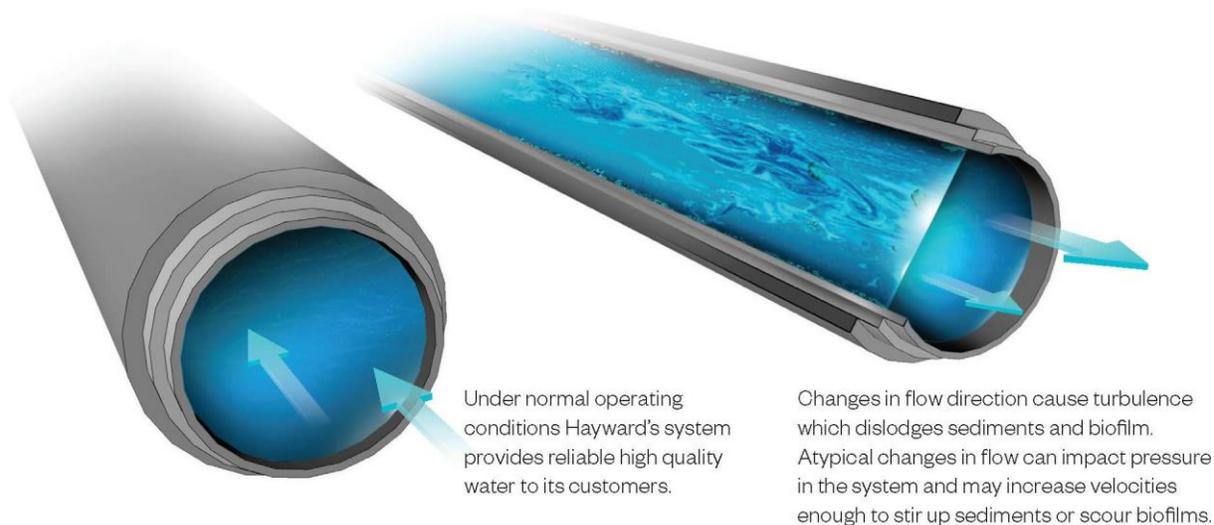
### **BAWSCA-Hayward Cooperative Agreement**

BAWSCA took steps to address each of Hayward's concerns. In February 2015, BAWSCA and Hayward formally signed the Cooperative Agreement between Hayward and BAWSCA for Preliminary Planning and Analysis for Development of a Short-Term Pilot Water Transfer Plan (Cooperative Agreement). As stated in the Cooperative Agreement, BAWSCA was committed to helping Hayward identify and assess the impacts of water quality changes on Hayward customers, particularly the industrial sector. To examine potential water quality issues related to the Pilot Transfer Water, BAWSCA worked with EBMUD to identify the anticipated water quality of the supply delivered through the Hayward Intertie during the Pilot Water Transfer I. The water quality was found to be very similar to the supplies from SFPUC's local reservoirs, which (1) was delivered to BAWSCA member agencies periodically throughout any given year, and (2) met all water quality regulatory guidelines.

The Cooperative Agreement also specified that BAWSCA and Hayward would work together on a public communications plan. This public communications plan would establish effective communications to Hayward's residential, commercial, and industrial customers regarding the use of the Hayward Intertie and potential changes in water quality, including potential impacts and benefits to all Hayward customers.

BAWSCA and Hayward partnered on an investigation of hydraulic pressures in the Hayward system to assess the impacts to Hayward's water system operations during the Pilot Water Transfer I, including potential changes to the existing water pressures and resultant fire flow capacity in Hayward. Figure 6 provides a graphic depicting the potential challenges to operating a water distribution system in reverse. The goal of this analysis was to identify areas in the water system that could be vulnerable to lower pressures and that might require monitoring during the Pilot Water Transfer I. Hayward's consultant, West Yost and Associates, finished its preliminary analysis in April of 2015.

**Figure 6: Potential Impacts to Water System Operations from Reversing Flow Direction**  
**Challenges of Operation System in Reverse**



Regarding Hayward's concern that additional environmental compliance documentation could be required to use the Hayward Intertie for the Pilot Water Transfer I, BAWSCA and EBMUD organized meetings and distributed information about California Environmental Quality Act (CEQA) compliance for the Pilot Water Transfer I and the relationship with the existing Hayward Intertie Operating Agreement. It was determined that additional CEQA considerations were not required as part of the Pilot.

### **Lessons Learned and Outstanding Issues**

A key lesson learned was that the process of developing a water transfer unfolds slowly. In June 2014, BAWSCA engaged Hayward in weekly meetings to increase the frequency of discussions and allow time to identify and discuss issues and concerns. Entering into the Cooperative Agreement focused the discussions between BAWSCA and Hayward and surfaced issues that needed to be resolved prior to the implementation of a pilot water transfer involving Hayward.

Early on, BAWSCA and Hayward agreed that BAWSCA would reimburse Hayward for operational costs incurred after the Pilot Water Transfer I had been implemented. However, BAWSCA and Hayward spent considerable time in over 10 in-person meetings discussing the potential terms of wheeling cost reimbursement and were not able to reach a mutually agreeable approach.

### **3.E. BAWSCA-SFPUC Pilot Transfer Agreement**

To execute the Pilot Water Transfer I, BAWSCA and SFPUC needed an agreement to specify how costs would be allocated under the WSA, which provides for a detailed cost allocation methodology whereby all costs of the RWS are allocated between the San Francisco Retail

Customers and Wholesale Customers, primarily based on proportionate annual water use. Because the Pilot Water Transfer I would introduce new water into the RWS, an agreement was needed to specify how this water would be treated with respect to the WSA.

BAWSCA and SFPUC discussed key aspects of the BAWSCA–SFPUC Pilot Transfer Agreement. Few in-person meetings between SFPUC and BAWSCA were needed as the staff from both agencies came to agreement on most of the terms quickly.

### **Overview of Agreement Terms**

The draft BAWSCA-SFPUC pilot transfer agreement formalized:

- Allocation of RWS costs
- Notification procedures
- Water accounting procedures in the case of both voluntary and mandatory water use reduction on the RWS
- Responsibilities of each agency

SFPUC and BAWSCA agreed that during voluntary water use reductions declared by SFPUC, the transfer water would be considered RWS water and part of the total volume of water delivered to the Wholesale Customers in a year. During mandatory water use reductions declared by SFPUC, the share of pilot transfer water allocated to each Wholesale Customer would be added to each Wholesale Customer's monthly budget. During the month of the Pilot Water Transfer I, the transfer water would be the first water used by each Wholesale Customer for the purposes of water accounting as described in the WSA.

BAWSCA agreed to provide SFPUC with the allocated amount of transfer water delivered to each Wholesale Customer during the Pilot Water Transfer I. The Wholesale Customers would be billed, as usual, for the total RWS water used during that month, including the pilot transfer supplies. BAWSCA staff proposed to split pilot transfer supplemental supplies and costs among all the member agencies in proportion to the water each agency used during that time.

The J Table of the WSA, used to calculate total water used in the RWS for each year, would be modified to include the transfer supplies for the year in which the Pilot Water Transfer I occurred. The transfer supplies would be included in the calculation of the Wholesale Revenue Requirement, as well. The draft BAWSCA-SFPUC Pilot Transfer Agreement contained examples of how both the J Table and the Wholesale Revenue Requirement would be calculated during the Pilot Water Transfer I.

### **Lessons Learned and Outstanding Issues**

BAWSCA and SFPUC were able to come to agreement on most of the terms related to the Pilot Water Transfer I after only a couple of meetings. Both SFPUC and BAWSCA were committed to resolving the details of accounting and cost allocation for both voluntary and

mandatory water use reduction scenarios. Further work would be needed to implement a pilot water transfer when the RWS was not in a water use reduction condition. In addition, BAWSCA would need to continue discussions with San Francisco about water storage for potential longer-term water transfer agreements.

### **3.F. Hayward Intertie Pilot Transfer Agreement**

The Hayward Intertie is a set of pipeline and pump station facilities that connect the water systems of EBMUD and SFPUC in the City of Hayward. Use of the Hayward Intertie is governed by the Hayward Intertie Agreement, which currently only covers the use of the intertie for “emergencies” and planned outages.

The Hayward Intertie Agreement includes the following terms:

- Limits the use of the Hayward Intertie to emergency situations and planned outages.
- Prohibits use of the Hayward Intertie to supply water during drought conditions.
- Defines the roles and responsibilities of each party.
- Specifies cost share allocations and ownership of the facilities between SFPUC and EBMUD.
- Governs the operations and maintenance of the Hayward Intertie.

The definition of emergency does not provide for the use of the Hayward Intertie to transfer or exchange water to address water shortages during times of drought, and thus would need to be amended to enable use of the Hayward Intertie for the Pilot Water Transfer I. EBMUD, SFPUC, Hayward, and BAWSCA proposed to create a new agreement specifically for the Pilot Water Transfer I, in addition to the Hayward Intertie Agreement. Several meetings were held to discuss the Hayward Intertie Pilot Transfer Agreement.

In October 2013, EBMUD, SFPUC, and Hayward met to discuss the issues related to the use of the Hayward Intertie for the Pilot Water Transfer I. The three parties agreed to draft principles for an agreement that will allow for BAWSCA’s use of the Hayward Intertie for the Pilot Water Transfer I.

All four parties met on March 3, 2014, to discuss the full set of intertie principles and agreed to modify and consolidate some of them. EBMUD agreed to use the principles to prepare a three-party intertie agreement specifically to authorize and conduct the Pilot Water Transfer I. The parties also agreed that the Hayward Intertie Pilot Transfer Agreement would be between EBMUD, SFPUC, and Hayward and would reference the other agreements between the parties, including the existing Hayward Intertie Agreement described previously. Additionally, the parties agreed to develop an operations plan for the Pilot Water Transfer I. Subsequent meetings focused on operational aspects of the Hayward Intertie Pilot Transfer Agreement and primarily included operational staff from the agencies.

EBMUD asked that the Hayward Intertie Pilot Transfer Agreement be completed after all other agreements between BAWSCA, EBMUD, SFPUC, and Hayward were completed.

### **Overview of Agreement Terms**

The draft Hayward Intertie Pilot Transfer Agreement included authorization for the one-time use of the Hayward Intertie for delivering the Pilot transfer water, as well as the following principles:

- The SFPUC, EBMUD, and Hayward remain the sole parties to the Hayward Intertie Agreement and the terms and conditions of the Hayward Intertie Agreement remain in full force and effect notwithstanding the Hayward Intertie Pilot Transfer Agreement.
- The Hayward Intertie Pilot Transfer Agreement would be limited to the proposed Pilot Water Transfer I for a limited duration and for purposes of the pilot only.
- The Hayward Intertie Pilot Transfer Agreement outlined the roles and responsibilities of the partners that would operate the Hayward Intertie, including the chain of command and authorities.

### **Lessons Learned and Outstanding Issues**

The following list summarizes lessons learned and outstanding issues for the Hayward Intertie Pilot Transfer Agreement:

- Because BAWSCA was not a party to the Hayward Intertie Agreement, BAWSCA would not be a party to the Hayward Intertie Pilot Transfer Agreement.
- The Hayward Intertie facilities receive regular maintenance to ensure operability in the event of an emergency but require several days to prepare for use once an emergency occurs.
- Flushing of the intertie pipeline prior to the pilot may be needed to scour sediments that settle in the little-used portions of the pipe.
- At the time, the intertie facilities required an upgrade to facilitate flushing of sediments prior to the Pilot Water Transfer I.
- The need for flushing may be avoided if scouring velocities in the pipeline are not reached. This could be achieved by slowly ramping up flows during the Pilot Water Transfer I operation, but the maximum flow velocity could result in scour.
- The cost for flushing and reimbursement parameters were not resolved by the parties.
- Discussions about use of the Hayward Intertie for the Pilot Water Transfer I spurred conversations about the adequacy of the current maintenance plan for the Hayward Intertie.

Because BAWSCA was not a party to the existing Hayward Intertie Agreement, and BAWSCA did not own or operate the Hayward Intertie, it was decided that the Hayward Intertie Pilot Transfer Agreement should not include BAWSCA.

Many of the discussions regarding the use of the Hayward Intertie for the Pilot Water Transfer I focused on the state of the Hayward Intertie facilities when not in use and the potential need for flushing the intertie pipelines that connect EBMUD and Hayward. Technical staff from the agencies that own and operate the intertie engaged in dialogue about the potential need for flushing prior to the Pilot Water Transfer I, how that flushing could occur, how to operate the intertie during the Pilot Water Transfer I in a manner that might avoid the need for flushing, potential infrastructure changes needed on the intertie pipeline to facilitate proper flushing, how much of the pipeline would need flushing, and potential changes to regular maintenance of the Hayward Intertie. Technical staff involved in the discussions included staff at Hayward that were responsible for operating the intertie as well as EBMUD and SFPUC operational staff, who have experience with use of the intertie.

The water in the large, 42-inch intertie pipeline normally flows at a low velocity, which allows for settling of sediments to the bottom of the pipe. When the Pilot Water Transfer I occurs, the flow in the pipe would increase to a level such that scouring could occur along the pipe's edges, loosening any sediments that have accumulated along the bottom of the pipe. These sediments could then be suspended in the water delivered to Hayward customers.

Several strategies were suggested to prevent sediments from being introduced into the water delivered to Hayward's customers. The first strategy, and the solution originally preferred by Hayward, was to flush the intertie pipelines prior to the water transfer. The second strategy was to run the Pilot Water Transfer I at a flow rate low enough to avoid scouring the walls of the pipelines and avoid loosening any sediments deposited on the edges. To do this, the operators would need to (1) slowly ramp up the flow rate in the intertie pipeline and (2) keep the flow rate low enough that the sediments would not become suspended into the flow. Operators expressed concerns about the ramp-up method, citing that the flow necessary to meet the demands in Hayward during the Pilot Water Transfer I could necessitate a flow rate in the intertie pipeline that was high enough to suspend sediments on the bottom of the pipe.

If flushing were to occur prior to the Pilot Water Transfer I, Hayward staff pointed out that the design of the intertie pipeline (at that time) did not allow for adequate draining of water from the pipe to achieve the desired scour and flushing of sediments from the pipe. Hayward staff suggested infrastructure improvements to the pipe to accommodate flushing and designed a plan to discharge the flushing water into a creek that drains to the San Francisco Bay, avoiding flooding of the Hayward stormwater discharge system. An attempt to flush the intertie pipeline prior to the Pilot Water Transfer I caused flooding in Hayward that should be avoided in the future.

BAWSCA and the other parties investigated the costs of flushing the intertie pipeline, including the cost of the water that would be flushed into the San Francisco Bay, the cost of labor to perform the flushing, the cost of electricity for pumping, and any costs associated with upgraded infrastructure for flushing and related discharge into a creek. Additionally, BAWSCA worked

with the other parties to determine who should be responsible for paying those costs. These flushing-related costs and responsibilities for reimbursement were not resolved by the parties.

BAWSCA gained a better understanding of how the Hayward Intertie functions and how it is maintained. As the owners of the intertie, EBMUD and SFPUC pay to maintain the intertie on an annual basis, according to the current agreement and maintenance plan. As the operator of the intertie, Hayward performs the maintenance activities, as required, and is then reimbursed by EBMUD and SFPUC. The intertie operations discussion that occurred during Phase II was beneficial in identifying potential areas of improvement in the annual maintenance of the intertie. EBMUD, SFPUC, and Hayward discussed what maintenance changes could be made to ensure it is ready in the event of an emergency. The status of those discussions has not been shared with BAWSCA. These changes would also likely benefit the operation of the intertie for a pilot water transfer.

### **3.G. Regulatory Agency Approvals and Environmental Compliance**

In order to execute the Pilot Water Transfer I, BAWSCA needed to (1) obtain several regulatory agency approvals, and (2) ensure that the proper environmental compliance analysis and documentation was submitted. The Pilot Plan provided a detailed explanation of each of the following.

#### **State Water Resources Control Board Approvals**

To implement the Pilot Water Transfer I, the parties would need to obtain a TTO from the SWRCB adding portions of the BAWSCA service area to the authorized place of use for YCWA transfer supplies. BAWSCA worked with YCWA to draft the required documentation for the TTP. Although the transfer never materialized, typically, the TTP would be submitted when a water transfer was scheduled. A TTO is valid for up to one year to provide a flexible window for implementation of pilots.

CVP supplies diverted at FRWP are approved for use in EBMUD's service area through a permit from the SWRCB Division of Drinking Water (DDW). For any other transfer water that EBMUD purchases, EBMUD needs to obtain a DDW permit for use of that source water in the EBMUD service area. Discussions indicated that the language in a DDW permit issued to EBMUD could have been broad enough to cover BAWSCA's transfer as well.

#### **USBR Approvals**

Use of the FRWP to convey any non-CVP transfer water from the Sacramento River Valley through EBMUD facilities and USBR's Folsom South Canal to the BAWSCA service area requires a Warren Act contract. The USBR enters into Warren Act contracts when entities desire to use Federal CVP facilities to transfer non-CVP water. The USBR must also perform or approve National Environmental Policy Act (NEPA) analysis to support these contracts.

In 2014 and 2015, EBMUD obtained Warren Act contracts to move transfer water into the EBMUD service area, in addition to EBMUD's CVP contract drought-year supplies. According to EBMUD, due to drought conditions that have occurred in the past, their environmental compliance requirements, and associated costs of environmental review and analysis, have increased. BAWSCA was not provided with a detailed explanation of the additional requirement, but understood they related to addressing water quality and flow requirements associated with the Bay-Delta.

Because EBMUD had an existing relationship with the USBR through their CVP contract, EBMUD was the sole point of contact with the USBR regarding the Pilot Water Transfer I. BAWSCA intended to engage directly with the USBR to pursue the Warren Act contract or start the NEPA process once the Pilot Water Transfer I was scheduled, but that stage was never realized.

### **Environmental Compliance - State Natural Resources Law**

CEQA is a statute that requires State and local agencies to identify and analyze the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. A public agency must comply with CEQA when it undertakes a "project." A project is a discretionary activity undertaken by the public agency, which may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. A public agency is required to comply with CEQA to complete a water transfer, but a temporary one-year water transfer involving post-1914 surface water rights is exempt from this requirement. Other CEQA exemptions may also apply to such a transfer.

CEQA compliance strategies were discussed throughout implementation of the Pilot Plan. The four parties discussed CEQA exemptions on March 3, 2014, and BAWSCA agreed to research and report back on which exemptions were most applicable. BAWSCA emailed findings from this research to all parties in June 2014. On November 21, 2014, BAWSCA convened a conference call with all parties and associated legal counsel to discuss these exemptions and the strategy for implementation. Based on feedback from that call, the parties were poised to move forward, had the Pilot Water Transfer I been implemented.

The Pilot Plan presented a list of potential exemptions that could be used for implementation of the Pilot Water Transfer I. Water Code Section 1729 and CEQA Guidelines Section 15252(u) provides that temporary changes in the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights pursuant to Water Code Section 1725 are exempt from the requirements of CEQA. While this was not the only exemption the parties believed to apply, it was determined to be the most appropriate one.

### **Environmental Compliance - Federal Natural Resources Law**

The Pilot Water Transfer I would also need to comply with Federal resource laws, including NEPA and the Endangered Species Act (ESA). NEPA environmental review and analysis was

required to obtain a Warren Act Contract from the USBR as described above. Some consultation with other resource agencies may have been required to comply with the ESA. BAWSCA and EBMUD had discussions about NEPA compliance throughout Phase II. Due to the historic drought conditions, NEPA and ESA compliance likely would have required significant additional effort.

### 3.H. Summary and Conclusions

BAWSCA learned a considerable amount about the implementation of water transfers throughout the process and concluded:

- The timing of the use of EBMUD's FRWP facilities was not as predictable as thought when the Pilot Plan was developed.
- Access to capacity was a serious issue in drought years, and moreover, EBMUD expressed a need to use the full capacity of the FRWP to deliver its own supplies, effectively eliminating use the FRWP as an assured viable option in a long-term transfer.
- During drought conditions, sellers are likely to have less supply to sell, increasing the competition for purchase of transfer water and increasing the price of transfer water.
- Transfer water was only available at certain times of the year, and the availability and cost of transfer water changed with the type of water year (i.e., wet or dry), adding complexity to scheduling a water transfer to BAWSCA.
- Access to storage would have greatly improved the viability of water transfers to BAWSCA.
- The historic drought conditions created difficulty for agencies in securing Warren Act contracts for use of the Folsom South Canal and increased requirements for both State and Federal environmental compliance analysis.
- Improving regular maintenance of Hayward Intertie and upgrading the intertie infrastructure for emergency use would have provided benefits for a water transfer program.
- Hayward had significant concerns about a pilot water transfer that requires use of their facilities.
- BAWSCA and Hayward agreed that information gained during implementation of a pilot water transfer would be useful for future decision making.
- Negotiations between BAWSCA and Hayward about the Pilot Water Transfer I proceeded slower than was anticipated due in part to Hayward's continued concerns about the use of the Hayward Intertie as part of transfer deliveries.
- BAWSCA and SFPUC developed a framework for accounting for water supply within the RWS if BAWSCA were to have obtained a supply independent of SFPUC.

At the close of the First Attempt, BAWSCA noted to the parties as well as to BAWSCA's Board of Directors that it would continue to pursue a pilot water transfer. BAWSCA hoped that the transfer could be implemented within the coming years.

BAWSCA had continued discussions with Valley Water on pursuing a pilot water transfer. In July 2014, BAWSCA and Valley Water finalized an MOU, which established tasks, roles, and responsibilities for the development of a short-term pilot water transfer plan. The purpose of the plan was to provide vital information regarding partnership on future long-term and/or dry year transfers. Staffing issues at Valley Water delayed the progress of the work on a pilot water transfer with BAWSCA. No significant work with Valley Water has ensued since those early discussions.

## 4. Pilot Water Transfer II – Second Attempt

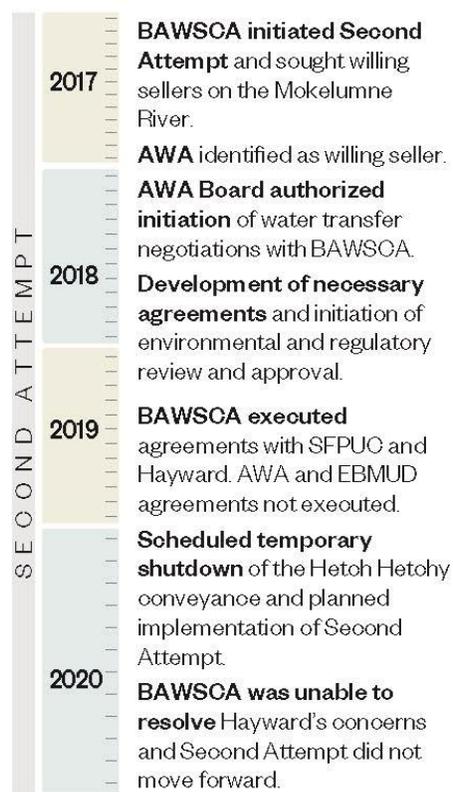
### 4.A. Second Attempt - Development Approach

Although the first attempt at a pilot water transfer was unsuccessful, implementation of a one-time pilot water transfer remained a key recommended action identified in BAWSCA’s Strategy Report. Work continued on reconfiguring a possible pilot with an aim to implement one when possible.

BAWSCA’s goal for conducting a pilot water transfer remained to evaluate the feasibility of delivering supplemental water supplies to BAWSCA member agencies in times of future supply interruptions or water shortages. A one-time temporary transfer of up to 1,000 AF of water from a willing seller would (1) test the viability of using, and impacts to, the existing infrastructure; (2) identify and verify the necessary elements of the multiple institutional approvals and agreements required to deliver transfer supplies that BAWSCA was evaluating as a part of other potential projects; and (3) serve as a tool to inform BAWSCA about the potential challenges, risks, and benefits associated with water transfers in a drought or for long-term water supply.

The First Attempt provided valuable lessons that were applied during the Second Attempt to streamline the process and increase the likelihood of success. For example, BAWSCA sought out willing sellers that could divert transfer water downstream of Federal facilities (i.e., the Folsom South Canal) and with water rights that did not require SWRCB approval for use of the transfer water throughout BAWSCA’s service area. Additionally, BAWSCA sought to alleviate concerns regarding water quality by finding a water source that was similar to Hayward’s typical water source. BAWSCA made significant progress on agreements during the First Attempt and learned much from working with multiple parties. Those agreements were repurposed, expediting the process for the Second Attempt.

**Figure 7: Pilot Water Transfer II Timeline**



## 4.B. Pilot Concept

### Initial Development Efforts

BAWSCA initiated the second attempt at a pilot water transfer ('Pilot Water Transfer II' or 'Second Attempt') in early 2017 when it began looking for other sources of water available on the Mokelumne River, which is EBMUD's primary water source. Two meetings took place with representatives of Woodbridge Irrigation District (WID). In those discussions WID indicated that, due to the one-time nature of the transfer coupled with its "small" size of 1,000 AF, it was not interested in pursuing it further at this time. In the fall of 2017, EBMUD suggested that BAWSCA approach AWA with a similar proposition. AWA expressed an interest and detailed water transfer negotiations ensued.

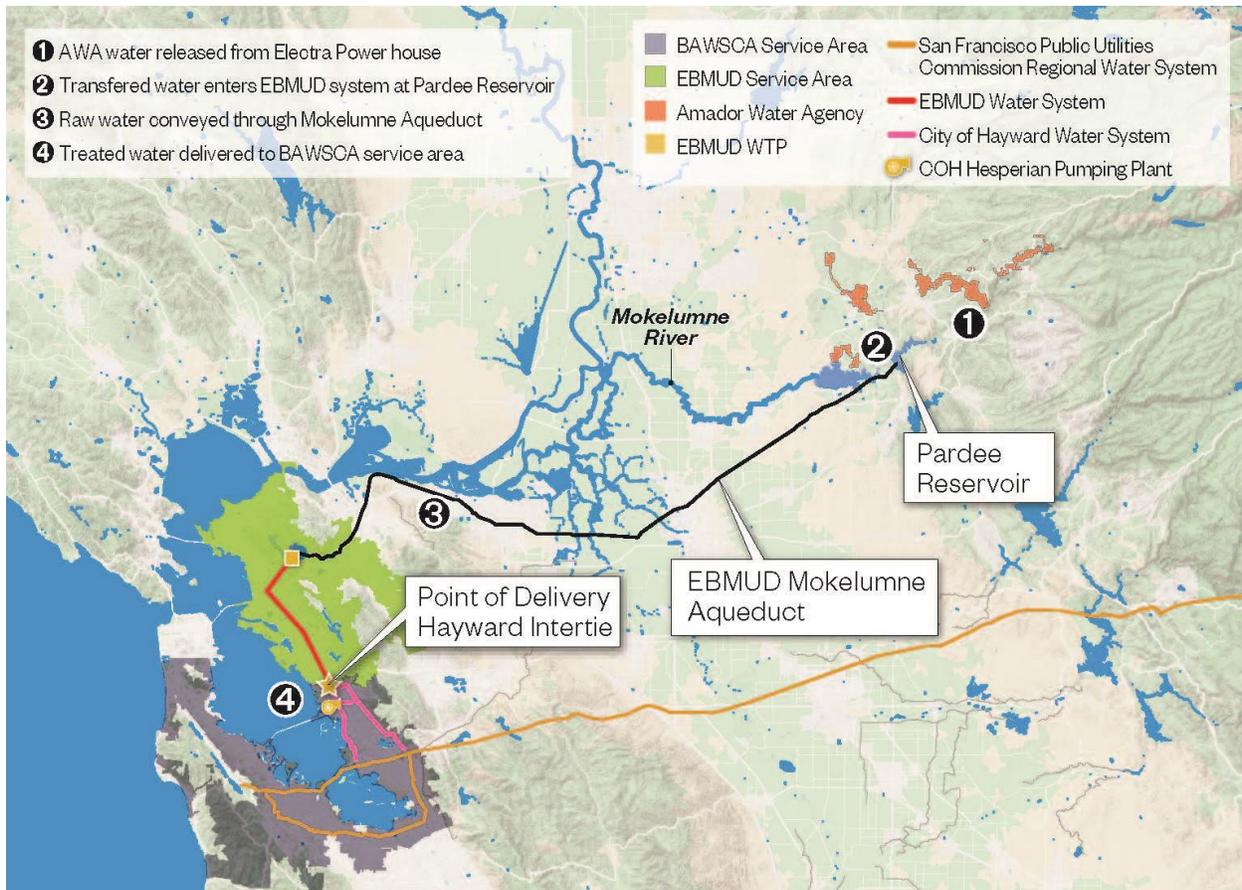
Water from AWA is sourced from the Mokelumne River, which flows directly into EBMUD's Pardee Reservoir. From a technical and hydraulic perspective, that water can easily be conveyed through EBMUD's Mokelumne Aqueducts to EBMUD's service area, where it would be treated and sent into its distribution system and routed directly to the Hayward Intertie.

Aside from a different transfer partner/seller, much remained in place from the prior Pilot Transfer I effort. EBMUD continued to be the wheeling partner, Hayward continued to be the BAWSCA member agency that would receive the water, SFPUC needed to be engaged due to the intended use of the Hayward Intertie and the fact that non-RWS water would be served to Hayward. The thought was that existing agreements, which were nearly complete, could be modified quickly to substitute this new water transfer and the CEQA / Environmental Permitting effort would be much simpler. Unfortunately, the partners in the Second Attempt had concerns that were specific to the proposed transfer and the existing agreements served only as a starting point for new negotiations.

### Proposed Pilot Water Transfer II Route

BAWSCA's discussions with AWA focused on the purchase of up to 1,000 AF of water for a one-time pilot water transfer. AWA would make the transfer water available to BAWSCA at the Electra Powerhouse on the Mokelumne River. From there, the pilot transfer water would flow downstream to EBMUD's Pardee Reservoir on the Mokelumne River. EBMUD would use its facilities to wheel and treat the water, delivering it to BAWSCA, via the Hayward Intertie, for ultimate use primarily within Hayward, utilizing the same operational approach detailed in the First Attempt at a pilot water transfer. Figure 8 provides the route of transfer water and the service areas of parties to the Pilot Water Transfer II.

**Figure 8: Pilot Water Transfer II Route and Parties to the Second Attempt**



The Second Attempt was planned to occur in January 2020 and would coincide with a scheduled temporary shutdown of the Hetch Hetchy conveyance portion of the RWS, at which time the Hayward Intertie would be prepared for use.

### **Elements of the Pilot Water Transfer II**

The Second Attempt would have the following key elements:

- **Water Transfer Amount:** 1,000 AF purchased, and 800 AF delivered over approximately 20 days
- **Source of Supply:** Amador Water Agency, Mokelumne River water
- **Type of Water Right:** Pre-1914 water rights
- **Point of Diversion:** Electra Powerhouse on the Mokelumne River
- **Losses through EBMUD:** EBMUD assessed a total loss of 20% through its raw water transmission, treatment, and distribution systems
- **Rate of Deliveries:** Planned rate of between 13 to 16 mgd to the Hayward Intertie
- **Timing of Deliveries:** Planned for January 13 – February 2, 2020, during SFPUC's shutdown of the Hetch Hetchy system

## Parties

- BAWSCA: Pilot water transfer purchaser
- EBMUD: Wheeling agency and facility owner/operator (Pardee Reservoir)
- SFPUC: Regional Water System owner and operator
- Hayward: Facility owner/operator (Hayward Intertie)
- AWA: Pilot water transfer seller

## Pilot Water Transfer II Costs

The estimated costs for the Pilot Water Transfer II are provided in Table 2 below. Note that due to the one-time nature of the Pilot Water Transfer II, some costs that might typically be charged for water transfers were reduced, absorbed, or omitted by the transfer partners.

**Table 2: Estimated Costs of the Second Pilot Water Transfer**

<b>Type of Cost</b>	<b>Recipient</b>	<b>Est. Total Costs</b>
Water Purchase <sup>(1)</sup>	AWA	Up to \$407,500
Wheeling <sup>(1)</sup>	EBMUD	Up to \$515,000
Distribution <sup>(1)</sup>	Hayward	Up to \$190,000
RWS <sup>(2)</sup>	SFPUC	Up to \$150,000
<b>Total Estimated Costs</b>		<b>\$1,112,500</b>

- (1) Note that a portion of these costs were fixed, but most of the costs were prorated based on the amount of water actually delivered to BAWSCA.
- (2) BAWSCA agreed to reimburse all reasonable costs incurred by SFPUC to implement the Pilot Water Transfer II.

## Agreements Necessary

In order to implement the Pilot Water Transfer II, BAWSCA required the following agreements:

- BAWSCA-AWA Water Purchase Agreement: Agreement for the purchase of water from AWA. AWA was responsible for managing the release of water from their storage to meet BAWSCA's transfer schedule.
- BAWSCA-EBMUD Wheeling Agreement: Agreement that specifies the terms and conditions (including costs) to wheel the transfer water through EBMUD facilities to the Hayward Intertie.
- BAWSCA-Hayward Pilot Transfer Agreement: Agreement that specifies the terms and conditions for the one-time Pilot Water Transfer II and specifies the costs to BAWSCA for Hayward to implement the transfer.
- BAWSCA-SFPUC Pilot Transfer Agreement: Agreement that specifies the water accounting and cost reimbursement guidelines between BAWSCA and SFPUC for conveying purchased transfer water to member agencies through the RWS.

Additionally, the following agreements, to which BAWSCA was not a party, were necessary to implement the Pilot Water Transfer II:

- Hayward Intertie Side Agreement for the Pilot Water Transfer: Three-party agreement between EBMUD, SFPUC, and Hayward that defined the terms for BAWSCA's one-time use of the Hayward Intertie for the Pilot Water Transfer II.
- Hayward-SFPUC Pilot Water Transfer Letter Agreement: Written confirmation from SFPUC authorizing Hayward to receive delivery of water from EBMUD and documenting that Hayward's participation in the Pilot Water Transfer II in no way affected Hayward's 1962 Water Sales Contract with SFPUC.
- AWA-EBMUD MOU: An agreement related to Mokelumne River water rights matters, which included language allowing the BAWSCA Pilot Water Transfer II to take place.

#### **4.C. BAWSCA-AWA Water Purchase Agreement**

In 2017, BAWSCA began discussions with entities on the Mokelumne River that hold pre-1914 Water Rights. AWA provides water and wastewater services to a large portion of Amador County, including all five cities within the county. AWA provides both retail and wholesale water to approximately 27,000 residents through just under 7,000 service connections.

Following introductions made via EBMUD, BAWSCA initiated discussions with AWA for the purchase of water to be used for a one-time pilot water transfer. BAWSCA expressed an interest in securing up to 1,000 AF of water from AWA. Under the proposed Pilot, AWA would transfer water to BAWSCA that it had determined could be made available through its water conservation efforts. At AWA's August 9, 2018, Board meeting, its Board of Directors authorized AWA staff to begin water transfer negotiations with BAWSCA.

Through the later part of 2018 and into early 2019, AWA and BAWSCA staff and attorneys met to develop a water transfer agreement / contract. Contract terms between BAWSCA and AWA covered financial details as well as operational requirements associated with the transfer of water.

##### **Pilot Components as detailed in the BAWSCA-AWA Agreement**

AWA holds an entitlement to 15,000 acre-feet of water supplies provided by the Pacific Gas and Electric Company (PG&E) under various pre-1914 appropriative water rights it holds on the Mokelumne River, which also are used to generate hydroelectric power through PG&E's Mokelumne River power project (FERC license P-137). AWA has conserved approximately 6,600 acre-feet of its PG&E entitlement water which AWA seeks to transfer for consumptive uses inside or outside of Amador County under Water Code section 1011.

For the compensation provided in the proposed agreement, AWA was willing to temporarily make 1,000 AF of transfer water available to BAWSCA by delivering that supply from the tailrace of PG&E's Electra Powerhouse on the Mokelumne River to flow into Pardee Reservoir, where EBMUD would then divert it into its Mokelumne Aqueduct for conveyance, treatment,

and distribution, and ultimately (via the connection provided by the Hayward Intertie) for use within BAWSCA's service area.

The primary components of the agreement that required negotiation were the price of the water and how associated costs would be allocated between BAWSCA and AWA, particularly in the event of termination. Negotiations, however, were very straight forward and mutually agreeable terms were reached in the Spring of 2019, although the agreement was supplemented in the following months, as needed, to conform to the agreements with the other transfer partners.

### **Adoption**

BAWSCA's Board authorized the BAWSCA CEO/General Manager to enter into the BAWSCA-AWA Transfer Agreement on November 21, 2019. The AWA Board took no action on the agreement. These Agreements were never executed.

### **Lessons Learned**

EBMUD and AWA disagreed about the proposed "use" of the water rights that were to be the source for the transfer (AWA's entitlement to 15,000 AF of water supplies provided by PG&E under various pre-1914 appropriative water rights). AWA stated that the supplies could be sold to parties outside of the county. EBMUD contended that was not the case and that the water had to remain within Amador County.

EBMUD had various demands associated with the use of those rights for the transfer. Ultimately, they agreed that this transfer could happen one time under the umbrella of the Pilot Water Transfer II, but the parties needed to resolve the matter of whether the water could be transferred outside Amador County before EBMUD would support any permanent sale or transfer by AWA. This disagreement resulted in significant delays.

The lesson learned was that water rights are tightly guarded and are a very important component of a transfer that requires careful consideration. If there are other entities that could protest a proposed transfer, those entities need to be engaged early and directly to determine if any opposition exists, and whether there can be a timely resolution of any conflicts.

## **4.D. BAWSCA-EBMUD Wheeling Agreement**

A wheeling agreement was prepared, but not finalized, with EBMUD as part of the First Attempt and served as the starting point for the Second Attempt. Discussions with EBMUD began in earnest in early 2019.

During negotiations, EBMUD expressed legal and other concerns regarding the Pilot Water Transfer II, including the water rights concerns detailed previously. Following significant discussions in the fall of 2019, EBMUD agreed to proceed with the Second Attempt on a non-

precedential basis on the terms and conditions to be set forth in the BAWSCA-EBMUD Wheeling Agreement. EBMUD considered its willingness to proceed as an accommodation to BAWSCA and AWA, subject to the understanding that EBMUD's concerns would need to be fully considered and adequately addressed, as appropriate, before future AWA water transfers.

In the Spring of 2019, EBMUD and BAWSCA began editing the draft agreement from the First Attempt to address the needs of the Second Attempt. That effort continued well into the Fall of 2019, with stops and starts to address water rights issues.

### **Overview of Agreement Terms**

During the Pilot Water Transfer II, EBMUD would wheel BAWSCA-purchased transfer water that flowed into Pardee Reservoir following release by AWA. From there, the water would be sent by EBMUD into its conveyance system that leads to its service area. The transfer water would continue through EBMUD's transmission and water treatment system(s), and ultimately its distribution system.

The BAWSCA-EBMUD Wheeling Agreement developed as part of the First Attempt was repurposed for the Second Attempt. Please see Section 3.C for a list of terms defined and components included in that agreement.

The wheeling agreement called for the development of a separate operations plan that would specify the roles and responsibilities of those that operate the Hayward Intertie. BAWSCA was not a party to the development of the operations plan.

This new BAWSCA-EBMUD Wheeling Agreement, however, had more elements than the version developed for the First Attempt, which was due primarily to EBMUD's water rights concerns.

Additional elements of the Agreement included:

- Conditions Precedent
- Replacement Water Charge
- Unbalanced Indemnification
- Statement that the Agreement was non-precedential

EBMUD negotiated several conditions precedent to the effectiveness of the agreement and to its obligations to wheel the water. These conditions largely served to ensure that all other agreements and approvals were completed before EBMUD would be obligated to wheel the water. EBMUD also included a provision specifying that the agreement was not precedential, as did other transfer partners. This language was intended to protect the transfer partner from claims that any accommodations that were made in the context of a one-time pilot transfer should be applied to a future long-term transfer. Similarly, EBMUD required BAWSCA to pay what it determined to be a portion of the cost EBMUD would pay if the 1,000 AF of transfer

water, which would normally flow to EBMUD, was needed if water years 2020 or 2021 proved to be “dry years” and EBMUD needed to obtain replacement water. EBMUD calculated a possible \$350,000 cost to replace the 1,000 AF, and BAWSCA agreed to pay 10% of that cost, or \$35,000, in the form of a “replacement charge” to address any potential adverse water supply impact to EBMUD, whether or not EBMUD actually purchased replacement water.

The indemnification language was also considerably different than that proposed for the agreement drafted for the First Attempt and favored EBMUD. EBMUD was clear that, as the entity wheeling the water, it did not feel that it was appropriate to accept any risk beyond its own negligence. BAWSCA reluctantly agreed to the language.

BAWSCA agreed to pay the cost of wheeling on a \$/AF basis. EBMUD calculated the expense of wheeling based on the treatment and conveyance costs. Those costs were a combination of labor and materials (including power and chemical costs).

### Adoption

BAWSCA’s Board authorized the BAWSCA CEO/General Manager to execute the wheeling agreement on November 21, 2019. EBMUD’s Board authorized the wheeling agreement on December 10, 2019. However, the agreement was never executed.

### Lessons Learned

It is important to understand the interests of the parties in any negotiation. It was clear to BAWSCA that EBMUD was not as interested in a pilot transfer during the Second Attempt. However, BAWSCA did appreciate EBMUD’s candor regarding its position and EBMUD’s willingness to accommodate the Pilot Water Transfer II.

BAWSCA did not anticipate EBMUD’s concerns related to the water rights held by AWA. More specifically, EBMUD’s interpretation of where that water could be used differed from that of AWA. While ultimately this issue was resolved for the purpose of the Pilot Water Transfer II, EBMUD and AWA agreed to hold follow-up conversations to resolve any long-term differences of interpretation of AWA’s water rights.

In its contract with BAWSCA, EBMUD asked for a refill agreement (an agreement that BAWSCA would back-stop the 1,000 AF that would be taken and “refill” that volume during the subsequent year, should a drought take place). Ultimately, BAWSCA and EBMUD agreed to an approach whereby BAWSCA would pay a “replacement charge” to address potential adverse water supply impacts to EBMUD, whether or not EBMUD actually purchased replacement water.

## **4.E. BAWSCA-Hayward Pilot Transfer Agreement**

During the Second Attempt, Hayward continued to have major concerns about a pilot transfer. As described above, those concerns included:

- Pilot transfer water would be of a different quality than the RWS supplies that Hayward normally receives.
- Potential customer complaints and public relations issues about this different water quality for both residential and commercial customers.
- Hayward would rely solely on pumped water during the Pilot Water Transfer II, different than water normally being delivered almost completely by gravity.
- Costs to keep water pressures up in Hayward during the Pilot Water Transfer II.
- Hayward water system pressures being different than under usual operations.
- Liability issues if something happened to Hayward’s system during the Pilot Water Transfer II.
- Potential environmental documentation required.

In the 2015 Cooperative Agreement developed between BAWSCA and Hayward, some of these issues were day lighted and commitments were made as to the timing of when transfer water would be delivered, the need to reimburse Hayward for costs incurred during the transfer, as well as the formal recognition that the use of the Hayward Intertie for delivery of transfer water was not to be seen as acceptance by Hayward for its use under a more permanent transfer scenario. However, as negotiations began in earnest in 2019, Hayward’s concerns were incorporated into agreement language for the Second Attempt.

The agreement between BAWSCA and Hayward developed under the First Attempt was modified to fit the Second Attempt. Initial changes included the following:

- Revisions to correct the project description, removing references to YCWA and the use of FRWP and the Folsom South Canal, coupled with references to AWA and the pre-1914 transfer water source, which would be easier to permit.
- Clarification that the timing of the transfer would coincide with a shutdown of SFPUC’s Hetch Hetchy portion of the RWS.
- Agreements on the financial responsibilities (and cost accounting components) of the parties.

The agreement built on the 2015 version and included the following new “standard” components:

- Term
- Definition of Transfer Water
- Operations Plan (need for a separate plan as also included in BAWSCA’s agreement with EBMUD)
- Regulatory / CEQA
- Expenses
- Suspension
- Water Rights

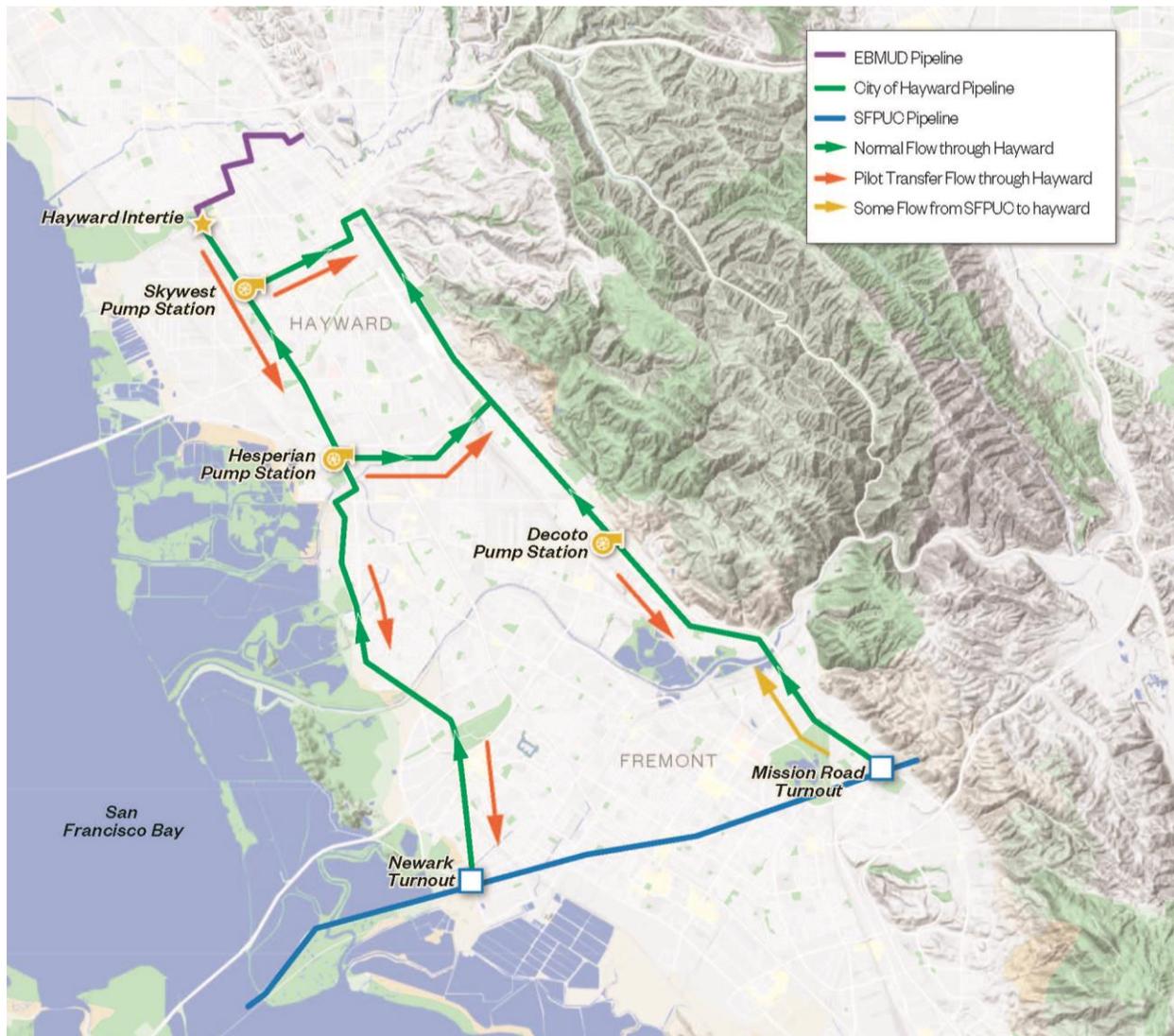
### Components of the Agreement to Address Hayward's Specific Concerns

To address Hayward's specified concerns, certain components of the proposed agreement were requested and included. Components of the agreement included to address Hayward's specific concerns:

- The Agreement and its terms were not a commitment to, nor precedent for, future transfers.
- Unbalanced indemnification in Hayward's favor.
- BAWSCA would obtain limited term insurance coverage for the Hayward system.

Figure 9 provides a schematic of Hayward's main distribution system and the direction of flow in green, as well as the reversed flow direction (in orange) that would be required for use of the Hayward intertie to deliver transfer water to the BAWSCA service area.

**Figure 9: Schematic of Flow in the Hayward Distribution System During Normal Operations Compared to the Proposed Pilot Water Transfer**



Due to the operational changes to the Hayward system, which would be required to deliver water by way of the Hayward Intertie, Hayward made clear to all parties that it did not see use of the intertie as a viable option to deliver water to BAWSCA and its member agencies during a drought. Staff clarified that the purpose of the Intertie was strictly for use in times of major emergency (which is defined as an unforeseen event, such as an earthquake, that disrupts water service, but does not include a drought). Hayward also sought to make its position clear in the agreement with BAWSCA that Hayward's willingness to take part in the Pilot Water Transfer II did not equate to a willingness to allow a more permanent movement of supplies through the Intertie.

Furthermore, Hayward wanted to ensure that it would not assume any risk related to its participation in the Pilot Water Transfer II, beyond risks caused by its own negligence or willful misconduct, and that the cost of any damage to the Hayward system which occurred within 14 days of the transfer, would not be borne by Hayward. To that end, Hayward proposed indemnification provisions and insurance requirements that strictly limited its potential exposure.

Regarding insurance, Hayward stipulated that:

- Prior to the commencement of the Pilot Water Transfer II, BAWSCA shall procure and maintain, in a form acceptable to Hayward, all-risk property insurance with a limit of \$10 million, which coverage shall specifically include damages to the Hayward Water System during the term of the Pilot Water Transfer II and for 14 days following the completion or termination of the Pilot Water Transfer II.

While BAWSCA's staff initially did not think that it would be possible (or affordable) for BAWSCA to obtain such coverage, after contacting its insurance provider, the Special District Risk Management Authority (SDRMA), staff was told that such coverage was available and at an affordable cost. BAWSCA determined that, given the low cost, such insurance would serve as protection for BAWSCA should an incident arise that created damage to the Hayward system, and initially supported the inclusion of the provision.

Regarding indemnification, given Hayward's "assume no risk" stance, the indemnification section of the agreement was heavily in Hayward's favor, and to BAWSCA's disadvantage. BAWSCA reluctantly agreed to the language in November 2019.

In December 2019, with Hayward City Council's approval of the agreement (and given BAWSCA's Board approved the agreement in November 2019), BAWSCA reengaged SDRMA to purchase the \$10 million property insurance coverage. However, SDRMA informed BAWSCA that there was a miscommunication regarding the insurance coverage. Specifically, property insurance is only available if an entity has an insurable interest in the property (i.e., it is the owner). As BAWSCA did not have an insurable interest in the Hayward system, there was

no market for it to procure all-risk property insurance. Secondly, property insurance would not cover underground water lines, and Hayward was primarily worried about damage to its underground distribution lines from differing water pressure. Thirdly, the insurance market was very tight at the time, due primarily to the increased claims relative to wildfire damage.

Given BAWSCA's inability to obtain property insurance coverage, BAWSCA sought an alternative approach, which was to increase BAWSCA's existing liability insurance coverage to \$10 million (from its existing \$2.5 million level) or to obtain an excess policy covering the difference. Interactions with BAWSCA's insurance carrier were delayed by the fact these discussions were taking place over the Christmas and New Year's Holidays. Hayward, while open to the liability coverage approach, noted that they would need to make the indemnification language in the contract even stronger. Time ran out for further debate or negotiations as the transfer window, which was timed to coincide with SFPUC's shut down of the Hetch Hetchy system in January, closed.

SDRMA was not able to secure an increase in BAWSCA's general liability coverage to \$10 million (noting that it perhaps would have been possible, but BAWSCA would have had to wait until the existing policy came up for renewal in July 2020 and indicating that no carrier would provide coverage mid-cycle). Additionally, in such a tight market, an excess policy was not available on the amount of BAWSCA's base policy. Further, the expanded indemnification language proposed by Hayward included provisions that BAWSCA could not accept. Specifically, it proposed to require that BAWSCA indemnify Hayward for any injury to the Hayward system incurred as a result of the Second Attempt, including for the negligent acts of all parties to the various required pilot agreements. This request proved to be too substantial of a burden and financial risk for BAWSCA.

The unavailability of the proposed insurance coverage for the Hayward system, coupled with BAWSCA's unwillingness to accept the revised indemnification language given the inability for BAWSCA to secure insurance to offset this risk, were obstacles that could not be overcome. With the transfer window closing, the parties did not have time to negotiate an alternative risk allocation and the Second Attempt was called off.

### **Negotiation Delays during the Agreement Development Process**

In October of 2019, EBMUD informed BAWSCA that, due to water rights concerns, its Board was unwilling to go forward with the Pilot Water Transfer II. During the dispute between EBMUD and AWA regarding water rights issues, Hayward was unwilling to continue negotiations on the agreement unless and until the matter between AWA and EBMUD could be resolved. As a result, no calls with BAWSCA staff were returned and all communication stopped for a period of approximately one month. This loss of time proved highly problematic, given the rush toward the end of 2019 to get Board approvals and the need to delay commencement of certain steps (such as CEQA and insurance provision efforts) until after agreements were secured.

### **Adoption**

Hayward's City Council adopted the Hayward-BAWSCA Agreement on December 3, 2019, BAWSCA's Board adopted the Hayward-BAWSCA Agreement on November 21, 2019. In adoption, both agencies noted that some minor edits to the agreements were yet to be made, but that they did not materially change the agreement (and hence governing bodies could approve). The agreement was never executed due to the parties' inability to come to agreement on the allocation of risk.

### **Lessons Learned**

Hayward was upfront very early on regarding the concerns it had associated with the Pilot Water Transfer II and with its firm stance that the Intertie was not a viable option for the delivery of drought supplies. BAWSCA, perhaps for reasons of having no other "easy" options to secure and move transfer water, coupled with direction from the prior strategy documents regarding the merits of a transfer to address long term water supply reliability needs, believed that a one-time pilot could be implemented, and the concerns could be mitigated with a reasonable accommodation to Hayward.

One lesson is clear – if an entity does not want to see a system it operates used for the purpose proposed, and it presents sound reasoning for that position, it is best to step back and reconsider unless there is an urgent need to move forward. In this instance, in order to satisfy its concerns about the potential unique impact to its water system, Hayward imposed significant requirements on the overall plan and ultimately the last two requirements (insurance and indemnification) proved impossible for BAWSCA to adequately address in the time available.

## **4.F. BAWSCA-SFPUC Pilot Transfer Agreement**

Unlike the other agreements negotiated as part of the Second Attempt, the agreement between BAWSCA and SFPUC was nearly complete and required only a modest update from the prior draft agreement.

As noted in the discussion for the First Attempt, BAWSCA and SFPUC needed an agreement in place to specify how costs would be allocated under the WSA. During negotiations, SFPUC expressed a need to mirror indemnification and other clauses included in the agreements with other parties. There was also a need to address the fact that the AWA was now the water transferor/seller.

The SFPUC also worked with EBMUD and Hayward on the development of an Operations Plan that was referenced in the agreements (but stood alone as a separate document).

Several discussions between BAWSCA and SFPUC about key aspects of the BAWSCA–SFPUC agreement took place in 2019. The SFPUC and BAWSCA quickly agreed on most of the terms and few in-person meetings were needed.

### **Overview of Agreement Terms**

The BAWSCA-SFPUC agreement:

- formalized the allocation of RWS costs,
- outlined notification procedures,
- specified the water accounting procedures in the case of both voluntary water use reductions and mandatory water use reduction on the RWS, and
- identified the responsibilities of each agency.

Please refer to Section 3.E for a detailed description of the terms of the BAWSCA-SFPUC Pilot Transfer Agreement.

### **Adoption**

The SFPUC adopted the BAWSCA-SFPUC agreement on December 10, 2019. BAWSCA’s Board adopted the BAWSCA-SFPUC agreement on November 21, 2019. In adoption, both agencies noted that some minor edits to the agreements would be needed, but that they did not materially change the agreements (and hence governing bodies could approve). The agreement was never executed due to BAWSCA’s inability to meet the terms of the agreement between BAWSCA and Hayward.

### **Lessons Learned**

BAWSCA and SFPUC agreed to most of the terms related to the Pilot Water Transfer II after only a couple of meetings. Both SFPUC and BAWSCA were committed to resolving any issues with the language of key remaining components.

BAWSCA and SFPUC have developed a good working relationship over the years, including participating in numerous negotiations on contractual matters. That working relationship carried over to the negotiations for both pilot transfer attempts.

## **4.G. Agreements of which BAWSCA was not a Party To**

Three agreements were needed to implement the Pilot Water Transfer II to which BAWSCA was not a party. Those Agreements were as follows:

1. Hayward Intertie Side Agreement for the Pilot Water Transfer II
2. Hayward-SFPUC Pilot Water Transfer Letter Agreement
3. AWA-EBMUD MOU

The following sections provide a summary of all three agreements.

### **Hayward Intertie Side Agreement for the Pilot Water Transfer II**

As detailed previously, when the Hayward Intertie was originally planned and permitted, its use was limited to emergencies. Adjustments were needed to the Hayward Intertie Agreement to describe how the Intertie would be operated to allow for the use of the Intertie for the Pilot Water Transfer II. The parties to that agreement (i.e., Hayward, SFPUC, and EBMUD) determined that instead of modifying the existing agreement, a separate side-agreement would be crafted to allow the use of the Intertie for the purposes of the Pilot Water Transfer II.

The side agreement among SFPUC, EBMUD, and Hayward set forth the terms and conditions for the one-time use of the Hayward Intertie for the Pilot Water Transfer II and the parties' respective roles and responsibilities. It included, as an attachment, the Pilot Water Transfer Operations Plan jointly developed by SFPUC, EBMUD, and Hayward, which set forth operational parameters, communications procedures, timing, and rates of delivery to carry out the Pilot Water Transfer II.

All parties to the side agreement adopted it in concert with the adoption of the respective agreements with BAWSCA to implement the Pilot Water Transfer II.

### **Hayward-SFPUC Pilot Water Transfer Letter Agreement**

The terms of the Water Supply Agreement between Hayward and SFPUC prevent Hayward from receiving water from another source without SFPUC's prior approval. More specifically, written confirmation from SFPUC authorizing Hayward to receive delivery of water from EBMUD and documenting that Hayward's participation in the Pilot Water Transfer II would in no way affect Hayward's 1962 Water Sales Contract with SFPUC.

This letter was drafted by SFPUC but was not executed since the Pilot Water Transfer II did not move forward.

### **AWA-EBMUD MOU**

As noted previously, a significant water rights dispute emerged in 2019 between EBMUD and AWA. The dispute centered on whether or how AWA was "allowed" to transfer the water stipulated for the purposes of the Pilot Water Transfer II outside of Amador County. To resolve the dispute, the parties agreed to craft an MOU that charted the course for working through their water rights issues over the coming year(s) while still allowing the Pilot Water Transfer II to proceed.

The EBMUD-AWA MOU set the terms and conditions under which EBMUD agreed not to oppose AWA's one-time transfer of 1,000 AF of water to BAWSCA in order to permit the Pilot Water Transfer II to proceed and to allow the parties to negotiate issues related to AWA's possible future transfers.

The MOU was approved by both AWA's and EBMUD's governing boards concurrent with the boards' actions to approve the respective agreements with BAWSCA related to the Pilot Water Transfer II.

#### **4.H. Regulatory Agency Approvals and Environmental Compliance**

The Pilot Water Transfer II would have followed the same route and used existing facilities utilized by EBMUD in delivery and treatment of water into its service area. The use of the Hayward Intertie to move water from EBMUD to SFPUC, through the Hayward water distribution system, during emergencies or planned critical maintenance, was studied in the SFPUC-Hayward-EBMUD Water System Emergency Intertie Project - Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring and Reporting Program, dated February 2004. The Hayward Intertie has previously been used to move water from EBMUD to SFPUC through Hayward in essentially the same manner as anticipated for both pilot water transfer attempts. The Hayward Intertie was last used continuously from December 15, 2009, through February 17, 2010, to deliver water from EBMUD to SFPUC during a planned shutdown of the SFPUC system.

Unlike the first attempt at a pilot water transfer, the second attempt did not require use of Federal projects and therefore did not require a Warren Act contract with USBR or NEPA compliance. Additionally, as the water to be purchased was part of a Pre-1914 Water Right, a petition to change before the SWRCB was not required nor did the parties need to seek a TTP or TTO.

It was determined that the Project was exempt from CEQA under:

1. The Class I - Existing Facilities Exemption for the operation of existing public facilities involving negligible or no expansion of existing or former use (CEQA Guidelines section 15301(b)); and
2. The Common Sense Exemption because the Project does not have the potential for causing a significant effect on the environment (CEQA Guidelines section 15061).

#### **4.I. Summary and Conclusions**

While BAWSCA was unable to implement the Second Attempt, the parties were able to finalize most agreements and made more progress than the First Attempt. Lessons learned will be applied to future pilot water transfer attempts, including a project BAWSCA is engaged in at the time of writing this report (see Section 5). Because of the significant progress on agreements and regulatory and environmental compliance, the Second Attempt provided more insights from a legal perspective than the first attempt. These considerations are detailed in Section 6.

## 5. Moving Forward

BAWSCA came extremely close to implementing the Pilot Water Transfer II. The water transfer, wheeling, delivery to Hayward, and the use of the RWS were agreed to. CEQA was successfully navigated, and the cost of the transfer proved to be in line with the amount budgeted. The risk mitigation required by Hayward (the purchase of insurance and indemnification provisions) proved to be the one hurdle that the parties could not overcome within the given timeframe.

A key lesson learned was that the level of effort, compromise, and negotiation required to execute a pilot transfer with entities that were willing to provide help / accommodate the transfer, but which did not necessarily benefit from the transfer (and instead assumed risks due to it) must not be dismissed. BAWSCA's interest and approach toward a future water transfer will be greatly informed by this experience, and BAWSCA will be more selective of opportunities that may be presented in the future. BAWSCA must have a clear understanding of the water rights involved, the entities needed to approve of the transfer and to assist in wheeling the water to BAWSCA. It is not simply the willingness of the various parties to a transfer, but consideration must be given to what benefits, if any, may come to those partners from helping execute the transfer.

At the time of writing this report, BAWSCA has another pilot water transfer in progress as part of the Bay Area Regional Reliability's Shared Water Access Program (BARR-SWAP Pilot).

### 5.A. Bay Area Regional Reliability – Shared Water Access Program

Between 2016 and 2017, the agencies participating in BARR-SWAP developed a Drought Contingency Plan for the bay region. In the spring of 2019, the BARR effort moved forward into a subsequent stage, specifically the development of a Water Marketing Strategy. The Water Marketing Strategy effort was funded in part by remaining monies from prior agency contributions coupled with a \$400,000 grant from USBR.

In November 2019, the Bay Area Shared Water Access Program Technical Memorandum (TM) I (TM I) was completed. TM I introduced a replicable approach for evaluating potential transfers and exchanges as part of the Bay Area Shared Water Access Program (SWAP). In addition, it memorialized the process of developing and vetting an initial portfolio of potential water transfers

#### **Bay Area Regional Reliability Partners:**

- Alameda County Water District
- Bay Area Water Supply and Conservation Agency
- Contra Costa Water District
- East Bay Municipal Utility District
- Marin Municipal Water District
- San Francisco Public Utilities Commission
- Santa Clara Valley Water District
- Zone 7 Water Agency

and exchanges for pilot testing in 2020.

On December 9, 2019, BARR partners met to discuss which two of the four possible pilot transfers should be pursued under this effort. Two pilots were selected for further consideration:

- Pilot 1a: An exchange between ACWD and BAWSCA/SFPUC, and
- Pilot 2a: A Contra Costa Water District (CCWD) and Valley Water storage exchange of CVP water.

As of the date of this report, both pilots are in progress and anticipated to be completed by the end of calendar year 2022.

## 6. Legal Considerations

For the Pilot Water Transfer II, the source of the water and the path of the transfer made it relatively straight forward from a permitting and environmental review standpoint. Because the water proposed to be transferred was PG&E's established pre-1914 water rights, a petition to change before the SWRCB was not required.<sup>5</sup> Further, because there were no Federal facilities involved, there was no Warren Act contract required. Because the Transfer would follow the same path and use the same facilities that EBMUD already uses to bring water into the Bay Area, it was determined there would be no significant environmental impacts from the proposed Transfer and the existing facilities exemption to CEQA applied (CEQA Guidelines §15301(b)). A Notice of Exemption was filed and there were no objections, including by environmental groups.

The legal complexities of the Pilot Water Transfer II involved the number of contracting parties and agreements, the terms of these agreements, especially as related to costs and liability, interpretation and application of the wheeling statutes, and issues associated with the source of the water rights and legal ability to transfer the water.

### 6.A. Contracting Issues

The number of partnering agencies made development of contract terms challenging. BAWSCA needed to enter into separate agreements for:

- the purchase of the water with AWA;
- wheeling the water through the EBMUD system;
- use of the Hayward Intertie; and

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<sup>5</sup> The legal analysis concentrates on the second attempt at a Pilot Transfer. This attempt progressed further and had approved agreements in place to execute the Transfer. Many of the legal issues in the first and second transfer attempts were similar. However, as discussed above, in the first attempt, drought conditions present in 2015 created difficulty in getting Warren Act contracts by USBR for the use of the Folsom South Canal and increased both State and Federal environmental compliance requirements.

- use of the water within the RWS.

Additionally, as discussed above, agreements were required amongst the parties that did not include BAWSCA. Many of the parties have worked together on projects before and had good working relationships. The process was generally open and contract terms were shared amongst the parties. This helped with transparency and trust, but became an issue because there was a trend towards "borrowing" contract terms from other parties' agreements as negotiations progressed, which extended negotiations and added layers of complexity to more streamlined agreements. Additionally, because BAWSCA was the primary party with an interest in testing the transfer concept, those terms became progressively more burdensome on BAWSCA. BAWSCA was willing to pay a cost and assume some liability to prove the transfer concept, but specific agreement terms became too burdensome for BAWSCA to accept the risk, even in the context of a one-time transfer.

Because of the multiple parties involved and the vast geographic scope of the proposed Pilot Water Transfer II, it was difficult to negotiating the timing and effect of the suspension and termination terms of the various contracts. In general, the agreements allowed for suspension or termination of the Pilot Transfer II operations in order to respond to regulatory directives, protect the health and safety of employees, protect water supplies, quality or operations, and respond to emergencies or operational issues. The transfer water was to be released upcountry by AWA and would take approximately two days to travel from the Pardee Reservoir for delivery at the Hayward Intertie. If an issue developed upcountry during release of the transfer water, the termination provisions had to account for stopping the further release of transfer water and delivery of the water that was already in the transfer process. Likewise, if an issue were to develop in the EBMUD treatment and distribution system, with the Hayward Intertie, or within Hayward's distribution system, contract provisions had to be developed to stop the release of transfer water until the issues could be resolved.

Contract terms were developed and coordinated across the various agreements to account for the timing of various suspension scenarios and the costs if the transfer operation were suspended or terminated. Generally, BAWSCA agreed to pay for certain fixed and overhead costs, but only paid for the cost per AF of water actually treated and delivered.

## **6.B. Application of the Wheeling Statutes (California Water Code §1810 et seq)**

Under the wheeling statute, public agencies must make extra capacity within their conveyance systems available to bona fide transferors of water for fair compensation. (Wat. Code §1810.) Fair compensation is defined as the "reasonable charges incurred by the owner of the conveyance system, including capital, operation, maintenance, and replacement costs, increased costs from any necessitated purchase of supplemental power, and including reasonable credit for any offsetting benefits for the use of the conveyance system." (Wat. Code §1811(c).)

Further, Water Code section 1813 requires public agencies to act in a reasonable manner to facilitate water transfers, and to support their determinations by written findings.

There was disagreement among the Pilot Water Transfer II parties about whether the wheeling statute applied to all aspects of the Second Attempt. For example, although the wheeling statutes pertain to EBMUD's water conveyance facility, which have unused capacity, questions arose about whether the wheeling statute required EBMUD to provide treatment of raw water, or to significantly re-operate its treated water distribution system to accommodate transfer water. The BAWSCA-Hayward Pilot Transfer Agreement contained a provision that the proposed Pilot Water Transfer II is an exploratory project, and not construed as an acknowledgement of capacity or a determination of fair compensation under the wheeling statute or as precedent for future water transfers.

The wheeling statute can be highly contentious and is often litigated. For BAWSCA's part, it decided not to use the wheeling statutes to argue the reasonableness of proposed costs for the Pilot Water Transfer II. BAWSCA was willing to accept unbalanced contract terms to prove the transfer concept as a potential alternative water supply for the BAWSCA service area. It is highly probable the transfer parties will work together on future projects, and it was not worth the potential bad will to push the application of the wheeling statute in the Pilot Water Transfer II. Likewise, as described below, EBMUD and AWA entered into an MOU to address the long-term transferability of AWA's conserved water, and to allow the one-time Pilot Water Transfer II to proceed. If this were a long-term transfer of a valuable water supply, the wheeling statute requirements would more likely have been invoked.

### **6.C. BAWSCA-EBMUD Wheeling Agreement**

The BAWSCA-EBMUD Wheeling Agreement proposed wheeling losses equal to 20% of the transfer water. For example, if the quantity of transfer water were 1,000 AF, wheeling losses would be equal 200 AF. In addition to reimbursable wheeling expenses, under the agreement, BAWSCA would pay EBMUD a charge of \$35 per AF of transfer water diverted by EBMUD at the point of diversion. For example, if EBMUD diverted 1,000 AF of transfer water at the point of diversion, BAWSCA would have paid EBMUD a total Replacement Water Charge of \$35,000. The purpose of the replacement water charge was to address the potential adverse water supply impacts EBMUD may experience as a result of wheeling the transfer water. The replacement water charge would partially offset EBMUD's anticipated cost to obtain replacement water, should EBMUD determine a need to obtain such water. EBMUD was not obliged to seek or obtain replacement water.

### **6.D. Water Rights Issues**

EBMUD had legal concerns about the proposed Pilot Water Transfer II and the source of the water including, whether it was: 1) appropriated under a valid pre-1914 water right, 2) within the quantity to which AWA was entitled under the agreement between AWA and PG&E, 3) properly accountable as conserved water resulting from conservation measures and reported

as such, and 4) capable of being lawfully sold and transferred by AWA to BAWSCA in the manner and for uses contemplated by the Pilot Water Transfer II. EBMUD also raised concerns about the application of the wheeling statute to the proposed transfer. The main point of contention appeared to be AWA's ability to transfer the conserved water outside of AWA's service area in Amador County.

Although AWA and EBMUD disagreed about these issues and both parties felt strongly about their respective legal positions, they agreed to enter into an MOU that would allow the Pilot Water Transfer II to proceed and to separately address the issues surrounding the long-term transferability of AWA's conserved water. EBMUD agreed not to oppose AWA's one-time transfer of water to BAWSCA for the Pilot Water Transfer II, and AWA acknowledged that a separate wheeling agreement between the EBMUD and BAWSCA would set forth additional rights and obligations of EBMUD regarding the Pilot Water Transfer II. EBMUD and AWA agreed to work collaboratively to resolve the dispute regarding the transferability of AWA's water supplies and EBMUD's legal obligations to facilitate transfers of those supplies.

Although the MOU allowed the Pilot Water Transfer II to proceed, work on the agreements with the other transfer partners essentially came to a standstill while EBMUD and AWA resolved these issues. This negatively impacted BAWSCA's ability to address the problematic insurance and indemnification issues within the BAWSCA-Hayward agreement. It remains unclear if there would have been a resolution to Hayward's concerns that would have allowed the Pilot Water Transfer II to proceed (see discussion below). However, by the time AWA and EBMUD entered the MOU and Pilot negotiations resumed, there was insufficient time to address Hayward's concerns in order to coincide the Second Attempt with the shutdown of the Hetch Hetchy system, as required. Ultimately, the Pilot Water Transfer II did not occur.

## **6.E. BAWSCA-Hayward Pilot Transfer Agreement**

As previously discussed, Hayward was very concerned about damage to its distribution system from operating the Hayward Intertie and the increased system pressure from pumping water in the reverse direction from normal supply flows. To address this concern, the BAWSCA-Hayward Pilot Transfer Agreement contained what ultimately became unworkable indemnification provisions and insurance requirements.

The indemnity provision required BAWSCA to defend and hold Hayward harmless from any and all claims that 1) arise from anything done or omitted to be done by any of the transfer partners, 2) any allegation that the performance of the agreement may injure or damage any non-party, and 3) any claim arising under CEQA or another State or Federal environmental law or regulation.

The Hayward City Council and the BAWSCA Board approved the pilot with the understanding that any risk to the Hayward water system would be handled, in part, by BAWSCA purchasing a limited-term insurance policy of up to \$10 million to cover potential damage. After initial

indications that such insurance would be available from BAWSCA's risk-management authority, which serves more than 600 agencies in California, BAWSCA subsequently learned that this insurance was not available at that time.

Once it became clear that BAWSCA could not obtain all-risk property insurance on Hayward's system, it sought to obtain coverage of BAWSCA's liabilities for damages to Hayward's water system as a result of the Pilot Water Transfer II by naming Hayward as an additionally covered party during the term of the transfer through either: 1) an endorsement of BAWSCA's General Liability insurance coverage increasing its policy limit to \$10 million per occurrence, or 2) excess General Liability coverage, with a \$7.5 million per occurrence limit.

In late-stage efforts to achieve Hayward's intent regarding risk mitigation, Hayward restated a previous request that BAWSCA agree to indemnify it for any injury to the Hayward Water System incurred as a result of the Pilot Water Transfer II, including the negligence of the other pilot transfer partners. As proposed, the indemnification provision effectively required BAWSCA to accept strict liability for all damage to the Hayward water system related to the Pilot Water Transfer II. Although burdensome, BAWSCA was initially willing to accept the nonreciprocal indemnification provision because it was believed that the insurance required by Hayward was obtainable, affordable, and would provide BAWSCA a certain level of protection.

The inability to obtain insurance and the indemnification language proposed by Hayward required BAWSCA to accept an uninsurable risk which was not commensurate with the risk posed to the Hayward distribution system. BAWSCA was not in the position to exercise reasonable care to even mitigate the risks to the Hayward owned and operated system, or cover damage due to the negligence of the other transfer partners or other reasons. BAWSCA and Hayward were ultimately unable to resolve these issues and execute the Pilot Water Transfer II before the completion of the Hetch Hetchy supply-system shutdown.

BAWSCA respects Hayward's decision and has begun negotiations for a new, different water transfer pilot with different water agencies. For example, BARR SWAP, discussed above, could involve an exchange between ACWD and BAWSCA/SFPUC, utilizing the South Bay Aqueduct to bring transfer water into BAWSCA service area without use of the Hayward Intertie.

## Appendix A: List of Acronyms

AB	Assembly Bill
ACWD	Alameda County Water District
AF	Acre Feet
AWA	Amador Water Agency
BARR	Bay Area Regional Reliability
BARR-SWAP	Bay Area Regional Reliability's Shared Water Access Program
BAWSCA	Bay Area Water Supply and Conservation Agency
CCWD	Contra Costa Water District
CEQA	California Environmental Quality Act
CVP	Central Valley Project
DDW	Division of Drinking Water
EBMUD	East Bay Municipal Utilities District
ESA	Endangered Species Act
FERC	Federal Energy Regulatory Commission
FRWP	Freeport Regional Water Project
MGD	Million Gallons per Day
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
PG&E	Pacific Gas and Electric Company
RWS	Regional Water System
SDRMA	Special District Risk Management Authority
SFPUC	San Francisco Public Utilities Program
SWP	State Water Project
SWRCB	State Water Resources Control Board
TM I	Bay Area Shared Water Access Program Technical Memorandum
TTO	Temporary Transfer Order
TTP	Temporary Transfer Petition
USBR	United States Bureau of Reclamation
WID	Woodbridge Irrigation District
WSA	Water Supply Agreement
WTP	Water Treatment Plant
YCWA	Yuba County Water Agency

## Appendix B: MOUs Negotiated BAWSCA was a party to - First Attempt

- B.1. BAWSCA-EBMUD 2012 Phase 1 MOU
- B.2. BAWSCA-EBMUD 2014 Phase 2 MOU
- B.3. BAWSCA-Valley Water MOU

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B.1. BAWSCA-EBMUD 2012 Phase I MOU

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10/4/12

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE EAST BAY MUNICIPAL UTILITY DISTRICT  
AND THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
FOR THE DEVELOPMENT OF A SHORT-TERM PILOT WATER TRANSFER PLAN**

This Memorandum of Understanding (“MOU”) between the East Bay Municipal Utility District, a public entity hereinafter referred to as “EBMUD” and the Bay Area Water Supply and Conservation Agency, a public entity hereinafter referred to as “BAWSCA,” setting forth the respective roles and responsibilities of EBMUD and BAWSCA in regard to developing a Short-Term Pilot Water Transfer Plan (hereinafter referred to as “PROJECT”) is made and entered into this 28<sup>th</sup> day of September 2012.

**W I T N E S S E T H**

WHEREAS, both EBMUD and BAWSCA have completed long-term water supply planning studies to identify the future water supply needs of their respective service areas; and

WHEREAS, EBMUD is pursuing water transfers as one component of an overall portfolio of supplemental water supply options to reliably meet the long-term dry year water supply needs of its customers identified in its Water Supply Management Plan (WSMP); and

WHEREAS, BAWSCA is exploring potential long-term strategies to reliably meet the water supply needs of its member agencies; and

WHEREAS, EBMUD and BAWSCA are interested in exploring the benefits of partnering on future water transfer projects to improve long-term water supply reliability in each of their service areas; and

WHEREAS, EBMUD and BAWSCA have agreed that engaging in a one-year water transfer would provide important information needed to evaluate the costs and benefits of partnering in future water transfer projects and have further agreed that the first step is to jointly develop a plan for conducting the short-term pilot water transfer; and

WHEREAS, EBMUD and BAWSCA have agreed that this MOU shall govern issues that are anticipated as part of the effort to develop the PROJECT, and the parties recognize that further agreement(s) will be executed by EBMUD and BAWSCA if and when EBMUD and BAWSCA jointly agree to proceed with the one-year short-term pilot water transfer.

NOW THEREFORE, EBMUD and BAWSCA agree as follows:

**I. ROLES AND RESPONSIBILITIES**

- A. EBMUD and BAWSCA agree to cooperate to complete the PROJECT as described in Attachment A, PROJECT SCOPE OF WORK.

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- B. Each party agrees to use best efforts to perform the roles and responsibilities shown in the PROJECT SCOPE OF WORK.

**II. COSTS**

Each party shall be solely responsible for the costs to complete its share of the work described in the PROJECT SCOPE OF WORK.

**III. SCHEDULE**

EBMUD and BAWSCA agree to cooperate and work diligently to complete the PROJECT according to the preliminary schedule shown on Attachment B, PROJECT SCHEDULE, which may be revised from time to time by the parties. If either party is unable to substantially meet the agreed upon PROJECT SCHEDULE, the party unable to meet the PROJECT SCHEDULE shall promptly notify the other party to attempt to revise the PROJECT SCHEDULE to the mutual satisfaction of the parties.

**IV. HOLD HARMLESS AND LIABILITY**

EBMUD and BAWSCA each agree to hold harmless, indemnify, and defend the other from and against any and all liability claims, costs, penalties, causes of action, demands, and losses of any nature whatsoever, including reasonable attorneys' fees, arising from the performance of this MOU, including but not limited to personal injury and injury to property, or any violation of any law or ordinance, or other harm caused by any negligent act, error or omission, or willful acts or omissions of the indemnifying party or its officers, employees, subcontractors, or agents acting pursuant to this MOU, provided that neither party shall be indemnified hereunder for any loss, liability, damage or expense arising from its sole negligence or willful misconduct. This indemnification shall survive termination or expiration of this MOU.

**V. TERM**

This MOU shall be effective until completion of the work outlined in the PROJECT SCOPE OF WORK, unless extended by mutual agreement. Either party may terminate participation in this MOU by providing 30-day written notice.

## VI. NOTICE

All notices required to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, registered and postage prepaid and addressed to the respective parties as follows:

EBMUD: Michael T. Tognolini,  
Manager of Water Supply Improvements  
East Bay Municipal Utility District  
P.O. Box 24055, MS #407  
Oakland, CA 94623  
Fax: (510) 287-1295

BAWSCA: Nicole M. Sandkulla  
Water Supply Planning Manager  
Bay Area Water Supply and Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402  
Fax: (650) 349-8395

Notification of a change in the name of the contact person shall be in writing.

## VII. MISCELLANEOUS

- A. This MOU may be amended as circumstances necessitate by written agreement executed by both parties.
- B. Each party agrees that it will not assign its interest in this MOU, or any part thereof, without the express written consent of the other party.
- C. In the event of a dispute between the parties over the meaning of this MOU, the parties shall meet in good faith to attempt to resolve the matter.
- D. Each party shall comply with all laws, ordinances, regulations and orders all applicable to work it will perform under this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this MOU the day and year first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: 

Title: General Manager

Approved as to form: *FSE*

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

By: 

Title: Chief Executive Officer/GM

Approved as to form: \_\_\_\_\_

## ATTACHMENT A

### BAWSCA – EBMUD Short-term Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		EBMUD	BAWSCA	Deliverable
<b>TASK 1: Develop Objectives and Goals</b>				
Objectives and Goals	<p>BAWSCA and EBMUD will develop clear objectives and goals for the pilot water transfer plan, including identifying the benefits of partnering on transfers, reasons for piloting a transfer, and the information that would be gained by conducting the pilot transfer. The purpose of this task is to confirm that each agency’s goals and objectives for conducting a pilot transfer are aligned and that a long-term partnership on transfers would assist each agency in meeting its long-term water supply needs.</p> <p><i>BAWSCA and EBMUD will identify those issues that will need additional resolution prior to finalizing and executing a long-term transfer arrangement.</i></p>	BAWSCA and EBMUD will work together to determine objectives and goals of conducting a pilot transfer.	BAWSCA and EBMUD will work together to determine objectives and goals of conducting a pilot transfer.	<p>EBMUD will prepare Draft TM #1A summarizing EBMUD’s results of Task 1.</p> <p>BAWSCA will prepare Draft TM #1B summarizing BAWSCA’s results of Task 1.</p> <p>BAWSCA and EBMUD will meet to discuss comments on Draft TMs #1A and #1B.</p> <p>Comments will be incorporated by EBMUD into the Draft Pilot Water Transfer Plan Study. TMs#1A and #1B will be included in the Study.</p>
Pilot Transfer Trigger and Quantity	<p>Determine the water supply or other conditions under which EBMUD and BAWSCA would conduct the pilot transfer.</p> <p>Identify potential BAWSCA transfer quantities for (1) pilot transfer, and (2) long-term transfer. Transfer quantities should be specified as both the (1) total quantity of water (acre-feet per year, AFY), and (2) rate and duration that a transfer could be accepted (million gallons per day, MGD, over some months).</p> <p><i>Criteria for initiating a transfer on a long-term basis may be different than the criteria for conducting a pilot transfer and would have to be further evaluated. Such differences in criteria will be identified.</i></p>	EBMUD will identify the near-term water supply conditions or other criteria under which Freeport would be operated to facilitate a pilot transfer.	BAWSCA to develop criteria for determining the conditions under which a pilot transfer could occur.	

## ATTACHMENT A

### BAWSCA – EBMUD Short-term Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		EBMUD	BAWSCA	Deliverable
<b>TASK 2: Identify Potential Pilot Water Transfer Sources</b>				
Seller(s)	<p>Identify up to three (3) potential pilot transfer water sources. Describe potential sellers, sources of supply, reliability of underlying water rights, and method used to make water available for transfer. Summarize potential transferrable quantities, schedule, rate of delivery, range of water purchase costs, and financial arrangements for the pilot transfer.</p> <p>Describe changes to water rights that would be required for transfer water to be used within the BAWSCA service area, including analyzing the ability of EBMUD to serve portions of the city of Hayward.</p> <p><i>Issues such as water rights, transferrable quantities, schedule, rate of delivery, range of water purchase costs, and financial arrangements may be different when considering a long-term transfer and would have to be further evaluated. These potential differences will be identified.</i></p>	<p>Based on EBMUD's efforts to date, EBMUD will take the lead in completing Task 2.</p>	<p>BAWSCA to review and provide input to confirm that potential pilot transfer sources and other issues (e.g., water rights, costs and financial arrangements) would be acceptable for the pilot transfer.</p>	<p>EBMUD will prepare Draft TM #2 summarizing the results of Task 2.</p> <p>BAWSCA and EBMUD will meet to discuss comments on Draft TM #2.</p> <p>Comments will be incorporated by EBMUD into the Draft Pilot Water Transfer Plan Study.</p>
Source of Supply				
Water Rights				
Transfer Method (i.e., GW Substitution)				
Quantity, Schedule, and Rate of Delivery				
Purchase Cost				

## ATTACHMENT A

### BAWSCA – EBMUD Short-term Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		EBMUD	BAWSCA	Deliverable
<b>TASK 3: Evaluate Ability to Convey Transfer Water to BAWSCA Service Area</b>				
Conveyance Upstream of Freeport Intake	Evaluate the ability to convey transfer water from the point of delivery to the Freeport Regional Water Authority (FRWA) Intake on the Sacramento River. If applicable, identify potential conveyance losses.  <i>Identify what additional issues may be relevant or different when considering future and long-term transfers.</i>	EBMUD to take the lead.	BAWSCA to provide review and input.	<p>BAWSCA will prepare Draft Appendix #3A summarizing BAWSCA's results of Task 3.</p> <p>EBMUD will prepare Draft TM #3 summarizing the results of Task 3. BAWSCA's Appendix #3A will be included as an attachment to TM #3.</p> <p>BAWSCA and EBMUD will meet to discuss comments on Draft TM #3.</p> <p>Comments will be incorporated by EBMUD into the Draft Pilot Water Transfer Plan Study.</p>
Freeport Facilities	Evaluate the ability to convey transfer water through Freeport Facilities (intake and Folsom South Canal Connection facilities, FSCC).  <i>Identify what additional issues may be relevant or different when considering future and long-term transfers.</i>	EBMUD to take the lead.	BAWSCA to provide review and input.	
EBMUD's Raw Water System	Evaluate the ability to convey transfer water from the FSCC through EBMUD's raw water system to its treatment plants.  <i>Identify what additional issues may be relevant or different when considering future and long-term transfers.</i>	EBMUD to take the lead.	BAWSCA to provide review and input.	
EBMUD's Treatment Facilities and Distribution System	Evaluate the ability to treat and wheel water through EBMUD's distribution system to the SFPUC-Hayward-EBMUD (Hayward) intertie.  <i>Identify what additional issues may be relevant or different when considering future and long-term transfers.</i>	EBMUD to take the lead.	BAWSCA to provide review and input.	

## ATTACHMENT A

### BAWSCA – EBMUD Short-term Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		EBMUD	BAWSCA	Deliverable
<b>TASK 3 (continued): Evaluate Ability to Convey Transfer Water to BAWSCA Service Area</b>				
SFPUC-Hayward EBMUD (Hayward) Intertie	Evaluate the ability to convey water through the Hayward intertie, including quantities, rates of delivery, season and duration of delivery, water quality, and operational issues, including the option of EBMUD directly serving the City of Hayward. The transfer water delivered through the intertie would have to meet SFPUC and/or Hayward requirements, including any water quality standards.  <i>Identify what additional issues may be relevant or different when considering future and long-term transfers.</i>	EBMUD to take the lead.	BAWSCA to provide review and input of SFPUC and/or Hayward requirements for accepting transfer water, including any water quality standards.	
SFPUC System	Evaluate ability to wheel water through SFPUC system to BAWSCA member agencies.  <i>Identify what additional issues may be relevant or different when considering future and long-term transfers.</i>	EBMUD to review and provide input.	BAWSCA to take the lead.	

## ATTACHMENT A

### BAWSCA – EBMUD Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		EBMUD	BAWSCA	Deliverable
<b>TASK 4: Identify Approvals and Institutional Arrangements</b>				
Environmental Review	<p>Determine environmental review necessary to implement pilot transfer, including compliance with CEQA and NEPA. Identify whether any additional environmental review is needed to use Hayward intertie to facilitate transfer and exchanges.</p> <p><i>Identify what additional environmental review may be needed for long-term transfer arrangements.</i></p>	EBMUD to take the lead.	BAWSCA to provide review and input.	<p>BAWSCA will prepare Draft Appendix #4A summarizing BAWSCA's results of Task 4.</p> <p>EBMUD will prepare Draft TM #4 summarizing the results of Task 4. BAWSCA's Appendix #4A will be included as an attachment to TM #4.</p> <p>BAWSCA and EBMUD will meet to discuss comments on Draft TM #4.</p> <p>Comments will be incorporated by EBMUD into the Draft Pilot Water Transfer Plan Study.</p>
Regulatory Approvals	<p>Determine any regulatory approvals needed to implement pilot transfer, including SWRCB and USBR approvals.</p> <p><i>Identify what additional regulatory approvals may be needed for long-term transfer arrangements.</i></p>	EBMUD to take the lead.	BAWSCA to provide review and input.	
Permits	<p>Determine whether any permits are needed to implement pilot transfer, including reviewing to make sure pilot test would be conducted in compliance with the FRWA incidental take permit.</p> <p><i>Identify what additional permits may be needed for long-term transfer arrangements.</i></p>	EBMUD to take the lead.	BAWSCA to provide review and input.	

## ATTACHMENT A

### BAWSCA – EBMUD Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		EBMUD	BAWSCA	Deliverable
<b>TASK 4 (continued): Identify Approvals and Institutional Arrangements</b>				
Hayward Intertie Restrictions	<p>Identify any potential legal or institutional (non-technical) restrictions to using the Hayward intertie to wheel transfer water to BAWSCA, including potential water rights issues and grant funding conditions.</p> <p><i>Identify what additional restrictions may exist for long-term transfer arrangements.</i></p>	EBMUD to take the lead.	BAWSCA to provide review and input.	
Agreements and Institutional Arrangements	<p>Identify any agreements and institutional arrangements needed to implement pilot plan, which could include:</p> <ul style="list-style-type: none"> <li>▪ USBR Warren Act contract to convey non-CVP water through FSC</li> <li>▪ Transfer purchase agreement with seller</li> <li>▪ EBMUD-BAWSCA agreement</li> <li>▪ SFPUC</li> <li>▪ Hayward</li> <li>▪ Others</li> <li>▪ SMUD</li> </ul> <p><i>Identify what additional agreements may be needed for long-term transfer arrangements.</i></p>	<p>EBMUD to take the lead on identifying agreements required to convey water to Hayward intertie.</p> <p>EBMUD and BAWSCA will jointly identify agreements needed to use the Hayward intertie.</p>	<p>BAWSCA to provide review and input.</p> <p>BAWSCA to identify agreements to distribute transfer water to its member agencies.</p>	

## ATTACHMENT A

### BAWSCA – EBMUD Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		EBMUD	BAWSCA	Deliverable
<b>TASK 5: Develop Recommendations for Pilot Water Transfer</b>				
Pilot Test Conditions	Determine when a pilot transfer would start, AND THE quantity and duration of the pilot transfer. Determine any water quality or other monitoring that should be conducted during the pilot transfer. <i>Identify what additional criteria may exist for long-term transfer arrangements.</i>	EBMUD to take the lead listing conditions for conducting pilot transfer and the monitoring and reporting protocols.	BAWSCA to provide review and input.	EBMUD will prepare Draft TM #5 summarizing the results of Task 5.  BAWSCA and EBMUD will meet to discuss comments on Draft TM #5.  Comments will be incorporated by EBMUD into the Draft Pilot Water Transfer Plan Study.
Costs	Develop estimated total costs and unit costs for pilot transfer. Will include costs to purchase transfer water and provide it to BAWSCA immediately downstream of the Hayward intertie (includes conveyance, treatment, and operation of Hayward intertie). <i>Identify what additional costs may exist for long-term transfer arrangements.</i>	EBMUD will develop costs.	BAWSCA to provide review and input.	
Transfer Schedule	Determine trigger points and deadlines for deciding to pilot a transfer and when approvals would be needed to be able to implement the transfer.	EBMUD and BAWSCA to jointly develop.	EBMUD and BAWSCA to jointly develop.	

## ATTACHMENT A

### BAWSCA – EBMUD Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		EBMUD	BAWSCA	Deliverable
<b>TASK 6: Prepare Pilot Water Transfer Plan Study</b>				
Pilot Water Transfer Plan Study	Compile work completed in Tasks 1 – 5 into a document to be reviewed by the Parties.	EBMUD to take the lead in compiling the Study based on work completed in Tasks 1 – 5, including information provided by BAWSCA.	BAWSCA to provide review and input.	<p>EBMUD will prepare Draft Pilot Water Transfer Study summarizing TMs #1-5.</p> <p>BAWSCA and EBMUD will meet to discuss comments on the Draft Pilot Water Transfer Plan Study.</p> <p>Comments will be incorporated by EBMUD into the Final Pilot Water Transfer Plan Study.</p>
<b>TASK 7: Prepare Pilot Water Transfer Agreement</b>				
Pilot Water Transfer Agreement	The Agreement will be written to provide a general framework to support the execution of a pilot transfer. Some of the terms of the Agreement (e.g., costs) will be left more general to provide the parties with the flexibility to describe the specific nature of the actual pilot transfer that the parties decide to execute.	EBMUD to provide review and input.	BAWSCA to take the lead in developing the Pilot Water Transfer Agreement	<p>BAWSCA will prepare Draft Pilot Water Transfer Agreement.</p> <p>BAWSCA and EBMUD will meet to discuss comments on the Draft Pilot Water Transfer Agreement.</p> <p>Comments will be incorporated by BAWSCA into the Final Pilot Water Transfer Agreement.</p>

## ATTACHMENT A

### BAWSCA – EBMUD Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		EBMUD	BAWSCA	Deliverable
<b>TASK 8: Project Management</b>				
Project Management	Manage work and resources to ensure that all agreed upon project milestones are met.	EBMUD and BAWSCA to each manage their respective responsibilities.	EBMUD and BAWSCA to each manage their respective responsibilities.	
Progress Meetings	Meet periodically for progress meetings. At a minimum, the parties shall meet to discuss the preliminary results of each task.	Parties to periodically meet to report on progress.	Parties to periodically meet to report on progress.	
QA/QC		EBMUD and BAWSCA to each manage their respective responsibilities.	EBMUD and BAWSCA to each manage their respective responsibilities.	







B.2. BAWSCA-EBMUD 2014 Phase 2 MOU

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE EAST BAY MUNICIPAL UTILITY DISTRICT  
AND THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
FOR THE DEVELOPMENT OF THE SECOND PHASE OF  
A SHORT-TERM PILOT WATER TRANSFER PLAN**

This Memorandum of Understanding ("MOU") between the East Bay Municipal Utility District, a public entity hereinafter referred to as "EBMUD" and the Bay Area Water Supply and Conservation Agency, a public entity hereinafter referred to as "BAWSCA," setting forth the respective roles and responsibilities of EBMUD and BAWSCA in regard to developing the Second Phase of a Short-Term Pilot Water Transfer Plan (hereinafter referred to as "PHASE II PLAN") is made and entered into this 29<sup>th</sup> day of January 2014.

W I T N E S S E T H

WHEREAS, EBMUD and BAWSCA are respectively pursuing supplemental water supplies identified in long-term water supply planning studies to meet the future water supply needs of their respective service areas; and

WHEREAS, EBMUD is pursuing water transfers as a component of an overall portfolio of supplemental water supply options identified in its Water Supply Management Plan 2040 ("WSMP 2040"); and

WHEREAS, BAWSCA is exploring potential long-term strategies to reliably meet the water supply needs of its member agencies; and

WHEREAS, EBMUD and BAWSCA are interested in exploring the benefits of partnering on future water transfer to improve long-term water supply reliability in each of their service areas; and

WHEREAS, EBMUD and BAWSCA executed an MOU in September 2012 to complete the first phase of a Short-Term Pilot Water Transfer Plan (Pilot Plan) which evaluates the feasibility of partnering on a one-year pilot water transfer; and

WHEREAS, EBMUD and BAWSCA completed the Pilot Plan in September 2013 and have agreed, based on the findings of the Pilot Plan, that conducting a one-year pilot water transfer would provide important information needed to evaluate the costs and benefits of partnership in future water transfers; and

WHEREAS, the Pilot Plan identified agreements with EBMUD, San Francisco Public Utilities Commission ("SFPUC") and City of Hayward ("COH") that are needed to conduct the pilot water transfer and wheel water through the Freeport Regional Water Project ("Freeport") facilities, EBMUD's raw water, treatment, and distribution system, and the SFPUC-COH-EBMUD Intertie ("Hayward Intertie") to BAWSCA's service area; and

WHEREAS, EBMUD and BAWSCA have agreed to partner in developing the PHASE II PLAN which includes drafting the necessary agreements with COH and SFPUC to conduct the pilot water transfer; and

WHEREAS, as part of the PHASE II PLAN, EBMUD and BAWSCA have agreed to develop a draft scope of work and a schedule for the PHASE III PLAN which includes completing all remaining agreements, obtaining necessary State and Federal permits and approvals, completing CEQA compliance, executing the wheeling agreement, and conducting pilot water transfer operation in 2014 or a future dry year where EBMUD is operating Freeport facilities; and

WHEREAS, EBMUD and BAWSCA intend that this MOU will govern issues that are anticipated as part of the effort to develop the PHASE II PLAN, and the parties recognize that further agreement(s) will be executed by EBMUD and BAWSCA if and when EBMUD and BAWSCA jointly agree to proceed with the one-year short-term pilot water transfer.

NOW THEREFORE, EBMUD and BAWSCA hereby agree as follows:

**I. ROLES AND RESPONSIBILITIES**

- A. EBMUD and BAWSCA agree to collaboratively complete the PHASE II PLAN as described in Attachment A, the PHASE II PLAN SCOPE OF WORK.
- B. Each party agrees to apply earnest efforts to fulfill the roles and responsibilities as described in the PHASE II PLAN SCOPE OF WORK.

**II. COSTS**

Each party shall be solely responsible for the costs to complete its share of the work described in the PHASE II PLAN SCOPE OF WORK.

**III. SCHEDULE**

EBMUD and BAWSCA agree to cooperate and work diligently to complete the PHASE II PROJECT according to the preliminary schedule shown on Attachment B, the PHASE II PLAN SCHEDULE, which may be revised from time to time by the parties. If either party is unable to substantially meet the agreed upon PHASE II PLAN SCHEDULE, the party unable to meet the PHASE II PLAN SCHEDULE shall promptly notify the other party to attempt to revise the PHASE II PLAN SCHEDULE to the mutual satisfaction of the parties.

**IV. HOLD HARMLESS AND LIABILITY**

EBMUD and BAWSCA each agree to hold harmless, indemnify, and defend the other from and against any and all liability claims, costs, penalties, causes of action, demands, and losses of any nature whatsoever, including reasonable attorneys' fees, arising from the performance of this MOU, including but not limited to personal injury and injury to

property, or any violation of any law or ordinance, or other harm caused by any negligent act, error or omission, or willful acts or omissions of the indemnifying party or its officers, employees, subcontractors, or agents acting pursuant to this MOU, provided that neither party shall be indemnified hereunder for any loss, liability, damage or expense arising from its sole negligence or willful misconduct. This indemnification shall survive termination or expiration of this MOU.

**V. TERM**

This MOU shall be effective until completion of the work outlined in the PHASE II PLAN SCOPE OF WORK, unless extended by mutual agreement. Either party may terminate participation in this MOU by providing 30-day written notice.

**VI. NOTICE**

All notices required to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, registered and postage prepaid and addressed to the respective parties as follows:

EBMUD: Michael T. Tognolini,  
Manager of Water Supply Improvements Division  
East Bay Municipal Utility District  
P.O. Box 24055, MS #407  
Oakland, CA 94623  
Fax: (510) 287-1295

BAWSCA: Michael B. Hurley  
Water Resources Manager  
Bay Area Water Supply and Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402  
Fax: (650) 349-8395

Notification of a change in the name of the contact person shall be in writing.

**VII. MISCELLANEOUS**

- A. This MOU may be amended as circumstances necessitate by written agreement executed by both parties.
- B. Each party agrees that it will not assign its interest in this MOU, or any part thereof, without the express written consent of the other party.
- C. In the event of a dispute between the parties over the meaning and fulfillment of this MOU, the parties shall first meet in good faith to attempt to resolve the matter.

D. Each party shall comply with all laws, ordinances, regulations and orders all applicable to work it will perform under this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this MOU the day and year first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_

Title: General Manager \_\_\_\_\_

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

By: *Arde Sanakulka*

Title: CEO/General Manager

1/29/2014

B.3. BAWSCA-Valley Water MOU

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MEMORANDUM OF UNDERSTANDING  
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT  
AND THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
FOR THE DEVELOPMENT OF A SHORT-TERM PILOT WATER TRANSFER PLAN

This Memorandum of Understanding ("MOU") between the Santa Clara Valley Water District, a public entity hereinafter referred to as "SCVWD" and the Bay Area Water Supply and Conservation Agency, a public entity hereinafter referred to as "BAWSCA," setting forth the respective roles and responsibilities of SCVWD and BAWSCA in regard to developing a Short-Term Pilot Water Transfer Plan (hereinafter referred to as "PROJECT") is made and entered into on 7/21/14.

WITNESSETH

WHEREAS, both SCVWD and BAWSCA have completed long-term water supply planning studies to identify the future water supply needs of their respective service areas; and

WHEREAS, SCVWD is pursuing exchanges and water transfers as part of its ongoing water supply strategy to meet the long-term and dry year water supply reliability needs of its customers identified in its 2012 Water Supply and Infrastructure Master Plan; and

WHEREAS, BAWSCA is exploring potential long-term strategies to reliably meet the water supply needs of its member agencies; and

WHEREAS, SCVWD and BAWSCA are interested in exploring the benefits of partnering on future water transfer projects to improve long-term and dry year water supply reliability in each of their service areas; and

WHEREAS, SCVWD and BAWSCA have agreed that engaging in a one-year water transfer would provide important information needed to evaluate the costs and benefits of partnering in future water transfer projects and have further agreed that the first step is to jointly develop a plan for conducting the short-term pilot water transfer; and

WHEREAS, SCVWD and BAWSCA have agreed that this MOU shall govern issues that are anticipated as part of the effort to develop the PROJECT, and the parties recognize that further agreement(s) will be executed by SCVWD and BAWSCA if and when SCVWD and BAWSCA jointly agree to proceed with the one-year short-term pilot water transfer .

NOW THEREFORE, SCVWD and BAWSCA agree as follows:

**I. ROLES AND RESPONSIBILITIES**

- A. SCVWD and BAWSCA agree to cooperate to complete the PROJECT as described in Appendix A, PROJECT SCOPE OF WORK.

- B. Each party agrees to use best efforts to perform the roles and responsibilities shown in the PROJECT SCOPE OF WORK.

## **II. COSTS**

Each party shall be solely responsible for the costs to complete its share of the work described in the PROJECT SCOPE OF WORK.

## **III. SCHEDULE**

SCVWD and BAWSCA agree to cooperate and work diligently to complete the PROJECT according to the preliminary schedule shown on Appendix B, PROJECT SCHEDULE, which may be revised from time to time by the parties. If either party is unable to substantially meet the agreed upon PROJECT SCHEDULE, the party unable to meet the PROJECT SCHEDULE shall promptly notify the other party to attempt to revise the PROJECT SCHEDULE to the mutual satisfaction of the parties.

## **IV. HOLD HARMLESS AND LIABILITY**

SCVWD and BAWSCA each agree to hold harmless, indemnify, and defend the other from and against any and all liability claims, costs, penalties, causes of action, demands, and losses of any nature whatsoever, including reasonable attorneys' fees, arising from the performance of this MOU, including but not limited to personal injury and injury to property, or any violation of any law or ordinance, or other harm caused by any negligent act, error or omission, or willful acts or omissions of the indemnifying party or its officers, employees, subcontractors, or agents acting pursuant to this MOU, provided that neither party shall be indemnified hereunder for any loss, liability, damage or expense arising from its sole negligence or willful misconduct. This indemnification shall survive termination or expiration of this MOU.

## **V. TERM**

This MOU shall be effective until completion of the work outlined in the PROJECT SCOPE OF WORK, unless extended by mutual agreement. Either party may terminate participation in this MOU by providing 30-day written notice.

## VI. NOTICE

All notices required to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail or sent via email and addressed to the respective parties as follows:

SCVWD: Cindy Kao  
Imported Water Manager  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118  
CKao@valleyater.org

BAWSCA: Michael Hurley  
Water Supply Planning Manager  
Bay Area Water Supply and Conservation  
Agency 155 Bovet Road, Suite 650  
San Mateo, CA 94402  
MHurley@bawsca.org

Notification of a change in the name of the contact person shall be in writing.

## VII. MISCELLANEOUS

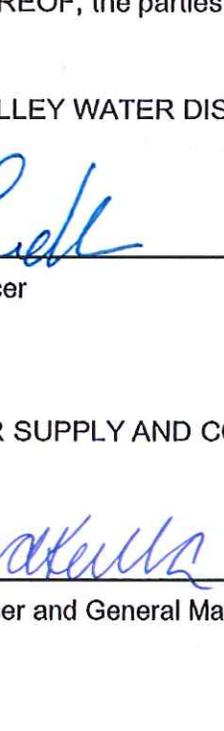
- A. This MOU may be amended as circumstances necessitate by written agreement executed by both parties.
- B. Each party agrees that it will not assign its interest in this MOU, or any part thereof, without the express written consent of the other party.
- C. In the event of a dispute between the parties over the meaning of this MOU, the parties shall meet in good faith to attempt to resolve the matter.
- D. Each party shall comply with all laws, ordinances, regulations and orders all applicable to work it will perform under this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this MOU the day and year first above written.

SANTA CLARA VALLEY WATER DISTRICT

*for*   
\_\_\_\_\_  
Chief Executive Officer

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

  
\_\_\_\_\_  
Chief Executive Officer and General Manager

## APPENDIX A

### BAWSCA – SCVWD Short-term Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		SCVWD	BAWSCA	Deliverable
<b>TASK 1: Develop Goals and Objectives</b>				
Goals and Objectives	<p>BAWSCA and SCVWD will develop objectives and goals for the pilot water transfer plan, including identifying the benefits of partnering on transfers, reasons for piloting a transfer, and the information that would be gained by conducting the pilot transfer. The purpose of this task is to confirm that each agency's goals and objectives for conducting a pilot transfer are aligned and that a long-term partnership on transfers would assist each agency in meeting its agency's goals.</p> <p><i>BAWSCA and SCVWD will identify those issues that will need additional resolution prior to finalizing and executing a long-term transfer arrangement.</i></p>	<p>BAWSCA and SCVWD will develop a set of goals and objectives of conducting a pilot transfer for review by the other party.</p>	<p>BAWSCA and SCVWD will develop a set of goals and objectives of conducting a pilot transfer for review by the other party.</p>	<p>SCVWD will prepare SCVWD's goals and objectives.</p> <p>BAWSCA will prepare BAWSCA's goals and objectives.</p> <p>BAWSCA and SCVWD will meet to discuss goals and objectives, and BAWSCA will prepare TM #1 reflecting goals and objectives.</p> <p>TM #1 will be incorporated by BAWSCA into the Draft Pilot Water Transfer Plan Study.</p>

## APPENDIX A

### BAWSCA – SCVWD Short-term Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		SCVWD	BAWSCA	Deliverable
<b>TASK 2: Identify Pilot Transfer Conditions and Quantity</b>				
Pilot Transfer Conditions and Quantity	<p>Identify the water supply and/or other conditions (e.g., enabling legislation) under which SCVWD and BAWSCA would conduct the pilot transfer.</p> <p>Identify potential BAWSCA transfer quantities for the pilot transfer. Transfer quantities may be specified as both the (1) total quantity of water (acre-feet per year, AFY), and (2) rate and duration that a transfer could be accepted (million gallons per day, MGD, over some months).</p> <p><i>Criteria for initiating a transfer on a long-term basis may be different than the criteria for conducting a pilot transfer and would have to be further evaluated. Such differences in criteria will be identified.</i></p>	<p>SCVWD will identify and provide BAWSCA with the near-term water supply conditions and/or other criteria related to SCVWD supplies, facilities and other appropriate criteria under which a pilot transfer could occur.</p>	<p>BAWSCA will identify the near-term water supply conditions and/or other criteria related to SFPUC and/or BAWSCA's member agencies supplies, facilities and other appropriate criteria under which a pilot transfer could occur.</p>	<p>BAWSCA will prepare Draft TM #2 summarizing pilot transfer conditions and quantities identified by both parties.</p> <p>BAWSCA and SCVWD will meet to discuss comments on Draft TM #2. BAWSCA will revise TM #2 based on comments.</p> <p>Revised TM #2 will be incorporated by BAWSCA into the Draft Pilot Water Transfer Plan Study.</p>
<b>TASK 3: Identify Potential Program Partners among BAWSCA Member Agencies</b>				
Identify and Coordinate With Potential Transfer Recipient(s)/ Exchange Partners	<p>Evaluate potential interest of BAWSCA Member Agencies to be pilot partners. Potential partners include the 8 BAWSCA member agencies in Santa Clara County and the California Water Service Company given their service areas in both SCVWD service area and SF Regional Water System service area.</p> <p><i>Willingness to participate in a pilot transfer is no way a commitment to participate in a long-term program.</i></p>	<p>SCVWD to participate in meetings and review and provide input on Draft TM #3.</p>	<p>BAWSCA to take the lead.</p>	<p>BAWSCA will prepare Draft TM #3 summarizing the potential pilot transfer participants.</p> <p>BAWSCA and SCVWD will meet to discuss comments on Draft TM #3. BAWSCA will revise TM #3.</p> <p>Revised TM #3 will be incorporated by BAWSCA into the Draft Pilot Water Transfer Plan Study.</p>

# APPENDIX A

## BAWSCA – SCVWD Short-term Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		SCVWD	BAWSCA	Deliverable
<b>TASK 4: Identify Potential Pilot Water Transfer Sources</b>				
Seller(s)	<p>Identify up to three (3) potential pilot transfer water sources. Describe potential sellers, sources of supply, reliability of underlying water rights, method used to make water available for transfer, and hydrologic conditions under which the transfer could occur.</p> <p>Summarize potential transferrable quantities, schedule, rate of delivery, range of water purchase costs, financial arrangements for the pilot transfer, and potential changes to water rights that would be required for transfer water to be used within the BAWSCA service area.</p> <p><i>Issues such as water rights, transferrable quantities, schedule, rate of delivery, range of water purchase costs, and financial arrangements may be different when considering a long-term transfer and would have to be further evaluated. These potential differences will be identified.</i></p>	SCVWD will take the lead.	BAWSCA to confirm that potential pilot transfer sources and other issues (e.g., water rights, costs and financial arrangements) would be acceptable for the pilot transfer.	<p>SCVWD will prepare Draft TM #4 summarizing the potential water transfer sources, estimated purchase costs, and potential changes to water rights that would be necessary for the transfer.</p> <p>BAWSCA and SCVWD will meet to discuss comments on Draft TM #4. SCVWD will revise TM #4 based on comments.</p> <p>Revised TM #4 will be incorporated by BAWSCA into the Draft Pilot Water Transfer Plan Study.</p>
Source of Supply				
Purchase Cost				
Transfer Method (e.g., GW Substitution)				
Quantity, Schedule, and Rate of Delivery				
Water Rights				

## APPENDIX A

### BAWSCA – SCVWD Short-term Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		SCVWD	BAWSCA	Deliverable
<b>TASK 5: Evaluate Ability to Convey Transfer Water to BAWSCA Service Area</b>				
SCVWD Conveyance, Treatment, Distribution and Storage System	Evaluate the ability to wheel (treat and store, if appropriate) transfer water through SCVWD’s distribution and storage system to BAWSCA recipient agency system.  <i>Identify what additional issues may be relevant or different when considering future and long-term transfers.</i>	SCVWD to take the lead.	BAWSCA to provide review and input.	SCVWD will prepare Draft TM #5A summarizing the conveyance through SCVWD’s distribution and storage system, and the evaluation of the ability to convey water through the Milpitas intertie
SFPUC-SCVWD (Milpitas) Intertie	Evaluate the ability to convey water through the Milpitas intertie, including quantities, rates of delivery, season and duration of delivery, water quality, and operational issues.  <i>Identify what additional issues may be relevant or different when considering future and long-term transfers.</i>	SCVWD to provide information on operation of the intertie, participate in meetings and provide review and input.	BAWSCA to coordinate joint effort to evaluate the ability to convey water through the Milpitas intertie including any water quality and source shifting issues.  BAWSCA will coordinate regular communications with SFPUC, SCVWD, and Milpitas related to use of the Intertie.	BAWSCA will prepare Draft TM #5B summarizing the conveyance through SFPUC Regional Water System.  BAWSCA and SCVWD will meet to discuss comments on Draft TMs #5A and #5B. BAWSCA and SCVWD will revise TMs #5A and #5B based on comments.  TMs #5A and #5B will be incorporated by BAWSCA into the Draft Pilot Water Transfer Plan Study.
SFPUC Regional Water System	Evaluate ability to deliver transfer water through SFPUC Regional Water System to BAWSCA member agencies.  <i>Identify what additional issues may be relevant or different when considering future and long-term transfers.</i>	SCVWD to participate in meetings, as possible, and review and provide input.	BAWSCA to take the lead.  BAWSCA will coordinate regular communications with SFPUC to update them on the progress of the Pilot Water Transfer Plan.	

## APPENDIX A

### BAWSCA – SCVWD Short-term Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		SCVWD	BAWSCA	Deliverable
<b>TASK 6: Identify Approvals and Institutional Arrangements</b>				
Environmental Review	<p>Determine environmental review necessary to implement pilot transfer, including compliance with CEQA and NEPA. Identify whether any additional environmental review is needed including, but not limited to use of the Milpitas intertie to facilitate transfer and exchanges.</p> <p><i>Identify what additional environmental review may be needed for long-term transfer arrangements.</i></p>	<p>SCVWD to identify environmental review required to convey water to the Milpitas Intertie.</p> <p>SCVWD will identify environmental review needed to use the Milpitas intertie.</p>	<p>BAWSCA to identify environmental review to distribute transfer water to its member agencies.</p>	<p>SCVWD will prepare Draft TM #6A summarizing relevant approvals and institutional arrangements to be led by SCVWD.</p> <p>BAWSCA will prepare Draft TM #6B summarizing relevant approvals and institutional arrangements to be led by BAWSCA.</p> <p>BAWSCA and SCVWD will meet to discuss comments on Draft TMs #6A and #6B. BAWSCA and SCVWD will revise Draft TMs #6A and #6B based on comments. TMs #6A and #6B will be incorporated by BAWSCA into the Draft Pilot Water Transfer Plan Study.</p>
Regulatory Approvals	<p>Determine any regulatory approvals needed to implement pilot transfer, including SWRCB, DWR, and/or USBR approvals.</p> <p><i>Identify what additional regulatory approvals may be needed for long-term transfer arrangements.</i></p>	<p>SCVWD to take the lead.</p>	<p>BAWSCA to provide review and input.</p>	
Permits	<p>Determine whether any permits are needed to implement pilot transfer.</p> <p><i>Identify what additional permits may be needed for long-term transfer arrangements.</i></p>	<p>SCVWD to take the lead.</p>	<p>BAWSCA to provide review and input.</p>	

## APPENDIX A

### BAWSCA – SCVWD Short-term Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		SCVWD	BAWSCA	Deliverable
Milpitas Intertie Restrictions	<p>Identify any potential legal or institutional (non-technical) restrictions to using the Milpitas intertie to wheel transfer water to BAWSCA, including potential water rights issues and grant funding conditions.</p> <p><i>Identify what additional restrictions may exist for long-term transfer arrangements.</i></p>	SCVWD to take the lead.	BAWSCA to provide review and input.	
Agreements and Institutional Arrangements	<p>Identify any agreements and institutional arrangements needed to implement pilot plan, which could include:</p> <ul style="list-style-type: none"> <li>▪ Transfer purchase agreement with seller</li> <li>▪ Milpitas Intertie Agreement</li> <li>▪ SCVWD-BAWSCA agreement</li> <li>▪ SFPUC-BAWSCA Agreement</li> <li>▪ BAWSCA-BAWSCA Member Agency Agreement</li> <li>▪ Others</li> </ul> <p><i>Identify what additional agreements may be needed for long-term transfer arrangements.</i></p>	<p>SCVWD to identify agreements required to convey water to the Milpitas Intertie.</p> <p>SCVWD will identify agreements needed to use the Milpitas intertie.</p>	BAWSCA to identify agreements to distribute transfer water to its member agencies.	<p>If both parties so desire, upon the completion of TMs #6A and 6B, BAWSCA will take the lead on the joint development of templates for any potential agreements between the parties required as part of a pilot water transfer.</p>

## APPENDIX A

### BAWSCA – SCVWD Pilot Water Transfer Plan

TASK	Description	Roles/Responsibilities		
		SCVWD	BAWSCA	Deliverable
<b>TASK 7: Develop Recommendations for Pilot Water Transfer</b>				
Pilot Test Conditions	Determine when a pilot transfer would start, and the quantity and duration of the pilot transfer. Determine any water quality or other monitoring that should be conducted during the pilot transfer. <i>Identify what additional criteria may exist for long-term transfer arrangements.</i>	TBD	TBD	BAWSCA will prepare Draft TM #7 summarizing the recommendations for the pilot water transfer.
Costs	Develop estimated total costs and unit costs for pilot transfer. Will include costs to purchase transfer water and provide it to BAWSCA downstream of the Milpitas intertie (includes conveyance, treatment, and operation of Milpitas intertie). <i>Identify what additional costs may exist for long-term transfer arrangements.</i>	SCVWD will develop costs.	BAWSCA to provide review and input.	BAWSCA and SCVWD will meet to discuss comments on Draft TM #7. BAWSCA will revise Draft TM #7 based on comments.  Comments will be incorporated by BAWSCA into the Draft Pilot Water Transfer Plan Study.
Next Steps	Identify objectives for the next phase of work towards implementation of a pilot transfer.	SCVWD and BAWSCA to jointly develop.	SCVWD and BAWSCA to jointly develop.	
Transfer Schedule	Determine trigger points and deadlines for deciding to pilot a transfer and when approvals would be needed to be able to implement the transfer.	SCVWD and BAWSCA to jointly develop.	SCVWD and BAWSCA to jointly develop.	

## APPENDIX A

### BAWSCA – SCVWD Pilot Water Transfer Plan Scope of Work

TASK	Description	Roles/Responsibilities		
		SCVWD	BAWSCA	Deliverable
<b>TASK 8: Prepare Pilot Water Transfer Plan Study Report</b>				
Pilot Water Transfer Plan Study	Compile work completed in Tasks 1 – 7 into a document to be reviewed by the Parties.	SCVWD to provide review and input.	BAWSCA will prepare Draft Pilot Water Transfer Study.	BAWSCA will prepare Draft Pilot Water Transfer Study summarizing TMs #1-7.  BAWSCA and SCVWD will meet to discuss comments on the Draft Pilot Water Transfer Plan Study.  Comments will be incorporated by BAWSCA into the Final Pilot Water Transfer Plan Study.
<b>TASK 9: Project Management</b>				
Project Management	Manage work and resources to ensure that all agreed upon project milestones are met.	SCVWD and BAWSCA to each manage their respective responsibilities.	SCVWD and BAWSCA to each manage their respective responsibilities.	
Progress Meetings	Meet regularly for progress meetings. At a minimum, the parties shall meet to discuss the preliminary results of each task.	Parties to regularly meet to report on progress.	Parties to regularly meet to report on progress.	
QA/QC		SCVWD and BAWSCA to each manage their respective responsibilities.	SCVWD and BAWSCA to each manage their respective responsibilities.	

## APPENDIX B

ID	Task Name	Duration	Start	Finish	Gantt Chart																									
					1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st																	
					e	Jan	e	Mar	Apr	a	Jun	Jul	Au	e	Oct	o	De	Jan	e	Mar	Apr	a	Jun	Jul	Au	e	Oct	o	De	Jan
1	<b>Memorandum of Understanding</b>	27.2 wks	Fri 1/17/14	Fri 7/25/14																										
2	Develop MOU, Scope of Work, Schedule	6 mons	Fri 1/17/14	Thu 7/3/14																										
3	Execute MOU	3 wks	Fri 7/4/14	Thu 7/24/14																										
4	Kickoff Meeting	1 day	Fri 7/25/14	Fri 7/25/14																										
5	<b>Task 1 - Develop Goals and Objectives</b>	14.2 wks	Mon 7/28/14	Mon 11/3/14																										
6	Develop individual agency goals and objectives	1 mon	Mon 7/28/14	Fri 8/22/14																										
7	Develop joint goals and objectives	2 wks	Mon 8/25/14	Fri 9/5/14																										
8	Prepare draft TM 1	3 wks	Mon 9/8/14	Fri 9/26/14																										
9	Review draft TM 1	3 wks	Mon 9/29/14	Fri 10/17/14																										
10	Progress Meeting 1/Meet to discuss draft TM 1	1 day	Mon 10/20/14	Mon 10/20/14																										
11	Revise TM 1 as needed	2 wks	Tue 10/21/14	Mon 11/3/14																										
12	<b>Task 2 - Identify Pilot Transfer Conditions and Quantity</b>	11.2 wks	Tue 10/21/14	Tue 1/6/15																										
13	Identify the water supply and/or other conditions under which SCVWD and BAWSCA would conduct the pilot transfer	3 wks	Tue 10/21/14	Mon 11/10/14																										
14	Identify potential transfer quantities for the pilot transfer	3 wks	Tue 10/21/14	Mon 11/10/14																										
15	Prepare draft TM 2	3 wks	Tue 11/11/14	Mon 12/1/14																										
16	Review draft TM 2	3 wks	Tue 12/2/14	Mon 12/22/14																										
17	Progress Meeting 2/ Meet to discuss draft TM 2	1 day	Tue 12/23/14	Tue 12/23/14																										
18	Revise TM 2 as needed	2 wks	Wed 12/24/14	Tue 1/6/15																										
19	<b>Task 3 - Identify Potential Partners among BAWSCA Agencies</b>	11.2 wks	Tue 10/21/14	Tue 1/6/15																										
20	Identify and Coordinate with Potential Transfer Recipient(s)/Exchange Partners	3 wks	Tue 10/21/14	Mon 11/10/14																										
21	Prepare draft TM 3	3 wks	Tue 11/11/14	Mon 12/1/14																										
22	Review draft TM 3	3 wks	Tue 12/2/14	Mon 12/22/14																										
23	Progress Meeting 3/Meet to discuss draft TM 3	1 day	Tue 12/23/14	Tue 12/23/14																										
24	Revise TM 3 as needed	2 wks	Wed 12/24/14	Tue 1/6/15																										
25	<b>Task 4 - Identify Potential Pilot Water Transfer Sources</b>	12.2 wks	Wed 12/24/14	Wed 3/18/15																										
26	Identify sellers, source of supply, purchase costs, transfer method, quantity, schedule, rate of delivery,	4 wks	Wed 12/24/14	Tue 1/20/15																										
27	Prepare draft TM 4	3 wks	Wed 1/21/15	Tue 2/10/15																										
28	Review draft TM 4	3 wks	Wed 2/11/15	Tue 3/3/15																										
29	Progress Meeting 4/Meet to discuss draft TM 4	1 day	Wed 3/4/15	Wed 3/4/15																										
30	Revise TM 4 as needed	2 wks	Thu 3/5/15	Wed 3/18/15																										
31	<b>Task 5 - Evaluate Ability to Convey Transfer Water to BAWSCA Service Area</b>	12.2 wks	Thu 3/5/15	Thu 5/28/15																										
32	Evaluate ability to wheel transfer water through SCVWD's system	4 wks	Thu 3/5/15	Wed 4/1/15																										
33	Evaluate the ability to convey water through the Milipitas Intertie	4 wks	Thu 3/5/15	Wed 4/1/15																										
34	Evaluate the ability to deliver transfer through the SFPUC Regional Water System to BAWSCA member	4 wks	Thu 3/5/15	Wed 4/1/15																										
35	Prepare draft TMs 5A & 5B	3 wks	Thu 4/2/15	Wed 4/22/15																										
36	Review draft TMs 5A & 5B	3 wks	Thu 4/23/15	Wed 5/13/15																										
37	Progress Meeting 5/Meet to discuss draft TMs 5A and 5B	1 day	Thu 5/14/15	Thu 5/14/15																										
38	Revise TMs 5A & 5B as needed	2 wks	Fri 5/15/15	Thu 5/28/15																										

Project: Pilot Water Transfer Plan 1405 Date: Fri 7/18/14	Task		Milestone		External Tasks	
	Split		Summary		External Milestone	
	Progress		Project Summary		Deadline	

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## Appendix C: Agreements Negotiated that Include BAWSCA - First Attempt

- C.1. BAWSCA-YCWA Water Transfer Agreement (DRAFT)
- C.2. BAWSCA-EBMUD Wheeling Agreement (DRAFT)
- C.3. BAWSCA-Hayward Cooperative Agreement (2015)
- C.4. BAWSCA-SFPUC Pilot Transfer Agreement (DRAFT)

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C.I. BAWSCA-YCWA Water Transfer Agreement (DRAFT)

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**TEMPORARY WATER TRANSFER AGREEMENT  
BETWEEN YUBA COUNTY WATER AGENCY AND  
BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

This Temporary Water Transfer Agreement (Agreement) is entered into and made effective on \_\_\_\_\_, 2015, by and between the Yuba County Water Agency (YCWA), and the Bay Area Water Supply and Conservation Agency (BAWSCA), in the County of Yuba. YCWA and BAWSCA also are referred to in this Agreement individually as a “Party” or jointly as “Parties.”

**RECITALS**

A. YCWA is a public agency located in Yuba County. YCWA is authorized by the Yuba County Water Agency Act to sell and transfer water to BAWSCA as provided in this Agreement.

B. BAWSCA is a water agency whose formation was enabled by special act of the California Legislature to provide regional water supply planning, resource development, and conservation program services for the benefit of its 26 member agencies. These activities include the planning and acquisition of supplemental water supplies to enhance the reliability of 16 cities, 8 water districts, and 2 private water utilities that provide water to 1.7 million people and nearly 33,000 commercial, industrial and institutional accounts in Alameda, Santa Clara and San Mateo Counties.

C. Certain BAWSCA members also receive water supplies from the State Water Project (SWP) under water service contracts with the California Department of Water Resources (DWR) and from the Central Valley Project (CVP) under water service contracts with the United States Bureau of Reclamation.

D. Because of dry hydrologic conditions and regulatory constraints on pumping water for export and the water supplies that are available to BAWSCA member agencies from the San Francisco Public Utilities Commission, BAWSCA seeks alternative water supplies. SWP and CVP deliveries have been significantly reduced in recent years, and climate change and the continuing drought demonstrate the benefit of a diversified water supply. BAWSCA has been working with East Bay Municipal Utilities District (EBMUD) on a pilot water transfer program under which BAWSCA could obtain supplemental water supplies for diversion at EBMUD’s Freeport Regional Water Project (Freeport Project) for conveyance and distribution for use by BAWSCA’s member agencies.

E. YCWA holds an appropriative water right granted by the State Water Resources Control Board (SWRCB) under Permit 15026 (Application 5632), which authorizes YCWA to

divert and store water in New Bullards Bar Reservoir for later release for power generation and consumptive uses.

F. The Yuba Accord is a comprehensive settlement agreement that was entered into and became effective in 2008 among YCWA, DWR, other local, state and federal agencies, and conservation groups, to resolve instream flow issues associated with YCWA's operation of the Yuba River Development Project by protecting and enhancing water supply reliability and fisheries through the implementation of programs paid for in part by water transfer revenues generated by YCWA water transfers to DWR for distribution to SWP and CVP water users.

G. The Yuba Accord's water transfer program is implemented under SWRCB Corrected Water Right Order 2008-14, which authorizes YCWA to transfer up to 200,000 acre-feet annually of water, adds the SWP and CVP service areas as authorized places of use and adds the SWP and CVP Delta export facilities as points of rediversion under Permit 15026 through December 31, 2025.

H. As a result of changing regulatory requirements that have constrained cross-Delta pumping, there are times when Yuba Accord transfer water cannot be rediverted at the Delta export facilities due to regulatory restrictions and when DWR's backing up of Yuba Accord transfer water into Lake Oroville also cannot be successfully implemented or assured, which has resulted in YCWA being unable at times to maximize the transfer of Yuba Accord water. The amount of Yuba Accord transfer water that may be available under these conditions varies from year to year.

I. On January 28, 2014, YCWA's Board of Directors adopted an Addendum (CEQA Addendum) to the Yuba Accord Final EIR that analyzed the potential effects of authorizing and utilizing EBMUD's Freeport Project intake as a point of rediversion for Yuba Accord transfer water. The diversion of Yuba Accord transfer water at the Freeport Project intake would not involve any changes to YCWA's operations under the Yuba Accord or schedules for making instream flow releases to benefit the lower Yuba River. To support the CEQA Addendum, YCWA conducted a detailed technical analysis of the hydrologic changes that could occur as a result of conducting YCWA water transfers through the Freeport Project and any potential fishery impacts. YCWA's analysis indicated that only changes in stream flows, reservoir storage and the Delta would occur and only outside of the Yuba River watershed as a result of less Yuba Accord transfer water being "backed up" in Oroville Reservoir than under existing conditions. YCWA's analysis determined that no significant fishery impacts would occur. The rediversion of Yuba Accord transfer water at the Freeport Project intake results in a transfer delivery schedule more similar to that anticipated in the Yuba Accord Final EIR. The CEQA Addendum found no new environmental impacts or substantial increases in the severity of significant impacts that were analyzed in the Final EIR.

J. On June 9, 2014, the State Water Resources Control Board (SWRCB) issued a Corrected Order (Freeport Order) approving the addition of the Freeport Project intake as a point of rediversion for Yuba Accord transfer water through 2025, with transfer quantities not to exceed

34,000 AF per year or 9,600 AF per month. The Freeport Project point of diversion will enable YCWA to make available to EBMUD, and additional agencies in the Bay Area, Yuba Accord transfer water that cannot be delivered to existing Yuba Accord buyers because of constraints on cross-Delta water transfers and storage in Lake Oroville. The addition of the Freeport Project intake allows YCWA to transfer water under, among other terms, the following:

- (a) Freeport Project diversion limits of 34,000 acre-feet per year and 9,600 acre-feet per month;
- (b) Compliance with all applicable biological opinions, the incidental take permit issued under the California Endangered Species Act for the Freeport Project and the California Department of Fish and Wildlife's streambed alteration agreement for that project; and
- (c) Compliance with all of the pre-existing instantaneous and annual limits on Yuba Accord transfer diversions, which were extended from the CVP and SWP export pumps to include Freeport Project diversions of Yuba Accord transfer water.

K. YCWA is willing to make Yuba Accord transfer water available to BAWSCA, and BAWSCA is willing to purchase Yuba Accord transfer water, on the terms set forth in this Agreement.

NOW, THEREFORE, YCWA and BAWSCA agree as follows:

### **AGREEMENT**

**1. Recitals and Definitions Incorporated.** The foregoing recitals and definitions are incorporated by reference.

**2. Petition to SWRCB.** YCWA will, in coordination with BAWSCA and EBMUD, prepare and file a petition (Temporary Transfer Petition) with the SWRCB for approval of the Water Transfer. YCWA will provide to BAWSCA a copy of the order (SWRCB Temporary Transfer Order) of the SWRCB approving the Temporary Transfer Petition. Either Party to this Agreement may promptly notify the other Party (but not more than 10 days following receipt by BAWSCA of the SWRCB Temporary Transfer Order) whether the Party reasonably determines that a term of the SWRCB Temporary Transfer Order is unacceptable to the Party (including a written statement of the basis for such determination), in which case the Parties will promptly confer to discuss how best to address the objectionable provision.

**3. Water Transfer.** For the compensation provided in this Agreement, YCWA is willing to temporarily make between 500 and 2,000 acre-feet of Yuba Accord water available (Transfer Water) by releasing water stored in YCWA's New Bullards Bar Reservoir at a rate of 100 cfs at the Marysville Gage on the lower Yuba River. YCWA and BAWSCA will closely coordinate with each other on the availability of Transfer Water at times when BAWSCA desires to purchase it. If YCWA is unable to provide the amount of Transfer Water requested by BAWSCA, BAWSCA reserves the right to cancel all delivery of Transfer Water under this Agreement. If YCWA is able to provide the amount of Transfer Water requested by BAWSCA,

BAWSCA will, in coordination with YCWA and EBMUD, determine how much of the available Transfer Water it will purchase. BAWSCA will take control of the Transfer Water at the Marysville Gage for redirection at the Freeport Project point of redirection and will make arrangements with EBMUD and other agencies, as appropriate, for diversion, conveyance and distribution to BAWSCA member agencies.

**4. Compliance with SWRCB Temporary Transfer Order.** The Parties will comply with all applicable provisions of the SWRCB Temporary Transfer Order. BAWSCA will ensure that the redirection of the Transfer Water at the Freeport Project point of redirection is consistent with the terms of the SWRCB Temporary Transfer Order and that the Transfer Water is used only within BAWSCA's service area (the Transfer Place of Use), as described in the Temporary Transfer Petition to the SWRCB.

**5. Accounting of Transfer Water Quantity.** The Transfer Water will be measured and accounted for by YCWA, consistent with the Freeport Order and the accounting provisions of the SWRCB Temporary Transfer Order. BAWSCA will assume all risk of loss or depletion (if any) of the Transfer Water between the Marysville Gage and the Freeport Project point of redirection and the Transfer Place of Use.

**6. Permits and Approvals.** YCWA will be responsible for obtaining all approvals and agreements necessary to deliver the Transfer Water to the Marysville Gage, and BAWSCA will be responsible for obtaining all approvals and agreements that BAWSCA determines are necessary for redirection of the Transfer Water at the Freeport Project point of redirection and for conveyance and distribution of the Transfer Water to and within the Transfer Place of Use.

**7. Scheduling and Confirmation of Transfer Water.** YCWA will make the Transfer Water available to BAWSCA between \_\_\_\_\_, 201\_ and \_\_\_\_\_,201\_ on a schedule that is mutually acceptable to YCWA and BAWSCA. The scheduling of the Water Transfer will be confirmed after the SWRCB Temporary Transfer Order effective date, provided that neither Party notifies the other Party of an objection to the SWRCB Temporary Transfer Order under Section 2. BAWSCA will confirm in writing to YCWA the amount of and timing of BAWSCA's request to schedule Transfer Water, and YCWA will confirm in writing to BAWSCA whether YCWA will have Transfer Water available on the schedule requested by BAWSCA.

**8. Purchase Price and Cost Reimbursement.** BAWSCA will pay \$\_\_\_ per acre foot for up to 2,000 acre-feet of Transfer Water (Purchase Price) delivered by YCWA at the Marysville Gage, and \$20,000 (Reimbursement) to reimburse YCWA for a portion of YCWA's costs in developing and obtaining approval of the Water Transfer, Temporary Transfer Petition and related administrative matters. Payment of the Reimbursement will be due whether or not the Water Transfer is carried out. The Purchase Price will not be subject to reduction or adjustment for loss, depletion or any other reason of Transfer Water delivered by YCWA at the Marysville Gage.

**9. Invoicing and Payments.** YCWA will invoice BAWSCA for the half of the Reimbursement amount following the effective date of this Agreement. YCWA will invoice BAWSCA for the remainder of the Reimbursement amount after submittal of the SWRCB Temporary Transfer Petition. YCWA will invoice BAWSCA for one-half of the Purchase Price following confirmation of the scheduling and availability of the Transfer Water, as provided in Section 7. YCWA will invoice BAWSCA for the balance due for Transfer Water following completion of the delivery of Transfer Water to the Marysville Gage. BAWSCA will pay YCWA's invoices within 30 days of receipt and approval of an invoice. If BAWSCA fails to timely pay the approved invoice, it will pay interest at the annual rate of 5 percent until the invoice is paid in full. Payment will be made (at YCWA's option) to YCWA at the address provided under this Agreement for notices to YCWA or pursuant to wire transfer instructions provided by YCWA to BAWSCA.

**10. Water Quality.** YCWA makes no warranty or representations as to the quality or fitness for use of the Transfer Water sold and delivered to BAWSCA.

**11. Administrative and Litigation Expenses.**

- (a) Other than the Reimbursement to YCWA provided for in Section 8, each Party will be responsible for its own engineering, legal, administrative, management and other costs necessary to support approval and implementation of the proposed Water Transfer.
- (b) BAWSCA will bear all costs of negotiating and administering any agreement required with EBMUD or other agencies for rediversion of the Transfer Water at the Freeport Project and wheeling and conveying the Transfer Water to the Temporary Transfer Place of Use.
- (c) Each Party will promptly notify the other Party of the filing and/or service of any claim, action or proceeding to attack, set aside or void the proposed Water Transfer or any authorization or approval related to the Water Transfer on any ground ("Project Litigation"). In the event of any Project Litigation, the Parties will confer to determine the best approach for defending the Water Transfer and to discuss possible joint defense or cost-sharing arrangements. YCWA will be responsible for Project Litigation costs that relate to YCWA's delivery of Transfer Water to the Marysville Gage, and BAWSCA will be responsible for Project Litigation costs that relate to BAWSCA taking control of the transfer water at and downstream from the Marysville Gage, for rediversion at the Freeport Project point of rediversion and for conveyance and distribution to and within the Temporary Transfer Place of Use. Such joint defense or cost-sharing arrangements could include, but not be limited to: (1) retention of separate legal counsel by each Party; (2) retention of legal counsel to jointly represent both Parties; or (3) retention of legal counsel to represent one Party, with the other Party contributing financial support to the Party

employing counsel. In the event that the Parties are unable to reach an agreement regarding costs and measures to defend any Project Litigation, either Party may terminate this Agreement in accordance with Section 14.

**12. Water Rights.** The Transfer Water made available under this Agreement is a portion of the surface water available to YCWA under its Water Right Permit 15026. Consistent with the provisions of California Water Code sections 109, 475, 1011, 1244, and 11961, the Water Transfer performed will not confer any appropriative, public trust or other right to water on any person or entity. Nothing in this Agreement will act as a forfeiture, diminution or impairment of any rights of YCWA to its full diversion of water after the expiration of the Agreement, and this Agreement will in no way prejudice any of YCWA's rights thereto. The Parties agree that the water transferred under this Agreement is considered a beneficial use of water under California law.

**13. Term.** This Agreement will commence on the effective date set forth above and expire on \_\_\_\_\_, unless terminated sooner in writing by the Parties pursuant to the provisions of this Agreement. Any obligations under this Agreement to be performed after \_\_\_\_\_ will survive the expiration of the term of this Agreement and will be fully enforceable.

**14. Termination.** This Agreement is subject to termination under the provisions of this section. In the event of termination of this Agreement as provided herein, the Parties thereafter will be under no further obligation or responsibility under this Agreement, and will release each other from further obligations under this Agreement, except as provided in this section. Notice of termination will be provided by the terminating Party to the other Party within 10 days of the event that gives rise to the right to termination, including a written statement of the basis for the termination. Prior to giving such notice, the Party electing to terminate will confer with the other Party to discuss and attempt to reasonably resolve the issues giving rise to the proposed termination.

- (a) A Party will have the right of termination if the Parties cannot resolve to their reasonable satisfaction an objection to the SWRCB Temporary Transfer Order under Section 2.
- (b) A Party will have the right of termination if it reasonably determines that any required regulatory approval (other than the SWRCB Temporary Transfer Order) or any third party agreement necessary to accomplish the Water Transfer cannot be obtained to carry out the Water Transfer, or is too burdensome in relation to the benefits to be received under this Agreement.
- (c) A Party will have the right of termination if a Party reasonably determines that the costs of any Project Litigation, any restrictions, fees, charges or costs imposed in the approvals of any regulatory agency, or any relief afforded to third parties in any

action brought in state or federal court involving this Agreement or the Water Transfer, are too burdensome in relation to the benefits to be received under this Agreement.

**15. Cooperation.** The Parties will reasonably cooperate with each other, including the execution of all necessary documents and providing assistance in obtaining approvals and permits from regulatory agencies required to perform the obligations under this Agreement and to carry out the purpose and intent of this Agreement.

**16. Waiver of Rights.** Any waiver, at any time, by any Party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, will not be deemed to be a waiver with respect to any other breach, default or matter.

**17. Notices.** All notices that are required, either expressly or by implication, to be given by any Party to the other Party under this Agreement will be from the designated officer of YCWA and BAWSCA as each Party may, from time, authorize in writing to so act. The time for providing a notice under this Agreement may be changed by the Parties by confirming such change in writing. Any notices to Parties required by this Agreement will be delivered by e-mail as follows:

YCWA:

Yuba County Water Agency  
Curt Aikens, General Manager  
caikens@ycwa.com  
1220 F Street  
Marysville, CA 95901  
(530) 741-5015

With a copy to: Paul M Bartkiewicz at pmb@bkslawfirm.com

BAWSCA:

Bay Area Water Supply and Conservation Agency  
Nicole M. Sandkulla, CEO/General Manager  
NSandkulla@bawsca.org  
155 Bovet Road, Suite 650  
San Mateo, CA 94402  
(650) 349-3000

Notice will be deemed given upon transmission by e-mail with a request that the receiving party confirm receipt. The Parties will promptly give written notice to each other of any change of its designated contact person or address, and transmittal to the e-mail addresses stated herein will be deemed sufficient unless written notification of a prior change of address has been received.

**18. Approvals.** Where the terms of this Agreement provide for an approval or action to be based upon the opinion, determination, approval or review of either Party, such terms are not intended to be, and will not be construed as permitting such actions to be arbitrary, capricious or unreasonable. Any opinion, determination, approval or review required of a Party under this Agreement will be provided in a timely manner.

**19. Other Agreements.** Nothing contained herein prohibits YCWA from providing water services and sales to other persons or entities as authorized by law, which do not unreasonably interfere with YCWA's obligations under this Agreement.

**20. Entire Agreement.** This Agreement constitutes the entire Agreement between the YCWA and BAWSCA and supersedes any oral agreement, statement or promise between them relating to the subject matter of the Agreement. Any amendment hereto must be in writing and signed by both Parties to be effective.

**21. Amendments.** To be effective, an amendment to this Agreement must be agreed to in writing by the Parties.

**22. Warranties.** YCWA warrants that there are no contractual or other obligations limiting the use of the water in the BAWSCA service area (Transfer Place of Use) once delivered.

**23. Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts will be sufficient proof of this Agreement and be binding on the Parties.

**24. Interpretation.** The Parties have entered into this Agreement freely and voluntarily. This Agreement has been arrived at through negotiation, and each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.

**25. Signatures and Authority.** The signatories to this Agreement represent that they have authority to execute and to bind the Party on whose behalf they execute this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

**YUBA COUNTY WATER AGENCY:**

By: \_\_\_\_\_  
Chair, Board of Directors

Attest:

By: \_\_\_\_\_  
Secretary

**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY:**

By: \_\_\_\_\_  
Nicole M. Sandkulla, CEO/General Manager

**EXHIBIT A**

**MAP OF BAWSCA AND BAWSCA MEMBER AGENCIES**

DRAFT

C.2. BAWSCA-EBMUD Wheeling Agreement (DRAFT)

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**AGREEMENT  
BETWEEN  
EAST BAY MUNICIPAL UTILITY DISTRICT  
AND  
THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
TO WHEEL WATER FOR  
THE SHORT-TERM PILOT WATER TRANSFER**

THIS AGREEMENT is made as of the \_\_\_ day of \_\_\_\_, \_\_\_\_\_, between East Bay Municipal Utility District (“EBMUD”), a public agency in the State of California and Bay Area Water Supply and Conservation Agency (“BAWSCA”), a public agency in the State of California as to the wheeling of Pilot Transfer Water secured by BAWSCA from a willing seller, through EBMUD water facilities to the San Francisco Regional Water System (“RWS”) and the San Francisco Public Utility District’s Wholesale Customers that are member agencies of BAWSCA.

**RECITALS**

WHEREAS, EBMUD, a public agency formed under the Municipal Utility District Act passed by the California Legislature in 1921, owns and operates a water system that delivers potable water to 1.3 million customers in Alameda and Contra Costa Counties; and

WHEREAS, the Freeport Regional Water Authority (“FRWA”) a Joint Powers Authority established by agreement in February 2002 between EBMUD and Sacramento County Water Agency (“SCWA”), completed the Freeport Regional Water Project (“FRWP”) in 2011, with an intake located on the Sacramento River near the town of Freeport; and

WHEREAS, FRWA owns and operates the FRWP intake and associated joint pipelines and EBMUD owns and operates facilities located in Sacramento County and San Joaquin County that convey water from the FRWP to EBMUD’s Mokelumne Aqueducts for conveyance to EBMUD’s service area; and

WHEREAS, Article IV, Section 4.3 of the third amended FRWA agreement, as approved by the EBMUD Board on February 9, 2010, provides for a member agency to enter into an agreement with a third party for use of that member agency’s share of dedicated FRWP capacity under certain conditions; and

WHEREAS, BAWSCA, a public agency enabled by a special act of the California Legislature and formed by its member agencies to provide regional water supply planning, resource development, and conservation program services for the benefit of its 26 member agencies. BAWSCA’s activities include the planning and acquisition of supplemental water supplies to enhance the reliability of 16 cities, 8 water districts, and 2 private water providers that provide water to 1.7 million people and nearly 33,000 commercial, industrial and institutional accounts in Alameda, Santa Clara and San Mateo Counties; and

WHEREAS, EBMUD and BAWSCA are pursuing supplemental water supply strategies, including those identified in their long-term water supply plans, to meet the future needs of their respective service areas; and

WHEREAS, EBMUD is pursuing water transfers as a component of an overall portfolio of supplemental water supply options identified in its Water Supply Management Plan 2040 ("WSMP 2040"); and

WHEREAS, BAWSCA is exploring water transfers as a potential long-term strategy to reliably meet the water supply needs of its member agencies consistent with its Long-Term Reliable Water Supply Strategy; and

WHEREAS, EBMUD and BAWSCA are interested in exploring the benefits of working together to improve long-term water supply reliability; and

WHEREAS, EBMUD and BAWSCA executed a MOU in September, 2012 to complete the first phase of a Short-Term Pilot Water Transfer Plan ("Pilot Plan") which evaluates the feasibility of partnering on a one-year pilot water transfer ("Pilot Water Transfer"); and

WHEREAS, EBMUD and BAWSCA executed a MOU in February, 2014 to complete the second phase of the Pilot Plan which evaluates the feasibility of partnering on a one-year Pilot Water Transfer; and

WHEREAS, EBMUD and BAWSCA have agreed, based on their findings in the Pilot Plan, that conducting a Pilot Water Transfer would provide important information needed to evaluate the costs and benefits of partnership in future water transfers; and

WHEREAS, the Pilot Plan identified agreements with EBMUD, San Francisco Public Utilities Commission ("SFPUC") and City of Hayward ("Hayward") that are needed to conduct the Pilot Water Transfer and wheel water through the EBMUD's Freeport Regional Water Project ("Freeport") facilities, EBMUD's raw water, treatment, and distribution system, and the SFPUC-EBMUD-Hayward Intertie ("Hayward Intertie") to the Wholesale Customers in the San Francisco RWS that are BAWSCA's member agencies; and

WHEREAS, BAWSCA is working with Hayward and SFPUC to draft the necessary agreements to conduct the pilot water transfer; and

WHEREAS, EBMUD and BAWSCA agree that when the water conditions of EBMUD and BAWSCA are such that a one-year Pilot Water Transfer is appropriate for both agencies, as set forth herein, EBMUD's and BAWSCA's respective roles and responsibilities for the wheeling of BAWSCA's Pilot Transfer Water through EBMUD facilities will be carried out pursuant to terms and conditions as described in this Agreement.

## AGREEMENT

In consideration of the foregoing recitals and the terms and conditions contained herein, EBMUD and BAWSCA agree to the following:

### 1. Definitions.

When used in this Agreement, the following definitions will apply:

- (a) "Agreement" or "Wheeling Agreement" means this agreement for the wheeling of water.
- (b) "BAWSCA" means Bay Area Water Supply and Conservation Agency.
- (c) "BAWSCA Service Area" means all areas or lands where BAWSCA is authorized to provide water service.
- (d) "CEQA" means the California Environmental Quality Act.
- (e) "CVP" means the Central Valley Project.
- (f) "Delivery Criteria" means the specific criteria agreed upon between BAWSCA and EBMUD as defined in Attachment C to this Agreement.
- (g) "DDW" means the California State Water Resources Control Board, Division of Drinking Water.
- (h) "EBMUD" means East Bay Municipal Utility District.
- (i) "EBMUD Service Area" means all areas or lands where EBMUD is authorized to provide water service.
- (j) "EBMUD System" means all EBMUD owned and operated facilities including its raw water system, water storage facilities including surface reservoirs, water treatment systems and facilities, and distribution system.
- (k) "EA" means Environmental Assessment.
- (l) "ESA" means the Endangered Species Act.
- (m) "FSC" means the USBR's Folsom South Canal.
- (n) "Freeport Facilities" means water supply facilities jointly owned and operated by EBMUD and Sacramento County Water Authority constructed as part of the Freeport Regional Water Project.
- (o) "Force Majeure Event" means an event, conditions or circumstances not the fault of, and beyond the reasonable control of, the Party claiming excuse which makes it impossible or impracticable for such Party to operate under the Agreement. Force Majeure Events include (a) an "act of God" such as an earthquake, flood, earth movement, or similar catastrophic event, (b) an act of the public enemy, terrorism, sabotage, civil disturbance or similar event, (c) a strike, work stoppage, picketing or similar concerted labor action, or (d) adopted legislation or a decision, order or regulation issued by a federal or state court or regulatory agency during the term of this Agreement.

- (p) “FRWA” means the Freeport Regional Water Authority, a Joint Powers Authority between EBMUD and Sacramento County Water Authority.
- (q) “FRWP” means the Freeport Regional Water Project.
- (r) “Hayward” means the City of Hayward.
- (s) “Hayward Intertie” means the SFPUC-EBMUD-Hayward Intertie.
- (t) “Hayward Intertie Pilot Water Transfer Agreement” means that specific agreement between EBMUD, SFPUC, and Hayward that defines the terms of use of the Hayward Intertie for the Pilot Water Transfer.
- (u) “Mokelumne Aqueduct” means EBMUD’s Mokelumne Aqueduct used to convey raw water from the Mokelumne River watershed as well as from the FRWP to EBMUD’s Service Area.
- (v) “NEPA” mean the National Environmental Policy Act.
- (w) “NOE” means Notice of Exemption.
- (x) “Parties” or "Party" mean BAWSCA and/or EBMUD.
- (y) “Point of Delivery” means the Hayward Intertie that connects EBMUD’s Service Area to the RWS.
- (z) “Point of Diversion” means the FRWP intake facility as located on the Sacramento River and as owned and operated by the FRWA at which location EBMUD assumes responsibility for wheeling of water.
- (aa) “RWS” means the San Francisco Regional Water System.
- (bb) “SFPUC” means the San Francisco Public Utilities Commission.
- (cc) “SWRCB” means the California State Water Resources Control Board.
- (dd) “Pilot Transfer Water” means \_\_\_\_ to \_\_\_\_ acre-feet of raw water to be purchased by BAWSCA under a separate water transfer agreement between BAWSCA and the seller.
- (ee) “USBR” means the United States Department of the Interior, Bureau of Reclamation.
- (ff) “Water Transfer Agreement” means that certain \_\_\_\_ agreement between a willing seller and BAWSCA for the transfer to BAWSCA of from \_\_\_\_ to \_\_\_\_ acre-feet of water.
- (gg) “Wheeled Water” means the \_\_\_\_ to \_\_\_\_ acre-feet of Pilot Transfer Water as purchased by BAWSCA and as diverted, conveyed, and treated by EBMUD.

**2. Necessary Conditions for the Execution of Water Wheeling.**

- (a) This Agreement shall become effective upon its execution by the Parties.
- (b) The Parties will have no obligation to wheel water under this Agreement until the last of the following has occurred:
  - (i) Receipt of all necessary agreements and approvals for BAWSCA to secure Pilot Transfer Water from a willing seller and for EBMUD to wheel Pilot Transfer

Water to BAWSCA's service area under terms acceptable to the parties, including but not limited to:

- (1) Execution of a Water Transfer Agreement by BAWSCA for supplies to be delivered at the FRWP's intake;
- (2) Confirmation of supply availability from a willing seller;
- (3) An amendment to the DDW permit allowing EBMUD to divert Pilot Transfer Water for BAWSCA's use at the FRWP's intake;
- (4) Execution of a Warren Act contract between the USBR and BAWSCA to allow for conveyance of BAWSCA's Pilot Transfer Water through the FSC, under terms acceptable to the Parties;
- (5) Confirmation of approvals from Hayward and SFPUC for the use of the Hayward Intertie;
- (6) Satisfying all regulatory approvals, environmental compliance and environmental reviews as specified in Article 3.

(ii) BAWSCA, in consultation with the SFPUC, determines, at its sole discretion, that wheeling Pilot Transfer Water will not cause, or have the potential to cause unacceptable impacts to the RWS or to the BAWSCA Service Area. EBMUD determines, at its sole discretion, that wheeling Pilot Transfer Water will not cause, or have the potential to cause unacceptable impacts to EBMUD's Water System and supplies.

- (c) The Parties will consult with each other and make a good faith effort to amend this Agreement, if necessary, to determine if operational constraints could be addressed and or mitigated in some manner or form such that wheeling could occur, to attempt to address any unacceptable terms or conditions of said permits and contracts or to address revised environmental compliance requirements or operational conditions.
- (d) This Agreement will terminate on \_\_\_\_\_ or when all obligations under this Agreement have been performed, whichever occurs first, unless this Agreement is cancelled pursuant to Article 8 (Cancellation).
  - (i) Payment obligations under Article 7 (Reimbursable Wheeling Expenses, Other Expenses and Payments) survive discharge or termination of this Agreement until obligations are satisfied.

### **3. Process for Regulatory Approvals, Environmental Compliance and Environmental Reviews.**

- (a) The Parties understand that an executed Warren Act contract from USBR is necessary to convey Pilot Transfer Water through the FSC. The Parties shall work together to obtain a Warren Act contract from USBR. BAWSCA shall execute a Letter of Agreement as required by USBR in order to direct USBR staff to prepare the Warren Act contract. As

part of that Letter of Agreement, BAWSCA shall pay the required fee(s) to cover USBR Warren Act contract preparation.

- (b) EBMUD will seek an amendment from DDW allowing it to divert Pilot Transfer Water for BAWSCA's use at the FRWP's intake.
- (c) Each Party shall be responsible for ensuring CEQA compliance for their respective actions required to wheel Pilot Transfer Water.
  - (i) The parties agree that the actions contemplated in this Agreement are exempt from the requirements of CEQA pursuant to Water Code Section 1729 and CEQA Guidelines Sections 15282 (u), 15301 and 15061 (b)(3).
    - (1) Each Party is responsible for final preparation, filing and posting of the NOE. The Parties agree to share the costs of preparation of the NOE.
    - (2) If it is subsequently determined that additional CEQA review is required, this Agreement may be amended as necessary with the mutual written consent of the Parties as stipulated in Article 14 or may be terminated in accordance with the provisions as stipulated in Article 8.
  - (ii) The Parties may be required to prepare an Environmental Assessment (EA) to comply with NEPA/ESA requirements for USBR's approval of a Warren Act contract.
    - (1) In coordination with USBR, the seller, and EBMUD; BAWSCA will prepare a draft EA to evaluate the potential environmental effects of wheeling water from a willing seller to BAWSCA pursuant to this Agreement.
    - (2) If it is subsequently determined that an EA is not the appropriate level of NEPA environmental documentation, this Agreement may be amended as necessary at the mutual written consent of the Parties as stipulated in Article 14 or may be terminated in accordance with the provisions in Article 8.
- (d) The parties recognize that any order by the SWRCB or other regulatory agency to curtail the seller's rights beyond the limitations currently contained in the seller's existing water rights permits or accords may affect or eliminate the ability to perform the wheeling. In the event that BAWSCA is notified by the seller that it cannot provide all of the water specified in their Water Transfer Agreement with BAWSCA, BAWSCA shall meet and confer with EBMUD in accordance with the procedures in Article 8(b).

#### **4. Delivery Criteria**

The wheeling of any water pursuant to this Agreement shall be governed by the "Delivery Criteria" attached hereto and incorporated herein as Exhibit C. The Delivery Criteria may be modified from time to time by the mutual written agreement of both BAWSCA and EBMUD representatives, or their authorized designees. In the event of

any conflict between any provision of this Agreement and the Delivery Criteria, this Agreement shall govern.

## **5. Notification**

The Parties understand and agree to the following:

- (a) After the EBMUD Board reviews the projected water supply availability and considers a decision on operation of FRWP, EBMUD will notify BAWSCA as to whether it intends to operate the FRWP.
- (b) BAWSCA shall provide EBMUD with a minimum of twenty eight (28) calendar days' notice of a requested schedule for EBMUD to commence the wheeling of water.
  - (i) EBMUD shall in turn respond to BAWSCA within ten (10) business days regarding whether EBMUD can accommodate BAWSCA's requested schedule.
  - (ii) The Parties understand that EBMUD's response as provided under Article 5 (b)(i) is subject to change if the provisions as detailed in Article 8(a)(i) affect EBMUD's ability to provide wheeling services.
- (c) In the event that EBMUD is unable to accommodate BAWSCA's requested wheeling schedule, the Parties agree to meet and confer as soon as practicable in order to identify an alternative delivery schedule. If it is deemed by either Party that an alternative delivery schedule cannot be accommodated, and that the Wheeling Agreement therefore must be terminated or canceled, the Parties shall follow the procedures in Article 8.

## **6. Wheeling of Water - Wheeling Quantity, Wheeling Timing, and Wheeling Route.**

Seller will deliver water to BAWSCA for diversion by EBMUD at the FRWP Point of Diversion. After the necessary permits and approvals are received, BAWSCA will inform EBMUD when and how much Pilot Transfer Water to divert at the Point of Diversion.

- (a) **Wheeling Quantity.** Subject to satisfaction of the requirements of Article 2 (b) and the other provisions of this Agreement, EBMUD agrees to divert from \_\_\_\_\_ to \_\_\_\_\_ acre feet of Pilot Transfer Water at the Point of Diversion at a rate of approximately \_\_\_\_\_ million gallons per day (\_\_\_\_\_ acre feet per day) and make the diverted water available at the Point of Delivery.
- (b) **Wheeling Timing.** EBMUD shall be provided advanced notice by BAWSCA confirming that water is available for diversion. Notification procedures are referenced in Article 5 of this Agreement.
- (c) **Wheeling Route.** The wheeling of the water shall commence at the Point of Diversion for the Pilot Transfer Water. From the Point of Diversion, the Pilot Transfer Water shall be pumped eastward and southward through the Freeport Facilities, the Folsom South Canal, and the Folsom South Canal Connection to EBMUD's Mokelumne Aqueducts. Pilot Transfer Water shall be directed into those Aqueducts for conveyance to EBMUD's Service Area. Once in EBMUD's Service Area, all of Pilot Transfer Water shall then be

diverted into one of EBMUD's local terminal reservoirs. The Pilot Transfer Water shall be treated at one of EBMUD's treatment plants before entering EBMUD's treated water distribution system. The treatment facility utilized by EBMUD will be dependent on which local reservoir receives the Pilot Transfer Water.

- (i) Point of Delivery. The Point of Delivery of the Pilot Transfer Water is the Hayward Intertie, which connects the EBMUD System to the RWS for delivery in the BAWSCA Service Area. The Parties agree that the water to be delivered to BAWSCA by EBMUD will be fluoridated and chloraminated, as described in the Delivery Criteria.
- (d) In addition to stipulations provided herein, the Hayward Intertie Pilot Water Transfer Agreement Operating Plan, between EBMUD, SFPUC and Hayward, will specify requirements of the pilot water transfer wheeling operations.

## 7. Reimbursable Wheeling Expenses, Other Expenses and Payments.

- (a) Reimbursable Wheeling Expenses.
  - (i) BAWSCA shall bear all documented costs of wheeling services provided by EBMUD that result in Pilot Transfer Water delivered at the Point of Delivery, including all operational expenses as summarized in **Attachment 1** to this Agreement.
  - (ii) BAWSCA will share in a portion of the costs of wheeling services provided by EBMUD if wheeling operations are modified, adjusted, suspended or terminated by EBMUD declaring a Force Majeure Event after notification that EBMUD can accommodate BAWSCA's requested schedule pursuant to Article 5(b)(i).
  - (iii) If EBMUD cancels or terminates wheeling after notification that EBMUD can accommodate BAWSCA's requested schedule pursuant to Article 5(b)(i) for a reason other than a Force Majeure Event, EBMUD shall bear the costs and expenses incurred by BAWSCA under the Water Transfer Agreement with a willing seller for water purchased by BAWSCA and not delivered to the Point of Delivery.
- (b) Other Expenses. Other expenses for which BAWSCA shall bear cost responsibilities include an appropriate portion of engineering and technical expenses as required to obtain regulatory approvals for the water transfer and wheeling, including a portion of the costs as expended by EBMUD to assist in CEQA, NEPA, ESA, and other environmental permitting efforts, plus filing fees, and any attorney fees or other related expenses necessary for accomplishing the wheeling of water pursuant to this Agreement.
  - (i) The proportion of other expenses for which BAWSCA is responsible are identified in **Attachment 2** to this Agreement. These expenses are considered a separate cost item not included in the Price for Wheeling of Water referenced in Article 7 (a).

- (c) Two (2) copies of each invoice for Payments, together with supporting documentation, will be submitted to the Chief Executive Officer/General Manager of BAWSCA at the following address:

Nicole Sandkulla, CEO/General Manager  
Bay Area Water Supply and Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402

**8. Cancellation or Modification of Agreement.**

- (a) Cancellation of this Agreement, prior to BAWSCA notification of requested schedule to wheel water under Article 5(b), may be effected by delivering to the other Party written notice of cancellation. Cancellation shall take effect five (5) business days following the receipt of notice by the other Party. Upon any cancellation of the Agreement, the Parties shall follow the procedures in Article 7 for reimbursable wheeling expenses and other expenses and payments.
- (i) EBMUD shall reserve the right to modify, adjust, suspend or terminate wheeling operations, at its sole discretion, if the Terms in Article 2 cannot be satisfied, or if needed to:
- (1) Protect the integrity of FRWP and or EBMUD facilities.
  - (2) Respond to regulatory directives from state and or federal agencies.
  - (3) Protect the health and safety of EBMUD's employees and or customers.
  - (4) Respond to a Force Majeure Event that may arise during the period of wheeling.
- (ii) BAWSCA shall reserve the right to modify, adjust, suspend or terminate the wheeling operations if the Terms in Article 2 cannot be satisfied, or if such changes are needed to:
- (1) Protect the integrity of RWS infrastructure.
  - (2) Respond to regulatory directives from state and or federal agencies.
  - (3) Protect the health and safety of BAWSCA's employees and or customers.
  - (4) Respond to a Force Majeure Event that may arise during the period of wheeling.
- (b) The Parties agree to meet and confer as soon as practicable in the event that either Party seeks to modify, adjust, or suspend the wheeling operations. If it is deemed by either Party that the Wheeling Agreement must be terminated or canceled, the Parties shall

follow the procedures in Article 7 for reimbursable wheeling expenses and other expenses and payments.

**9. Water Rights Protection and Responsibilities following Point of Delivery.**

Neither Party will assert that activities under this Agreement affect any existing water rights or contracts held by either Party to this Agreement. The execution of this Agreement is not intended by either Party to endorse water rights claimed by the other Party. Wheeling of water pursuant to this Agreement will not confer any appropriative, public trust or other right to water to any person or entity.

EBMUD is not responsible for the Pilot Transfer Water following its delivery to BAWSCA at the Point of Delivery.

**10. Hold Harmless, Indemnification and Remedies.**

- (a) To the extent permitted by State law, BAWSCA will indemnify, defend and hold EBMUD and its directors, officers, agents, and employees safe and harmless from any and all claims, suits, judgments, damages, penalties, costs, expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) to the extent that they arise from or are related in any way to BAWSCA's, its associates', employees', subconsultants', or other agents' negligent acts, errors, or omissions, or willful misconduct, in the operation and/or performance of this Agreement, including those actions related to securing Pilot Transfer Water from a willing seller. BAWSCA will defend EBMUD in any such action or lawsuit using counsel approved by EBMUD.
- (b) To the extent permitted by State law, EBMUD will indemnify, defend and hold BAWSCA and its directors, officers, agents, and employees safe and harmless from any and all claims, suits, judgments, damages, penalties, costs, expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) to the extent that they arise from or are related in any way to EBMUD's, its associates', employees', subconsultants', or other agents' negligent acts, errors, or omissions, or willful misconduct, in the operation and/or performance of this Agreement. EBMUD will defend BAWSCA in any such action or lawsuit using counsel approved by BAWSCA.

**11. Disputes.**

Any claim that a Party may have against the other Party regarding the performance of this Agreement including, but not limited to, claims for compensation or extension of time, will be submitted to the other Party. Parties will attempt to negotiate a resolution of such claim and if

necessary process an amendment to this Agreement or a settlement agreement to implement the terms of any such resolution.

**12. Agreement Not a Precedent.**

The Parties intend that the provisions of this Agreement will not bind the Parties as to the provisions of any future agreement between them. This Agreement was developed specifically for the specified Agreement term.

**13. Notices.**

Except as discussed in Article 5 (Notification) and Article 7 (Reimbursable Wheeling Expenses, Other Expenses, and Payments), any notice, demand, or request made in connection with this Agreement must be in writing and will be deemed properly served if delivered in person or sent by United States mail, postage prepaid, to the addresses specified below:

To EBMUD: Alexander R. Coate, General Manager  
East Bay Municipal Utility District  
P.O. Box 24055  
Oakland, CA 94623-1055  
Telephone: (510) 287-0101

With Copy to: Craig S. Spencer, General Counsel  
East Bay Municipal Utility District  
P.O. Box 24055  
Oakland, CA 94623-1055  
Telephone: (510) 287-0169

To BAWSCA: Nicole Sandkulla, CEO/General Manager  
Bay Area Water Supply and Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402  
Telephone: (650) 349-3000

With Copy to: Allison Schutte  
Hanson Bridgett, LLP  
425 Market Street, 26th Floor  
San Francisco, CA 94105  
415-995-5823

**14. Modification.**

This Agreement may be modified only upon the mutual written consent of the Parties.

**15. No Third-Party Beneficiaries.**

No third-party beneficiaries are intended or created by this Agreement.

**16. Severability.**

If any term or provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it will not affect the validity of any other provision, which will remain in full force and effect.

**17. Complete Agreement.**

Other than as specified herein, no document or communication passing between the Parties to this Agreement will be deemed to be part of this Agreement.

**18. Counterpart.**

This Agreement may be executed in counterpart. BAWSCA will deliver two copies of an executed counterpart to EBMUD, and EBMUD will then execute two copies of an executed counterpart. One fully executed agreement will remain with EBMUD and the other fully executed agreement will be delivered to BAWSCA. Facsimile and electronic signatures shall be binding.

**19. Assignment.**

This Agreement is not assignable either in whole or in part, except upon mutual written consent of the Parties.

**20. Time of the Essence.**

Time is of the essence in this Agreement.

**21. Waiver.**

The waiver at any time by either Party of its right with respect to default or other matter arising in connection with this Agreement will not be deemed a waiver by that Party with respect to any subsequent default or matter.

**22. Governing Law.**

This Agreement is governed by and will be interpreted in accordance with the laws of the State of California.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date first written.

Approved as to legal form:

**East Bay Municipal Utility District**

\_\_\_\_\_  
Craig S. Spencer, General Counsel

\_\_\_\_\_  
Alexander R. Coate, General Manager

Approved as to legal form:

**Bay Area Water Supply and Conservation Agency**

\_\_\_\_\_  
Allison Schutte, Legal Counsel

\_\_\_\_\_  
Nicole M. Sandkulla, CEO/General Manager

DRAFT

**ATTACHMENT 1  
ESTIMATED WHEELING SERVICES EXPENSES**

DRAFT



### Wheeling

	Annual delivery, TAF			Annual cost	Unit cost	Comments and Assumptions
	EBMUD	SCWA <sup>1</sup>	BAWSCA	\$	\$/AF	
Power (energy)	35	17	1	1,367,400	25.8	Based for invasive species
Power (capacity)				201,073	3.8	
Operational labor				680,000	12.8	
Maintenance fund				185,500	3.5	
Chemicals				0	0.0	
Sediment disposal				15,900	0.3	
<b>Subtotal</b>				<b>2,449,873</b>	<b>46.2</b>	
Gerber Pipeline Startup & shutdown	35	0	1	29,952	0.8	Pipeline fill/drain. 240 manhours at full cost.
Folsom South Canal Warren Act charge	35	0	1	17,330	17.3	under discussion.
SMUD treatment				360,000	10.0	
<b>Subtotal</b>				<b>377,330</b>	<b>27.3</b>	
Clay Station Pumping Plant Power (energy)	35	0	1	950,400	26.4	MW
Chemicals				168,073	4.7	
Startup & shutdown				0	0.0	
<b>Subtotal</b>				<b>1,245,701</b>	<b>34.6</b>	
Camanche Pumping Plant Power	35	0	1	1,314,000	36.5	PG&E schedule includes Lime for Mokelumne Aqueduct corrosion control
Chemicals				86,400	2.4	
Startup & shutdown				127,228	3.5	
<b>Subtotal</b>				<b>1,527,628</b>	<b>42.4</b>	
FSCC Pipeline Startup & shutdown	35	0	1	142,065	3.9	Pipeline fill/drain. 3500 manhours at full cost
Mokelumne Aqueducts	35	0	1	288,000	8.0	K was on CO <sub>2</sub> uring reconfiguration DPH compliance. 230
Chemicals				28,615	0.8	
<b>Subtotal</b>				<b>316,615</b>	<b>8.8</b>	
Walnut Creek Pumping Plants <sup>2</sup>	35	0	1	2,576,880	71.6	energy &
<b>Subtotal</b>				<b>62,207</b>	<b>1.7</b>	
Moraga Pumping Plant Power	17.5	0	1	490,065	26.5	Assumed half of Freeport water routed to USL Reservoir Per Bay Area Regional Desalination Project evaluation. Based demand charges. energy &
Startup & shutdown				15,552	0.8	
<b>Subtotal</b>				<b>505,617</b>	<b>27.3</b>	
USL Water Treatment Plant		0	1	530,293	28.7	2010 actual costs
Chemicals				1,108,795	59.9	
Solids Handling				331,433	17.9	
<b>Subtotal</b>				<b>1,970,521</b>	<b>106.5</b>	
<b>TOTAL</b>					<b>298.0</b>	If pumping at Walnut Creek not required

Notes:  
1. Modeling estimate  
2. Modeling estimate

Example list of reimbursable costs of wheeling.

**ATTACHMENT 2  
OTHER EXPENSES**

DRAFT

<b>Cost Item</b>	<b>Total Cost</b>	<b>BAWSCA Cost</b>	<b>EBMUD Cost</b>	<b>Comments</b>
<b>Reclamation work on Warren Act Contract</b>	TBD	TBD	TBD	
<b>Preparation of NEPA/ESA Documents by Consultant</b>	TBD	TBD	TBD	
<b>CEQA Compliance</b>	TBD	TBD	TBD	
<b>Division of Drinking Water Permit Amendment</b>	TBD	TBD	TBD	

DRAFT

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C.3. BAWSCA-Hayward Cooperative Agreement (2015)

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**SECOND COOPERATIVE AGREEMENT  
BETWEEN THE CITY OF HAYWARD  
AND THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
FOR THE DEVELOPMENT OF A SHORT-TERM PILOT WATER TRANSFER PLAN**

This Second Cooperative Agreement (AGREEMENT) between the City of Hayward, a municipal corporation, hereinafter referred to as "CITY," and the Bay Area Water Supply and Conservation Agency, a public entity hereinafter referred to as "BAWSCA," setting forth the respective roles and responsibilities of CITY and BAWSCA in regard to the preliminary planning and analysis associated with a short-term pilot water transfer (hereinafter referred to as "PLAN") is made and entered into this 24<sup>th</sup> day of April 2017.

W I T N E S S E T H

WHEREAS, BAWSCA represents the interests of 26 cities, water districts, and private utilities in San Mateo, Santa Clara, and Alameda counties that purchase water on a wholesale basis from the San Francisco Public Utilities Commission (SFPUC); and

WHEREAS, CITY is a member agency of BAWSCA; and

WHEREAS, BAWSCA is exploring potential strategies to meet the water supply reliability needs of its member agencies; and

WHEREAS, alternative water supplies, such as a long-term water transfer, may potentially reduce BAWSCA-wide required cutbacks during a drought; and

WHEREAS, CITY is the operator of the group of facilities collectively known as the Hayward Intertie, which is jointly owned by the East Bay Municipal Utility District (EBMUD) and SFPUC, that connects the EBMUD and SFPUC regional water systems through the CITY and using CITY owned infrastructure; and

WHEREAS, BAWSCA has proposed a short-term pilot water transfer (Pilot Water Transfer) utilizing the Hayward Intertie that will benefit the BAWSCA member agencies, including CITY, by (1) identifying technical, financial and institutional issues associated with a potential water transfer and (2) testing the ability to implement a water transfer by securing approvals needed to deliver transfer water for a limited duration; and

WHEREAS, during normal operations, the CITY's water system runs from south to north by gravity; and

WHEREAS, in the event of the operation of the Hayward Intertie to deliver water from EBMUD to the SFPUC (north to south operations), the CITY water system is fully pumped to run from north to south with the potential to impact CITY's water operations and infrastructure; and

WHEREAS, the reverse flow and pumped flow anticipated during the Pilot Water Transfer may adversely impact the CITY water distribution system and change water system pressure and flows, including those at fire hydrants; and

WHEREAS, in the event of operation of the existing Hayward Intertie to deliver water from EBMUD to SFPUC, Hayward will be exclusively served by EBMUD water supply, which will be of a different quality from SFPUC water delivered to the rest of BAWSCA member agencies; and

WHEREAS, on February 5, 2015 CITY and BAWSCA entered into the Cooperative Agreement Between The City Of Hayward And The Bay Area Water Supply And Conservation Agency For The Development Of A Short-Term Pilot Water Transfer Plan (First Cooperative Agreement), that provided for the parties to cooperate on planning for the Pilot Water Transfer, including conducting a study to evaluate the impacts of the Pilot Water Transfer on CITY's water system; and

WHEREAS, the First Cooperative Agreement expired on June 30, 2015 and the parties desire to continue cooperating on development of a Pilot Water Transfer; and

WHEREAS, in March 2016, CITY and BAWSCA completed a study with West Yost Associates that evaluated the potential impacts of operating the Hayward Intertie under specific conditions and identified actions to mitigate potential impacts; and

WHEREAS, the First Amended Joint Exercise of Powers Agreement between City and County of San Francisco Public Utilities Commission, East Bay Municipal Utility District, and City of Hayward for Long-term Operation and Maintenance of the Emergency/Maintenance Water System Intertie Project dated July 10, 2007 ("Hayward Intertie Operating Agreement") provides for the use of the Hayward Intertie only during emergencies or planned critical maintenance work; and

WHEREAS, the potential planned shutdown of Mountain Tunnel for critical maintenance during the winter of 2018-2019 will require the entire San Francisco Regional Water System ("RWS") be served by local water supplies for an extended period of time and the CITY, SFPUC, and EBMUD to prepare the Hayward Intertie for use; and

WHEREAS, consistent with the terms of the Hayward Intertie Operating Agreement, the Pilot Water Transfer could potentially be implemented during a planned shutdown of Mountain Tunnel for critical maintenance; and

WHEREAS, BAWSCA's proposed Pilot Water Transfer will enable the CITY to once again operate the existing Hayward Intertie to (1) assess the impacts of north to south operations of the Hayward Intertie and (2) collect important real-time information needed to evaluate the effects of future water transfer projects; and

WHEREAS, CITY and BAWSCA have agreed that engaging in a Pilot Water Transfer would help provide important information needed to evaluate the costs and benefits of partnering in future water transfer projects; and

WHEREAS, CITY and BAWSCA agree that information developed under the PLAN will help develop (1) the CITY'S operational protocols for managing and monitoring water supplies during a north to south operation and (2) a plan and protocols for the CITY to communicate information related to the Pilot Water Transfer to CITY water customers; and

WHEREAS, CITY and BAWSCA have agreed that this AGREEMENT shall govern the PLAN.

NOW THEREFORE, CITY and BAWSCA agree as follows:

**I. ROLES AND RESPONSIBILITIES**

CITY and BAWSCA agree to cooperate to complete the PLAN and use their best efforts to perform the roles and responsibilities as described in Attachment A, PLAN SCOPE OF WORK.

**II. COSTS**

The parties anticipate that the costs to complete the work described in the PLAN SCOPE OF WORK, Attachment A to the AGREEMENT, will be limited to internal staff time. Each party agrees to be solely responsible for its share of the costs for internal staff time. If either party identifies the need for external expenses, such as consultants or other third party resources, to complete a portion of the work described in the PLAN SCOPE OF WORK, the parties agree to negotiate external costs on a case by case basis and amend this AGREEMENT as needed.

**III. SCHEDULE**

CITY and BAWSCA agree to cooperate and work diligently to complete the PLAN according to the schedule shown on Attachment B, PLAN SCHEDULE, which may be revised from time to time by mutual agreement of the parties. If either party is unable to substantially meet the agreed upon PLAN SCHEDULE, the party unable to meet the PLAN SCHEDULE shall promptly notify the other party to attempt to revise the PLAN SCHEDULE to the mutual satisfaction of both parties.

**IV. HOLD HARMLESS AND LIABILITY**

CITY and BAWSCA each agree to hold harmless, indemnify, and defend the other from and against any and all liability claims, costs, penalties, causes of action, demands, and losses of any nature whatsoever, including reasonable attorneys' fees, arising from the performance of this AGREEMENT, including but not limited to personal injury and injury to property, or any violation of any law or ordinance, or other harm caused by any negligent act, error or omission, or willful acts or omissions of the indemnifying party or its officers, employees, subcontractors, or agents acting pursuant to this AGREEMENT, provided that neither party shall be indemnified hereunder for any loss, liability, damage or expense arising from its sole negligence or willful misconduct. This indemnification shall survive termination or expiration of this AGREEMENT.

**V. TERM**

This AGREEMENT shall be effective until June 30, 2019, unless extended by mutual agreement. Either party may terminate participation in this AGREEMENT by providing 30-day written notice.

**VI. NOTICE**

All notices required to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, registered and postage prepaid and addressed to the respective parties as follows:

CITY: Alex Ameri  
Director of Utilities & Environmental Services  
City of Hayward  
777 B. Street  
Hayward, California 94541

BAWSCA: Nicole M. Sandkulla  
Chief Executive Officer  
Bay Area Water Supply and Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402

Notification of a change in the name of the contact person shall be in writing.

**VII. MISCELLANEOUS**

- A. This AGREEMENT may be amended as circumstances necessitate by written agreement executed by both parties.
- B. Each party agrees that it will not assign its interest in this AGREEMENT, or any part thereof, without the express written consent of the other party.
- C. In the event of a dispute between the parties over the meaning of this AGREEMENT, the parties shall meet in good faith to attempt to resolve the matter.
- D. Each party shall comply with all laws, ordinances, regulations and orders all applicable to work it will perform under this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF HAYWARD

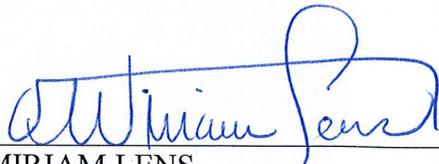
Recommended by:

  
\_\_\_\_\_  
ALEX AMERI  
Director of Utilities & Environmental Services

By:   
\_\_\_\_\_  
KELLY McADOO  
City Manager

Approved as to form:

  
\_\_\_\_\_  
MICHAEL LAWSON  
City Attorney

Attest:   
\_\_\_\_\_  
MIRIAM LENS  
City Clerk

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

By:   
\_\_\_\_\_  
Title: Chief Executive  
Officer/General Manager

- Attachments: A. Plan Scope of Work  
B. Plan Schedule



**ATTACHMENT A – PLAN SCOPE OF WORK**

Task	Description	Roles & Responsibilities	
		BAWSCA	CITY
1	Evaluate feasibility of conducting Pilot Water Transfer during future Mountain Tunnel shutdown	Primary responsibility for coordinating with SFPUC, EBMUD, and CITY to evaluate feasibility and identify specific operational conditions under which the Pilot Water Transfer could be implemented during a potential planned shutdown of Mountain Tunnel during the winter of 2018-2019	Participate in discussions and provide input, reviews and comments
2	Identify potential impacts to CITY of Pilot Water Transfer	Participate in discussions and provide reviews and comments	Primary responsibility for identifying potential impacts related to the delivery of transfer water to the CITY, including but not limited to, impacts on system pressure and flows and changes in water quality affecting customers
3	Obtain information on EBMUD's recent Freeport Facility operations	Primary responsibility for working with EBMUD to obtain updated operational and water quality information based on EBMUD's recent operation of the Freeport Facility that can be used to inform planning for the Pilot Water Transfer	Participate in discussions and provide input, reviews and comments
4	Develop Operational Plan for the Pilot Water Transfer	Primary responsibility for coordinating with SFPUC, EBMUD, and CITY to develop an Operational Plan to address and avoid potential impacts on CITY system pressure and flows related to the delivery of transfer water that were identified in the Technical Memorandum dated March 25, 2015 prepared by West Yost & Associates	Participate in discussions and provide input, reviews and comments

Task	Description	Roles & Responsibilities	
		BAWSCA	CITY
5	Develop Monitoring and Mitigation Plan	Review and provide comments on the Monitoring and Mitigation Plan. If needed, BAWSCA to facilitate coordination with SFPUC on plan.	Primary responsibility for developing a Monitoring and Mitigation Plan to be implemented during the next north to south operation of the Hayward Intertie (either for an emergency or as part of the Pilot Water Transfer)
6	Develop Public Communications Plan	Review and provide comments on the Public Communications Plan	Primary responsibility for developing a Public Communications Plan to be implemented as part of the execution of the Pilot Water Transfer to establish effective communications to all residential, commercial, and industrial water customers describing the potential impacts and long-term benefits to CITY water customers related to use of the Hayward Intertie for water transfers
7	Prepare draft Pilot Water Transfer Agreement	<p>Jointly prepare a draft Pilot Water Transfer Agreement for implementing the Pilot Water Transfer. The draft Pilot Water Transfer Agreement will be based on information developed in Tasks 1-6 and also include:</p> <ul style="list-style-type: none"> <li>• A list of estimated reimbursable costs specifically associated with operation of the Hayward Intertie during the Pilot Water Transfer</li> <li>• A list of reimbursable costs for use of the 33" and 42" CITY transmission pipelines and the Hesperian Pump Station for the duration of the Pilot Water Transfer</li> <li>• A list of reimbursable costs for the CITY to implement the Monitoring and Mitigation Plan and Public Communications Plan</li> </ul>	

**ATTACHMENT B – PLAN SCHEDULE**

<b>Task</b>	<b>Description</b>	<b>Schedule</b>	
		<b>Start</b>	<b>End</b>
1	Evaluate feasibility of conducting Pilot Water Transfer during future Mountain Tunnel shutdown	July 2017	October 2017
2	Identify potential impacts to CITY of Pilot Water Transfer	July 2017	October 2017
3	Obtain information on EBMUD’s recent Freeport Facility operations	April 2017	July 2017
4	Develop Operational Plan for Pilot Water Transfer	July 2017	March 2018
5	Develop Monitoring and Mitigation Plan	November 2017	September 2018
6	Develop Public Communications Plan	January 2018	September 2018
7	Prepare draft Pilot Water Transfer Agreement	July 2017	March 2018



C.4. BAWSCA-SFPUC Pilot Transfer Agreement (DRAFT)

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**AGREEMENT BETWEEN  
THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
AND THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION  
FOR OPERATION AND COST ALLOCATION  
OF THE PILOT WATER TRANSFER**

**RECITALS**

This Agreement (Agreement) is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ between the City and County of San Francisco, acting by and through its Public Utilities Commission (SFPUC), and the Bay Area Water Supply and Conservation Agency (BAWSCA) as to the operation and allocation of costs for water purchased by BAWSCA and delivered through the SFPUC/City of Hayward (Hayward)/East Bay Municipal Utility District (EBMUD) Intertie (Hayward Intertie) to wholesale customers of the San Francisco Regional Water System (RWS).

WHEREAS, the SFPUC owns and operates the RWS that delivers potable water to San Francisco retail customers, and to twenty-four cities and water districts and two private utilities that purchase water from the SFPUC (Wholesale Customers); and

WHEREAS, BAWSCA represents the Wholesale Customers; and

WHEREAS, BAWSCA has completed long-term water supply planning studies to identify the future water supply needs of its member agencies (collectively referred to herein as the "Long-Term Reliable Water Supply Strategy"); and

WHEREAS, based on the Long-Term Reliable Water Supply Strategy, BAWSCA is exploring potential long-term strategies to reliably meet the future water supply needs of its member agencies; and

WHEREAS, BAWSCA has partnered with EBMUD to engage in a one-year pilot water transfer ("Pilot Water Transfer") to evaluate the costs and benefits of partnering in future water transfer projects; and

WHEREAS, BAWSCA will purchase the Pilot Water Transfer water ("Pilot Transfer Supplies") from a willing seller; and

WHEREAS, BAWSCA has partnered with EBMUD to move water purchased by BAWSCA as part of the Pilot Water Transfer through the EBMUD service area and into the RWS through the Hayward Intertie (as described in Attachment 1); and

WHEREAS, the City of Hayward has agreed to receive and use the Pilot Transfer Supplies in lieu of RWS water delivered through the Mission and Newark Turnouts; and

WHEREAS, the City and County of San Francisco and the Wholesale Customers are signatories to the 2009 Water Supply Agreement (WSA) which governs water supply reliability and quality, as well as the fair allocation of RWS capital and operating costs; and

WHEREAS, the WSA restricts all but four of the Wholesale Customers from purchasing water for delivery into their respective service areas from any governmental entity without the prior written consent of San Francisco, which consent the SFPUC hereby provides for the Pilot Water Transfer; and

WHEREAS, in general, the WSA allocates costs between the SFPUC and Wholesale Customers based on their respective share of expenses incurred by the SFPUC in delivering water to them on the basis of proportional annual use; and

WHEREAS, SFPUC and BAWSCA agree that it is to the benefit of all users of the RWS that the agencies establish operations guidelines and a cost allocation method for the Pilot Water Transfer that ensures that the parties to the WSA are collectively kept whole financially for any costs related to the Pilot Water Transfer; and

WHEREAS, SFPUC and BAWSCA agree that the water supplied through the Hayward Intertie shall be consistent with the water quality provisions of the First Amended Joint Exercise of Powers Agreement Between the City and County of San Francisco Public Utilities Commission, East Bay Municipal Utility District, and City of Hayward for Long Term Operation and Maintenance of the Emergency/Maintenance Water System Intertie Project," (hereinafter referred to as the "Hayward Intertie Operating Agreement"); and

WHEREAS, SFPUC and BAWSCA agree that any Pilot Transfer Supplies introduced into the RWS as part of the Pilot Water Transfer will be considered additional to the RWS supply for the BAWSCA Member Agencies; and

WHEREAS, SFPUC and BAWSCA recognize that the WSA cost allocation methodology provides that the SFPUC is compensated for RWS capital and operating costs in proportion to each Wholesale Customer's share of the RWS deliveries; and

WHEREAS, SFPUC and BAWSCA agree that, with respect to the Pilot Water Transfer, when the water conditions of EBMUD and BAWSCA are such that the Pilot Water Transfer is appropriate for both agencies, SFPUC's and BAWSCA's respective roles and responsibilities as conveyor of the water (SFPUC) and owner of the water (BAWSCA), and the allocation of costs related to moving the Pilot Transfer Supplies through the RWS and to Wholesale Customers, will be carried out pursuant to this Agreement.

NOW THEREFORE, SFPUC and BAWSCA hereby agree as follows:

**1. RESPONSIBILITIES OF BAWSCA**

**BAWSCA shall:**

- A. Contract with Hayward as needed to provide that Hayward will (1) operate the Hayward Intertie to effectuate the Pilot Water Transfer as provided in the Hayward Intertie Operating Agreement and (2) accept the Pilot Transfer Supplies into Hayward's system.

- B. Contract with Hayward as needed to manage Hayward's reimbursable costs incurred as a result of accepting Pilot Transfer Supplies into Hayward's system.
- C. Reimburse the SFPUC for any operational costs directly attributable to the delivery of Pilot Transfer Supplies.
- D. Provide written notice to SFPUC at least sixty (60) days in advance of the Pilot Water Transfer stating its intent to commence the Pilot Water Transfer. The notice will include the planned timing and quantity of water anticipated to be delivered. BAWSCA shall also provide to SFPUC the allocated amounts of Pilot Transfer Supplies that will be delivered to each Wholesale Customer during the Pilot Water Transfer.

**2. RESPONSIBILITIES OF SFPUC**

**SFPUC shall:**

- A. Within thirty (30) days of receipt of BAWSCA's notification described above, or at such time as may be mutually agreed to by SFPUC and BAWSCA staff, SFPUC shall notify BAWSCA in writing whether and to what extent RWS facilities have sufficient capacity to accept the Pilot Transfer Supplies.
- B. Bill the Wholesale Customers according to the Provisions of the WSA. As provided in the WSA, SFPUC shall bill each individual Wholesale Customer for its use of the RWS for the entire volume of water transported to the Wholesale Customers during the period of the Pilot Water Transfer. Attachment 2 presents scenarios for calculating the Wholesale Revenue Requirement during the Pilot Water Transfer..
- C. Deliver Water to the Wholesale Customers during either Voluntary Water Use Reductions or Mandatory Water Use Reductions as described below:

**(i) Voluntary Water Use Reductions**

If SFPUC declares a shortage condition and requests voluntary water use reductions, as provided in Section 1.3.1 of Attachment H to the WSA, and the Pilot Water Transfer occurs, the accounting of water deliveries of RWS water and Pilot Transfer Supplies to the Wholesale Customers shall occur as described herein.

During the period of the Pilot Water Transfer, SFPUC shall consider the full quantity of Pilot Transfer Supplies a part of the total water deliveries to the Wholesale Customers. The total water deliveries to the Wholesale Customers during that period shall be calculated by the SFPUC as provided in the WSA. As stated above, BAWSCA shall provide to SFPUC the allocated amounts of Pilot Transfer Supplies that will be delivered to each Wholesale Customer during the Pilot Water Transfer.

**(ii) Mandatory Water Use Reductions**

When SFPUC declares that a system-wide water shortage emergency exists due to drought that requires mandatory water use reductions, as provided in Sections 1.3.2 and

1.4 of Attachment H to the WSA, SFPUC shall establish accounting of monthly water deliveries to each Wholesale Customer. During the month of the Pilot Water Transfer, the accounting of water deliveries of RWS water and Pilot Transfer Supplies to each individual Wholesale Customer shall occur as follows:

- a. Step 1: Tier 1 and Tier 2 drought allocations will be calculated pursuant to Attachment H to the WSA, including the determination of each Wholesale Customer's monthly budgets (An example is shown in Attachment 3, Table 3-1, Column C for 20% shortage condition using FY 12-13 as a baseline).
- b. Step 2: BAWSCA shall provide to the SFPUC the share of Pilot Transfer Supplies allocated to each Wholesale Customer (example proportions are shown in Attachment 3, Table 3-1, Column B and example share of Pilot Transfer Supplies shown in Attachment 3, Table 3-1, Column D).
- c. Step 3: SFPUC shall adjust each Wholesale Customer's monthly budgets to include the addition of each Wholesale Customer's share of the Pilot Transfer Supplies, as provided by BAWSCA in Step 2 (example modified annual budgets are shown in Attachment 3, Table 3-1, Column E).
- d. Step 4: During the period of the Pilot Water Transfer, the first water used by each Wholesale Customer shall be assumed to be its share of the Pilot Transfer Supplies supply as provided in Step 2 (i.e., the Pilot Transfer Supplies shall be the "first in, first out" for each Wholesale Customer) for the purposes of water accounting as described in the WSA, Article 3.11 and Attachment H, Article 2.4.
- e. Step 5: The provisions in the WSA for banking and excess use charges apply to each Wholesale Customer's use of the RWS supply, as provided in the WSA, Article 3.11 and Attachment H.

The Pilot Transfer Supplies conveyed by SFPUC through the RWS for the Pilot Water Transfer shall not count against any individual BAWSCA member agency's Interim Supply Limitation.

- D. SFPUC shall not apply the BAWSCA Bond Surcharge to Pilot Transfer Supplies. If the BAWSCA bond surcharge is in effect during the Pilot Water Transfer, the SFPUC shall continue to collect the surcharge from all Wholesale Agencies according to their usage of RWS water exclusive of the Pilot Transfer Supplies.
- E. Report the Pilot Transfer Supplies in Table J-1, "Base Usage and Allocation Rates," as shown in Attachment 4 and in accordance with Article 3.14 of the WSA.

**3. INDEMNITY**

SFPUC and BAWSCA each agrees to mutually indemnify and defend at its own expense, including attorneys’ fees, and hold the other, their officers, directors, employees and agents, harmless from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of or related to any negligent act, error or omission, or willful misconduct of itself, its officers, directors, employees and agents acting pursuant to this Agreement. This section shall survive termination or expiration of this Agreement.

**4. TERM**

This AGREEMENT shall be effective until completion of the one-year Pilot Water Transfer, unless extended by mutual agreement.

**5. CEQA**

The Pilot Water Transfer will comply with all applicable environmental regulations, including the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA).

**6. MODIFICATION**

This Agreement may be modified or amended only by a written document signed by both parties.

**7. DISPUTE RESOLUTION**

In the event of any dispute, the parties will promptly meet and confer, first at a staff level and then elevated to a meeting of executives, in a good faith attempt to resolve the dispute. If a dispute cannot be resolved by the parties independently, they may agree to submit such dispute to non-binding mediation by a mutually agreed-upon neutral third party with offices in the San Francisco Bay Area. The cost of mediation will be shared equally.

**8. NOTICE**

All notices required to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, registered and postage prepaid and addressed to the respective parties as follows:

If to Agency: Bay Area Water Supply & Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402  
Attention: Chief Executive Officer/General Manager

If to SFPUC: \_\_\_\_\_

Notification of a change in the name of the contact person shall be in writing.

**9. WAIVER**

A waiver of any requirement of this Agreement must be in writing by an authorized representative of the party waiving the requirement. The waiver by either party of a breach of any requirement of this Agreement will not be deemed a waiver of any such breach in the future or of a breach of any other requirement.

**10. INTERPRETATION**

Section headings are solely for convenience and are not intended to affect the interpretation of the Agreement. The Agreement will be interpreted reasonably, not in favor of or against either party.

**11. NO THIRD PARTY RIGHTS**

The parties do not intend this Agreement to create rights in any third parties and nothing in this Agreement should be construed to do so.

**12. SEVERABILITY**

If any provision of this Agreement or any portion thereof is held to be invalid or unenforceable for any reason, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event such provision will be severable and will not affect the validity or enforceability of any other provision.

**13. APPLICABLE LAW**

This Agreement, its interpretation and all work performed under it will be governed by the laws of the State of California.

**14. ENTIRE AGREEMENT**

This Agreement including any exhibits or attachments, constitutes the complete agreement between the parties and supersedes any prior agreements, promises, and understandings whether written or oral. This Agreement may be modified or amended only by written instrument signed by both parties.

**15. ATTACHMENTS TO THIS AGREEMENT**

- (1) Diagrams of the intersection of the EBMUD system, the Hayward Intertie, the City of Hayward system, and the RWS, including pump stations, turnouts, and meter locations and intertie system schematic. Four figures are included:

Diagram 1(a). Diagram of flow through the City of Hayward under normal conditions. Arrows indicate the anticipated direction of flow. Flow meters are located at the pump stations.

Diagram 1(b). Diagram of flow through the Hayward Intertie during the pilot water transfer (running in intertie operations mode 5, as defined in the July 2008 “Intertie Project Operations Plan”). Arrows indicate the anticipated direction of flow. Flow meters are located at the pump stations.

Diagram 1(c). Intertie system schematic showing flow direction during normal conditions and during intertie operations.

Diagram 1(d). 36” diameter transmission pipeline along Skywest Drive from Intertie Isolation Structure (labeled "Connection with EBMUD System") to the connection to the City of Hayward’s system 36” pipeline at Winton and Hesperian (labeled "1").

(2) Example: WSA Cost Allocation Tables.

Table 2-1. WSA Cost Allocation Table Identifying Wholesale Revenue Requirement Scenarios under the Example of a 10% Voluntary Shortage Condition..

Table 2-2. WSA Cost Allocation Table Identifying Wholesale Revenue Requirement Scenarios under the Example of Mandatory 20% Systemwide Shortage.

(3) Example: Water Allocation Table During a Pilot Water Transfer.

Table 3-1. Example Water Accounting During a Pilot Water Transfer Assuming a Mandatory 20% Systemwide Shortage.

(4) Example: Revised Table J-1 for Use in Accounting for Pilot Transfer Supplies According to Article 3.14 of the WSA.

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized officers as of the day and year first above written.

BAY AREA WATER SUPPLY & CONSERVATION AGENCY

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2014  
Nicole M. Sandkulla, CEO/General Manager

Title: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO  
ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2014  
Harlan L. Kelly, Jr., General Manager

APPROVED AS TO FORM:  
Dennis J. Herrera, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

DRA

# Appendix D: Agreements that do not Include BAWSCA – First Attempt

D.I. Principles for the Hayward Intertie Pilot Transfer Agreement (DRAFT)

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D.I. Principles for the Hayward Intertie Pilot Transfer Agreement (DRAFT)

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**PRINCIPLES FOR  
THE USE OF THE HAYWARD INTERTIE FOR  
THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY'S  
PILOT WATER TRANSFER**

1. The terms and conditions of the Joint Exercise of Power Agreement for Long Term Operation and Maintenance of the Emergency/Maintenance Water System Intertie Project, shall remain in full force and affect and the allowable uses identified in that agreement (i.e., emergency or planned critical work) shall retain priority access for use of the Hayward Intertie facilities notwithstanding the implementation of the Bay Area Water Supply and Conservation Agency's (BAWSCA) pilot water transfer. [1,2]
2. The City of Hayward (COH), East Bay Municipal Utilities District (EBMUD), San Francisco Public Utilities Commission (SFPUC) and BAWSCA shall develop a separate agreement defining the purpose of and terms and conditions for the use of the Hayward Intertie facilities (Hayward Intertie Use Agreement) for the purpose of delivering BAWSCA's pilot water transfer supplies including (1) the roles and responsibilities of the parties, (2) quantity and quality of the water transfer supplies, (3) terms for reimbursement and (4) duration of the use of the Hayward Intertie facilities related to the pilot water transfer. [3,6,7,8,10,11,13,14]
3. The Intertie Project Operations Plan shall be amended as necessary to accommodate delivery of BAWSCA's pilot water transfer supplies.
4. BAWSCA will reimburse all parties to the Joint Exercise of Power Agreement for appropriate costs related to use of the Hayward Intertie facilities for the delivery of BAWSCA's pilot water transfer supplies. [4,5,12]
5. All parties to the Hayward Intertie Use Agreement may terminate the agreement at any time during the implementation of the pilot water transfer consistent with the terms and conditions described in the Hayward Intertie Use Agreement and/or the Intertie Project Operations Plan. [15]

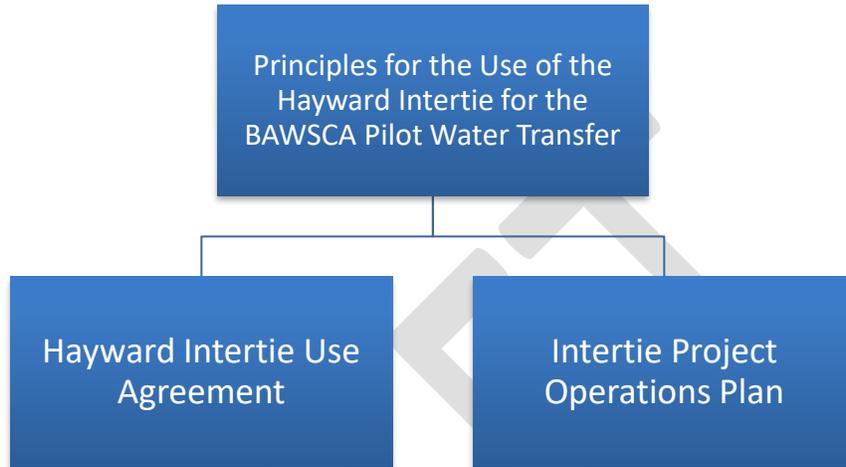
Suggested principle 9 will be addressed in the EBMUD-BAWSCA wheeling agreement

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**CONSOLIDATED PRINCIPLES FOR PROJECT  
SPECIFIC FOUR PARTY AGREEMENT**

1. The Intertie's stated purpose of JPA must be kept as the utmost priority. [SFPUC/ EBMUD]
2. SFPUC, EBMUD, and COH shall remain the sole parties in the intertie operating agreement (JPA) and the terms and conditions of JPA shall remain in full force and effect notwithstanding the project specific stand-alone agreement. [SFPUC/ EBMUD/ BAWSCA/ COH]
3. SFPUC, EBMUD, and COH shall remain solely responsible for complying with all conditions of approval for state or federal permits required to operate facilities used to wheel water to BAWSCA. [BAWSCA]
4. Costs for operating and start-up maintenance activities relating to pilot transfer operation of the intertie for the transfer will be borne by BAWSCA and/ or the recipients of the transfer water. [SFPUC/ EBMUD]
5. All COH costs for operating the intertie will be reimbursed. [COH]
6. The project specific pilot transfer operating plan (or agreement) should be prepared and outline the roles and responsibilities of the partners who will operate, including the chain of command and authorities. [SFPUC/ EBMUD] (No. 13 and No. 14 will be merged into this principle.)
7. The project specific stand-alone operating agreement shall be limited to the proposed pilot transfer for a limited duration and for purposes of the pilot only. [SFPUC/ EBMUD/ BAWSCA/ COH]
8. EBMUD will be responsible for the water quality only up to the point of delivery at the EBMUD/ COH intertie. [EBMUD] (No. 11 will be merged into this principle.)
9. Pertinent operating costs incurred exclusively for the pilot transfer operation of EBMUD's distribution and treatment systems shall be reimbursed to EBMUD under the terms and conditions outlined in the wheeling agreement between BAWSCA and EBMUD. [EBMUD]
10. Use of the Intertie facilities during the pilot is for the purposes of testing the technical and institutional feasibility of the delivery of potential water supplies to BAWSCA member agencies. [BAWSCA]
11. The Pilot Transfer Water delivered to Hayward will meet all standards for drinking water without further treatment of any kind, including residual disinfection and fluoride.
12. All City of Hayward costs for operating the intertie will be reimbursed. [COH]
13. City of Hayward's roles and responsibilities involving operation of the intertie will be clearly understood and documented. [COH]
14. The 42-inch intertie pipeline will be flushed before the first use by responsible parties. [COH/ EBMUD]

15. City of Hayward can terminate delivery of EBMUD water and restore SFPUC water supplies at any time during the pilot transfer operation if Hayward, at its sole discretion, determines that it is not able to meet all water quality parameters in its distribution system. [COH]



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## Appendix E: Agreements Negotiated that Include BAWSCA - Second Attempt

- E.1. BAWSCA-AWA Water Purchase Agreement
- E.2. BAWSCA-EBMUD Wheeling Agreement
- E.3. BAWSCA-Hayward Pilot Transfer Agreement
- E.4. BAWSCA-Hayward 2nd Cooperative Agreement (2017)
- E.5. BAWSCA-SFPUC Pilot Transfer Agreement

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E.I. BAWSCA-AWA Water Purchase Agreement

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**TEMPORARY WATER TRANSFER AGREEMENT  
BETWEEN AMADOR WATER AGENCY AND  
BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

This Temporary Water Transfer Agreement (Agreement) is entered into and made effective on \_\_\_\_\_, 2019 (Effective Date), by and between the Amador Water Agency (AWA), and the Bay Area Water Supply and Conservation Agency (BAWSCA), in the County of Amador. AWA and BAWSCA also are referred to in this Agreement individually as a “Party” or jointly as “Parties.”

**RECITALS**

A. AWA is authorized by the Amador Water Agency Act to sell and transfer water to BAWSCA as provided in this Agreement.

B. BAWSCA is a multi-county independent special district formed by special act of the California Legislature to represent the interests of 24 cities and public water districts and two private utilities that purchase wholesale water supplies from the San Francisco Public Utilities Commission’s (SFPUC) regional water system. BAWSCA also is authorized to acquire supplemental water supplies on behalf of its member entities to increase the overall reliability of their water supplies.

C. BAWSCA desires to engage in a pilot water transfer in late 2019 or early 2020 to demonstrate the feasibility of delivering additional water supplies to its member agencies during future interruptions in its SFPUC supplies or during droughts or other water shortages. The goal of the pilot transfer is to test the viability of and impacts to the existing infrastructure, and to determine the scope of the institutional approvals and agreements required to deliver such transfer supplies through existing infrastructure.

D. AWA holds an entitlement to 15,000 acre-feet of water supplies provided by the Pacific Gas and Electric Company (PG&E) under various pre-1914 appropriative water rights it holds on the Mokelumne River, which also are used to generate hydroelectric power through PG&E’s Mokelumne River power project (FERC license P-137). AWA has conserved approximately 6,600 acre-feet of its PG&E entitlement water, which AWA is authorized to transfer for consumptive uses inside or outside of Amador County under Water Code section 1011 (Transfer Water).

E. For the compensation provided in this Agreement, AWA is willing to temporarily make 1,000 acre-feet of Transfer Water available to BAWSCA by delivering that supply from the tailrace of PG&E’s Electra Powerhouse on the Mokelumne River to flow into Pardee Reservoir, where the East Bay Municipal Utility District (EBMUD) will divert it into its Mokelumne Aqueduct for conveyance, distribution, and use within BAWSCA’s service

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area. This transaction is referred to as the “Water Transfer.” The BAWSCA service area and its individual members’ service areas are shown on the map attached to this Agreement as Exhibit A (Authorized Place of Use), and incorporated herein by reference. The Water Transfer is anticipated to commence in late 2019 or early 2020, on a date to be agreed to later by the Parties.

NOW, THEREFORE, AWA and BAWSCA agree as follows:

**AGREEMENT**

1. **Recitals and Definitions Incorporated.** The foregoing recitals and definitions are incorporated herein by reference.

2. **Agreement to Transfer Water.** AWA will sell and make the Transfer Water available at the USGS gaging station located at the State Highway 49 bridge located between the Electra Powerhouse and head of Pardee Reservoir (Point of Delivery) [SUBJECT TO REVISION BASED ON OTHER AGREEMENTS], and BAWSCA will purchase the Transfer Water for reasonable and beneficial use within the Authorized Place of Use under the terms of this Agreement. BAWSCA will ensure that the redirection of the Transfer Water at EBMUD’s point of redirection, at the inlet of the Mokelumne Aqueduct, is consistent with applicable law and any conditions for the Water Transfer set forth in the CEQA documents provided for in Section 11 of this Agreement. BAWSCA will further ensure that the Transfer Water is used only within the Authorized Place of Use. [TO ADD STATEMENT REGARDING AWA’S OWNERSHIP OF THE WATER AND RIGHT TO TRANSFER]

3. **Scheduling of Transfer Water.** AWA will make the Transfer Water available to BAWSCA in late 2019 or early 2020 on a schedule that is mutually-acceptable to AWA and BAWSCA, provided that the failure of BAWSCA to schedule delivery of the Transfer Water will not excuse the obligation of BAWSCA to pay for the Reimbursement as set forth in Section 5 (Purchase Price and Cost Reimbursement).

4. **Accounting of Transfer Water Quantity.** The Transfer Water made available by AWA will be released at the tailrace of PG&E's Electra Powerhouse and measured at the USGS gage at the Point of Delivery [SUBJECT TO REVISION BASED ON OTHER AGREEMENTS]. BAWSCA will assume all risk of loss or depletion (if any) of the Transfer Water between the Point of Delivery and the Authorized Place of Use. [TO ADD OPERATIONAL REQUIREMENTS FROM EBMUD AGREEMENT.]

5. **Purchase Price and Cost Reimbursement.** BAWSCA will pay four hundred dollars per acre foot for 1,000 acre-feet of Transfer Water (\$400.00; Purchase Price) delivered by AWA at the Point of Delivery, and \$7,500 to reimburse AWA for a portion of AWA’s costs in developing and obtaining approval of the Water Transfer and related administrative matters (Reimbursement), for a total of \$407,500.00. Consistent with Section

4, the Purchase Price for the Transfer Water will not be subject to reduction or adjustment for loss, depletion or any other reason incurred beyond the Point of Delivery. Notwithstanding the foregoing, BAWSCA may notify AWA of the need to suspend the Water Transfer as further specified in Section 13, Suspension.

**6. Invoicing and Payments.** AWA will invoice BAWSCA for the Reimbursement amount and one-half of the Purchase Price on the first day that AWA makes Transfer Water available to BAWSCA at the Point of Delivery. AWA will invoice BAWSCA for the remaining one-half of the Purchase Price after the entire quantity of Transfer Water has been made available to BAWSCA at the Point of Delivery. BAWSCA will pay AWA's invoices within 30 days of receipt of an invoice. If BAWSCA fails to timely pay an invoice, it will pay interest at the annual rate of 10 percent until the invoice is paid in full. At AWA's option, payment will be made to AWA at the address provided under this Agreement for notices to AWA or pursuant to wire transfer instructions provided by AWA to BAWSCA.

**7. Water Quality.** AWA makes no warranty or representations as to the quality or fitness for use of the Transfer Water sold and delivered to BAWSCA. Without limiting the above, the Transfer Water is Mokelumne River water.

**8. Diversion, Conveyance and Use Costs.** AWA will be responsible for obtaining all approvals and agreements necessary to deliver the Transfer Water to the Point of Delivery. BAWSCA will be responsible for all agreements, approvals, permits and costs for rediverting the Transfer Water at the Point of Delivery and for conveying and distributing the Transfer Water to and in the Authorized Place of Use.

**9. Administrative and Litigation Expenses.**

a. Other than the Reimbursement to AWA provided for in Section 5, each Party will be responsible for its own engineering, legal, administrative, management and other costs necessary to support approval and implementation of the proposed Water Transfer.

b. BAWSCA will bear all costs of negotiating and administering any agreement required with EBMUD or other agencies for rediversion of the Transfer Water at the Mokelumne Aqueduct and wheeling and conveying the Transfer Water to the Authorized Place of Use.

c. Each Party will promptly notify the other Party of the filing and/or service of any claim, action or proceeding to attack, set aside or void the proposed Water Transfer or any authorization or approval related to the Water Transfer on any ground ("Project Litigation"). In the event of any Project Litigation, the Parties will confer to determine the best approach for defending the Water Transfer and to discuss possible joint defense or cost-sharing arrangements. AWA will be responsible for Project Litigation costs that relate to AWA's delivery of Transfer Water to the Point of Delivery, and BAWSCA will

be responsible for Project Litigation costs that relate to BAWSCA taking control of the Transfer Water at and downstream of the Point of Delivery, for redirection at the Mokelumne Aqueduct point of redirection and for conveyance and distribution to and within the Authorized Place of Use. The Parties agree that such joint defense or cost-sharing arrangements could include, but not be limited to: (1) retention of separate legal counsel by each Party; (2) retention of legal counsel to jointly represent both Parties; or (3) retention of legal counsel to represent one Party, with the other Party contributing financial support to the Party employing counsel. In the event that the Parties are unable to reach an agreement regarding costs and measures to defend any Project Litigation, either Party may terminate this Agreement in accordance with Section 14.

**10. Water Rights.** The Transfer Water made available to BAWSCA under this Agreement is a portion of the surface water conserved by AWA under its entitlement based on PG&E's pre-1914 appropriative water rights. Consistent with the provisions of California Water Code sections 109, 475, 1011, 1244, and 11961, the Water Transfer performed will not confer any appropriative, public trust or other right to water on any person or entity. Nothing in this Agreement will act as a forfeiture, diminution or impairment of any rights of AWA or PG&E to their full diversion of water after the expiration of the Agreement, and this Agreement will in no way prejudice any of AWA's or PG&E's rights thereto. The Parties agree that the water transferred under this Agreement is considered a beneficial use of water under California law. **[TO ADD LANGUAGE REGARDING AWA'S REPORTING OBLIGATIONS TO THE SWRCB. TO ADD LANGUAGE THAT AWA IS SOLELY RESPONSIBLE TO ENSURE THAT ALL ACTIVITIES CONTEMPLATED UNDER THIS AGREEMENT COMPLY WITH APPLICABLE WATER RIGHTS LAWS AND REGULATIONS.]**

**11. Environmental Review.** AWA will file a notice of exemption based on the categorical exemption for existing facilities under the provisions of the California Environmental Quality Act (CEQA) and the CEQA Guidelines promulgated by the California Natural Resources Agency. BAWSCA also will comply with CEQA as BAWSCA determines necessary. This agreement will not be executed and become effective until all CEQA review is complete and final.

**12. Term.** This Agreement will commence on the Effective Date set forth above and expire on December 31, 2020, unless terminated sooner in writing by the Parties pursuant to the provisions of this Agreement. Any obligations under this Agreement to be performed after December 31, 2020 will survive the expiration of the term of this Agreement and will be fully enforceable.

**13. Suspension.** At any time after AWA has begun to deliver the Transfer Water, BAWSCA may require AWA to suspend the Water Transfer and AWA shall comply with written notice of suspension issued by BAWSCA no later than 72 hours after receipt. Should BAWSCA be unable to adequately resolve the circumstances which created the need for the suspension, BAWSCA may terminate the Water Transfer and this Agreement. In the event

of a termination following a suspension, BAWSCA will pay AWA the Reimbursement and a prorated amount of the Purchase Price, which will reflect the amount of water received at the Point of Delivery.

**14. Termination.** This Agreement is subject to termination under the provisions of this section. In the event of termination of this Agreement as provided herein, the Parties thereafter will be under no further obligation or responsibility under this Agreement, and will release each other from further obligations under this Agreement, except as provided in this section. Prior to giving notice of termination, the Party electing to terminate will confer with the other Party to discuss and attempt to reasonably resolve the issues giving rise to the proposed termination. The Parties will comply with written notice of termination no later than five days after receipt.

a. A Party will have the right of termination if a Party reasonably determines that any required regulatory approval or third party agreement cannot be obtained to carry out the Water Transfer. Prior to such termination, the Parties will meet and confer to determine whether a required regulatory approval or third party agreement cannot be obtained to carry out the Water Transfer. In this case, BAWSCA would be required to pay AWA the Reimbursement but not the Purchase Price.

b. A Party will have the right of termination if a Party reasonably determines that the costs of any Project Litigation, any restrictions, fees, charges or costs imposed in the approvals of any regulatory agency, or any relief afforded to third parties in any action brought in state or federal court involving this Agreement or the Water Transfer, are too burdensome in relation to the benefits to be received under this Agreement. In this case BAWSCA will not be responsible any costs, including the Reimbursement and/or the Purchase Price.

c. As set forth in Section 13, BAWSCA will have the right to terminate the Water Transfer and the Agreement following a suspension. In this case, BAWSCA would be required to pay AWA the Reimbursement and a prorated amount of the Purchase Price, which will reflect the amount of water received at the Point of Delivery. **[TO ADD RIGHT TO TERMINATE IF ANOTHER AGREEMENT NECESSARY TO EFFECT THE TRANSFER IS TERMINATED.]**

**15. Cooperation.** The Parties will reasonably cooperate with each other, including the execution of all necessary documents and providing assistance in obtaining approvals and permits from regulatory agencies required to perform the obligations under this Agreement and to carry out the purpose and intent of this Agreement.

**16. [TO ADD INDEMNITY PROVISION TO ALIGN WITH OTHER AGREEMENTS.]**

**17. Waiver of Rights.** Any waiver, at any time, by any Party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, will not be deemed to be a waiver with respect to any other breach, default or matter.

**18. Notices.** All notices that are required, either expressly or by implication, to be given by any Party to the other Party under this Agreement will be from the designated officer of AWA and BAWSCA as each Party may, from time to time, authorize in writing to so act. The time for providing a notice under this Agreement may be changed by the Parties by confirming such change in writing. Any notices to Parties required by this Agreement will be delivered by e-mail as follows:

AWA:  
Amador Water Agency  
Gene Mancebo, General Manager  
[gmancebo@amadorwater.org](mailto:gmancebo@amadorwater.org)  
12800 Ridge Road  
Sutter Creek, CA 95685  
(209) 257-5245

With a copy to: Joshua M. Horowitz at [jmh@bkslawfirm.com](mailto:jmh@bkslawfirm.com)

BAWSCA:  
Bay Area Water Supply and Conservation Agency  
Nicole M. Sandkulla, CEO/General Manager  
[NSandkulla@bawsca.org](mailto:NSandkulla@bawsca.org)  
155 Bovet Road, Suite 650  
San Mateo, CA 94402  
(650) 349-3000

With a copy to: Allison Schutte at [aschutte@hansonbridgett.com](mailto:aschutte@hansonbridgett.com)

Notice will be deemed given upon transmission by e-mail with a request that the receiving party confirm receipt. The Parties will promptly give written notice to each other of any change of its designated contact person or address, and transmittal to the e-mail addresses stated herein will be deemed sufficient unless written notification of a prior change of address has been received.

**19. Approvals.** Where the terms of this Agreement provide for an approval or action to be based upon the opinion, determination, approval or review of either Party, such terms are not intended to be, and will not be construed as permitting such actions to be arbitrary, capricious or unreasonable. Any opinion, determination, approval or review required of a Party under this Agreement will be provided in a timely manner.

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20. **Other Agreements.** Nothing contained herein prohibits AWA from providing water services and sales to other persons or entities as authorized by law, which do not unreasonably interfere with AWA's obligations under this Agreement.

21. **Entire Agreement.** This Agreement constitutes the entire Agreement between the AWA and BAWSCA and supersedes any oral agreement, statement or promise between them relating to the subject matter of the Agreement.

22. **Amendments.** To be effective, an amendment to this Agreement must be agreed to in writing by the Parties.

23. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts will be sufficient proof of this Agreement and be binding on the Parties.

24. **Interpretation.** The Parties have entered into this Agreement freely and voluntarily. This Agreement has been arrived at through negotiation, and each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.

25. **Signatures and Authority.** The signatories to this Agreement represent that they have authority to execute and to bind the Party on whose behalf they execute this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**AMADOR WATER AGENCY:**

By: \_\_\_\_\_  
Gene Mancebo  
General Manager

**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY:**

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By: \_\_\_\_\_  
Nicole M. Sandkulla  
CEO/General Manager

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**EXHIBIT A**

**MAP OF BAWSCA AND BAWSCA MEMBERS' SERVICE AREAS**

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E.2. BAWSCA-EBMUD Wheeling Agreement

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**AGREEMENT  
BETWEEN  
EAST BAY MUNICIPAL UTILITY DISTRICT  
AND  
THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
TO WHEEL WATER FOR A  
SHORT-TERM PILOT WATER TRANSFER**

THIS AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, 2019, between East Bay Municipal Utility District (“EBMUD”), a public agency in the State of California, and Bay Area Water Supply and Conservation Agency (“BAWSCA”), a public agency in the State of California, as to the wheeling of Pilot Transfer Water secured by BAWSCA from Amador Water Agency (“AWA”), a willing seller, through EBMUD water facilities to the San Francisco Regional Water System (“RWS”) and to the wholesale customers of the San Francisco Public Utility Commission (“SFPU”) that are member agencies of BAWSCA.

**RECITALS**

WHEREAS, EBMUD is a public agency formed under the Municipal Utility District Act enacted by the California Legislature in 1921 which owns and operates a water system that delivers potable water to 1.4 million people in Alameda and Contra Costa Counties; and

WHEREAS, BAWSCA is a public agency enabled by a special act of the California Legislature and formed by its member agencies to provide regional water supply planning, resource development, and conservation program services for the benefit of its 26 member agencies, and BAWSCA’s activities include the planning and acquisition of supplemental water supplies to enhance the reliability of 16 cities, 8 water districts, and 2 private water utilities that provide water to 1.8 million people and over 40,000 commercial, industrial and institutional accounts in Alameda, Santa Clara and San Mateo Counties; and

WHEREAS, BAWSCA is exploring water transfers as a potential long-term strategy to reliably meet the water supply needs of its member agencies consistent with its Long-Term Reliable Water Supply Strategy; and

WHEREAS, EBMUD and BAWSCA are interested in exploring the benefits of working together to improve long-term water supply reliability; and

WHEREAS, BAWSCA has previously evaluated the feasibility of partnering on a pilot water transfer, and for that purpose prepared a Short-Term Pilot Water Transfer Plan in September 2013 which described a pilot transfer in which BAWSCA would purchase water from willing sellers outside the Mokelumne River watershed, and EBMUD would wheel that water through

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the Freeport Regional Water Project facilities to the Mokelumne Aqueducts and ultimately to the BAWSCA Service Area; and

WHEREAS, in the Short-Term Pilot Water Transfer Plan, BAWSCA identified several agreements needed to conduct a pilot water transfer, including an agreement between BAWSCA and EBMUD to provide for the wheeling of water through EBMUD’s raw water system, the treatment of such water by EBMUD, and the use of EBMUD’s distribution system to convey such water to the SFPUC-EBMUD-Hayward Intertie (“Hayward Intertie”) to the wholesale customers in the RWS that are BAWSCA’s member agencies; and

WHEREAS, BAWSCA has proposed a new pilot water transfer which differs from the project described in the Short-Term Pilot Water Transfer Plan insofar as BAWSCA would instead forgo use of the Freeport Regional Water project facilities and purchase the transfer water from AWA, which is located upstream of Pardee Reservoir in the Mokelumne River watershed and holds a contractual right to the use of water appropriated pursuant to water rights held by Pacific Gas & Electric Company (“PG&E”); and

WHEREAS, BAWSCA has proposed a Pilot Water Transfer during the SFPUC's planned Hetch Hetchy shutdown beginning in January 2020 and expected to end in February 2020; and

WHEREAS, although EBMUD has expressed its legal and other concerns regarding the Pilot Transfer, including but not limited to water rights issues arising from the source of water to be used for the Pilot Transfer, EBMUD is nevertheless willing to proceed with this pilot transfer on a voluntary, non-precedential one-time basis on the terms and conditions set forth in this Agreement, as an accommodation to BAWSCA and AWA, subject to the understanding that EBMUD’s concerns will need to be fully considered and adequately addressed, as appropriate, before future transfers of AWA water are made; and

WHEREAS, EBMUD and BAWSCA agree that when the water conditions of EBMUD and BAWSCA are such that a one-time pilot water transfer is appropriate for both agencies, as set forth herein, EBMUD’s and BAWSCA’s respective roles and responsibilities for the wheeling of BAWSCA’s Pilot Transfer Water through EBMUD facilities will be carried out pursuant to terms and conditions as described in this Agreement.

**AGREEMENT**

In consideration of the foregoing recitals and the terms and conditions contained herein, EBMUD and BAWSCA agree to the following:

**1. Definitions.**

When used in this Agreement, the following definitions will apply:

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- (a) "Agreement" means this agreement for the wheeling of water for a short-term pilot water transfer.
- (b) "AWA" means Amador Water Agency.
- (c) "BAWSCA" means Bay Area Water Supply and Conservation Agency.
- (d) "BAWSCA Service Area" means all areas or lands where BAWSCA is authorized to provide water service.
- (e) "CEQA" means the California Environmental Quality Act.
- (f) "Condition Precedent" means any condition described in subsection (a) or (b) of Article 3 (Conditions Precedent).
- (g) "EBMUD" means East Bay Municipal Utility District.
- (h) "EBMUD Service Area" means all areas or lands where EBMUD is authorized to provide water service.
- (i) "EBMUD System" means all EBMUD owned and operated facilities used to convey, store, treat, and distribute water, including its raw water system, water storage facilities including surface water reservoirs, water treatment systems and facilities, and distribution system.
- (j) "Hayward" means the City of Hayward.
- (k) "Hayward Intertie" means the physical interconnection between the EBMUD System and the RWS that is operated and maintained under the Hayward Intertie Agreement.
- (l) "Hayward Intertie Agreement" means the July 10, 2007 First Amended Joint Exercise of Powers Agreement among SFPUC, EBMUD, and Hayward.
- (m) "Initial Written Notice" means the written notice described in Article 5 (Initial Written Notice) by which BAWSCA requests that EBMUD wheel a specific quantity of Pilot Transfer Water on a schedule requested by BAWSCA.
- (n) "Mokelumne Aqueducts" means EBMUD's Mokelumne Aqueducts used to convey raw water from the Mokelumne River watershed to the EBMUD Service Area.
- (o) "Parties" or "Party" mean BAWSCA and/or EBMUD.
- (p) "Pilot Transfer Water" means the quantity of raw water stated in BAWSCA's Initial Written Notice to EBMUD, not to exceed 1,000 acre-feet, that is purchased by BAWSCA

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from AWA under their separate Water Transfer Agreement, and diverted, conveyed, treated, and made available by EBMUD to BAWSCA at the Point of Delivery, less the quantity of Wheeling Losses, in the manner provided by this Agreement.

**(q)** “Pilot Water Transfer” means that certain planned water transfer described in the Recitals of this Agreement which is the subject of this Agreement and is anticipated to occur during January and February of 2020.

**(r)** “Intertie Operations Plan” means that certain document agreed to among EBMUD, SFPUC, and Hayward which will govern the operations of the Hayward Intertie and related facilities for Pilot Water Transfer purposes in conjunction with the Hayward Intertie Agreement and the separate agreement described in Article 3(a)(iii)(1) of this Agreement.

**(s)** “Point of Delivery” means the Hayward Intertie.

**(t)** “Point of Diversion” means the raw water intake facility located within Pardee Reservoir, at which location EBMUD commences wheeling of water.

**(u)** “Points of Measurement” means: (1) the location at which releases of water from PG&E’s Electra Powerhouse into the North Fork of the Mokelumne River are measured (known as Gage M-65), and (2) the location at which releases of water from PG&E’s Electra Diversion Dam on the North Fork of the Mokelumne River are measured (known as Gage M-46 and USGS Gage 11316700).

**(v)** “Point of Release” means the location at which releases of water from PG&E’s Electra Powerhouse discharge into the North Fork of the Mokelumne River.

**(w)** “Reimbursable Wheeling Expenses” means the payment by BAWSCA to EBMUD specified in subsection (b) of Article 8 (Wheeling Expenses and Charges—Reimbursable Wheeling Expenses). The purpose of the Reimbursable Wheeling Expenses is to reimburse EBMUD for the capital and operational costs EBMUD will incur to perform its obligations under this Agreement.

**(x)** “Replacement Water Charge” means the payment by BAWSCA to EBMUD specified in subsection (c) of Article 8 (Wheeling Expenses and Charges—Replacement Water Charge). The purpose of the Replacement Water Charge is to address the potential adverse water supply impact EBMUD may experience by wheeling water under this Agreement by partially offsetting EBMUD’s anticipated cost to obtain replacement water.

**(y)** “RWS” means the San Francisco Regional Water System.

**(z)** “SFPUC” means the San Francisco Public Utilities Commission.

(aa) "Water Transfer Agreement" means that certain separate agreement between AWA and BAWSCA under which AWA would sell and make available for diversion up to 1,000 acre-feet of water for transfer to BAWSCA.

(bb) "Wheeling Losses" means the water quantity lost during the wheeling of water between the Point of Release and the Point of Delivery, including the losses incurred during the transport of raw water within the Mokelumne River below Electra Powerhouse and through Pardee Reservoir and the Mokelumne Aqueducts and other transmission facilities, and losses incurred during the treatment and conveyance of treated water to the Point of Delivery. For purposes of this Agreement, the Parties agree the Wheeling Losses equal twenty percent (20%) of the Pilot Transfer Water. For example, if the quantity of Pilot Transfer Water is 1,000 acre-feet, then Wheeling Losses equal 200 acre-feet.

**2. Effective Date and Termination.**

(a) This Agreement shall become effective upon its execution by the Parties.

(b) This Agreement will terminate on the earliest occurring of the following: (i) June 30, 2020, (ii) when all obligations under this Agreement have been performed, or (iii) upon the early termination of this Agreement pursuant to Article 9 (Suspension Early Termination). The Parties shall have the option to extend the Agreement by up to six months, until December 31, 2020, by mutual written agreement. The payment and indemnification obligations of this Agreement shall survive the termination of this Agreement.

**3. Conditions Precedent.**

(a) Neither Party is obliged to perform under this Agreement unless and until each of the following events has occurred:

(i) BAWSCA and AWA have executed a Water Transfer Agreement which requires AWA to comply in substance with the obligations set forth in paragraphs (b)(i)(1) through (b)(i)(4), inclusive, of Section 6 of this Agreement. [PENDING FURTHER REVIEW.]

(ii) EBMUD and AWA have executed a separate agreement under mutually agreeable terms under which those agencies agree to work to address the permissible uses and transferability of AWA's claimed entitlement to pre-1914 conserved water.

(iii) EBMUD, SFPUC, and Hayward have each executed or approved (1) an agreement which authorizes the Hayward Intertie to be used for the pilot water transfer described in this Agreement and (2) the Intertie Operations Plan.

(iv) Each Party has completed its respective obligations to obtain or complete all regulatory permits, approvals, environmental compliance and environmental reviews specified in Article 4 (Regulatory Approvals, Environmental Compliance and Environmental Reviews).

(b) EBMUD will not be obligated to begin wheeling water under this Agreement unless and until all of the following have occurred:

(i) BAWSCA has timely provided the Initial Written Notice to EBMUD described in Article 5 (Initial Written Notice), and EBMUD has determined its contents are sufficient and that EBMUD can accommodate the schedule requested therein.

(ii) EBMUD determines in its sole discretion, regardless of the season in which the transfer occurs, that it will have sufficient unused capacity in the intake, transmission, treatment, and distribution facilities which will be used in connection with this Agreement at the time the water transfer is to occur.

(iii) AWA has made available Pilot Transfer Water at the Point of Release in accordance with the terms of Article 6 (Operations) and the Water Transfer Agreement.

(c) If nonattainment of one or more Conditions Precedent would prevent the pilot water transfer from being completed, or if any unacceptable terms or conditions of said permits and contracts or revised environmental compliance requirements or operational conditions would substantially interfere with the completion of the transfer, the Parties will consult with each other and make a good faith effort to determine if such circumstances could be addressed and or mitigated in some manner such that wheeling could occur on mutually agreeable terms and, if so, to amend this Agreement to the extent practicable. If, after undertaking such consultation, either Party determines the circumstances cannot be adequately addressed, this Agreement may be allowed to expire or be terminated, pursuant to Article 9 (Suspension; Early Termination).

#### **4. Regulatory Approvals, Environmental Compliance and Environmental Reviews.**

(a) Permits and Approvals. BAWSCA understands that no permits are required to complete this pilot transfer. In the event permits or other approvals are required, BAWSCA, and not EBMUD, shall be responsible, as between the Parties to this Agreement, for obtaining any permits or other approvals required to (i) secure the water to be transferred, (ii) divert and convey the water in the manner described in this Agreement, (iii) use facilities not controlled by the Parties to this Agreement, including facilities controlled by SFPUC or Hayward, (iv) use the water to be conveyed within the BAWSCA Service Area, or (v) perform any other activity contemplated by this Agreement. EBMUD shall not bear any costs associated with obtaining such permits or other approvals and complying with their terms and conditions.

**(b) CEQA.**

**(i)** Each Party shall be responsible for ensuring CEQA compliance for its respective actions required to wheel Pilot Transfer Water.

**(ii)** BAWSCA shall serve as lead agency for purposes of CEQA. EBMUD shall be a responsible agency.

**(iii)** The parties agree that the actions contemplated in this Agreement are exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15301 and 15061(b)(3).

**(iv)** BAWSCA will prepare a Notice of Exemption (“NOE”) for this Agreement and the activities to be performed under it and provide a copy to EBMUD. Each Party is responsible for final preparation, filing and posting of a NOE.

**(v)** If it is subsequently determined that additional CEQA review is required, this Agreement may be amended as necessary with the mutual written consent of the Parties or may be terminated in accordance with the provisions of Article 9 (Suspension; Early Termination).

**5. Initial Written Notice.**

**(a)** BAWSCA shall provide EBMUD with the Initial Written Notice at least twenty-eight (28) calendar days before it desires EBMUD to commence the diversion water at the Point of Diversion for wheeling to BAWSCA. The Initial Written Notice shall include the following:

**(i)** The quantity of Pilot Transfer Water which AWA will make available to BAWSCA at the Point of Release, which quantity shall not exceed 1,000 acre-feet. EBMUD will calculate Wheeling Losses based on the quantity stated on the Initial Written Notice. Wheeling Losses shall not be made available to BAWSCA at the Point of Delivery.

**(ii)** The rate (e.g., cubic feet per second) at which such quantity will be made available by AWA at the Point of Release. EBMUD will attempt to make water available to BAWSCA at the Hayward Intertie at substantially the same rate, aligned as closely as practicable, less 20% for Wheeling Losses, and further subtracting as may be necessary to account for any portion of Pilot Transfer Water already provided in the form of pre-transfer flushing water.

**(iii)** A requested time schedule for the conveyance of Pilot Transfer Water to BAWSCA. The schedule shall describe the dates when AWA will begin and cease making

Pilot Transfer Water available at the Point of Release. EBMUD will attempt to align, as closely as practicable, the timing of water availability to BAWSCA at the Point of Delivery with the timing of water availability at the Point of Release as described in the approved Initial Written Notice.

(b) EBMUD shall in turn respond to BAWSCA within ten (10) business days regarding whether EBMUD can accommodate BAWSCA's requested schedule. If EBMUD determines it can wheel the Pilot Transfer Water on the requested schedule, such determination will be subject to EBMUD's rights under Article 9 (Suspension; Early Termination) and subsection (d) of Article 6 (Operations—Operational Modifications).

(c) In the event that EBMUD determines it is unable to accommodate BAWSCA's requested wheeling schedule, the Parties agree to meet and confer as soon as practicable in order to identify an alternative delivery schedule. If it is deemed by either Party that an alternative delivery schedule cannot be accommodated, and that this Agreement therefore must be terminated, the Parties shall follow the procedures in Article 9 (Suspension; Early Termination).

**6. Operations.**

(a) Provisions Applicable to Both Upstream and Intertie Operations.

(i) Schedule. Operational activities will be performed on the schedules set forth in the approved Initial Written Notice and Intertie Operations Plan. The Parties expect the Pilot Water Transfer to occur in its entirety during the forthcoming scheduled Hetch Hetchy outage and anticipate that Pilot Water Transfer activities will begin on or about January 6, 2020 with flushing of the Hayward Intertie. The duration of Pilot Water Transfer operations may vary depending on the volume of Pilot Transfer Water and the rate at which such water is made available, conveyed, and delivered. Pilot Water Transfer operations are expected to conclude no later than February 5, 2020.

(ii) Alignment of Rate and Timing. EBMUD shall attempt to align rate and timing upstream and downstream as closely as practicable in the manner stated in Article 5(a)(ii) and 5(a)(iii) of this Agreement. The purpose of such alignment is to avoid the need for EBMUD to store water, or withdraw water from storage, to complete the Pilot Water Transfer.

(b) Upstream Operations.

(i) AWA's Obligations. BAWSCA shall include provisions in its Water Transfer Agreement with AWA requiring AWA to comply in substance with the following obligations:

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(1) AWA shall make water Pilot Transfer Water available at the Point of Release at the rate described in the approved Initial Written Notice, and on the schedule described therein, and shall continue doing so until it has made available the entire quantity described in the approved Initial Written Notice. It is understood that reasonable changes to flow rate may be made (e.g. ramp-down period). Schedule, rate and volume shall be as specified in the approved Initial Written Notice; however, the Parties currently anticipate AWA will commence making water available on or about January 13, 2020 and will continue for approximately 20 days, unless such activities are suspended pursuant to Article 9.

(2) The Pilot Transfer Water made available shall be additional to the minimum instream flow and release obligations applicable when the Pilot Water Transfer occurs (e.g. requirements under the Lodi Decrees).

(3) AWA shall ensure that total usage of the water supply available to it pursuant to its contract with PG&E does not exceed thirty (30) cubic feet per second on a monthly average while the Pilot Water Transfer is occurring, inclusive of the water it makes available as Pilot Transfer Water plus all other water used within the Amador Water System. [PENDING FURTHER REVIEW.]

(4) AWA shall provide such information to PG&E as may be necessary for PG&E to report the Pilot Water Transfer to the State Water Resources Control Board in connection with its water rights reporting.

(ii) Measurement. After Pilot Water Transfer operations are complete, EBMUD shall verify the quantity of Pilot Transfer Water made available by AWA at the Points of Measurement. Specifically, EBMUD shall add together the flows measured at each Point of Measurement (i.e., Gage M-46, which measures releases from Electra Diversion Dam, plus Gage M-65, which measures releases from Electra Powerhouse) during each month in which Pilot Water Transfer activities occur, and subtract from that sum PG&E's minimum monthly release obligation at Electra Powerhouse during the same months. EBMUD will use the result of this calculation to determine whether AWA released the full quantity of Pilot Transfer Water in addition to the separate minimum flows PG&E is required to maintain at Electra Powerhouse during the months in which Pilot Water Transfer activities occur, as expected.

(iii) Operational Deadline. Notwithstanding anything in this Agreement to the contrary, EBMUD shall have no obligation to divert any quantity of water at the Point of Diversion after July 1, 2020. The purpose of this provision is to ensure EBMUD is able to comply with the terms and conditions of its water rights.

(c) Intertie Operations. The authorized staff of EBMUD, SFPUC and Hayward shall jointly develop and mutually approve an Intertie Operations Plan prior to commencing the wheeling of water. Pilot Transfer Water shall be made available at the Hayward Intertie upon a schedule, at the rate, and in the manner described in the approved Intertie Operations Plan, which may be subsequently modified as provided therein without further amendment of this Agreement.

(d) Operational Modifications.

(i) By EBMUD. EBMUD reserves the right to modify any term described in the approved Initial Written Notice, or any operational provision set forth in this Article, at any time it reasonably determines in its sole discretion that modifications are needed to:

- (1) protect the integrity of EBMUD's facilities;
- (2) address actual or potential significant adverse impacts to EBMUD's water supply or to the treatment or distribution of water to its customers;
- (3) respond to regulatory directives from state and/or federal agencies;
- (4) fully comply with permits, water rights, laws, and regulations applicable to EBMUD;
- (5) protect the health and safety of EBMUD's employees and or customers;
- (6) respond to emergencies or operational issues that may arise during the period of wheeling; and/or
- (7) avoid unreasonable effects to fish, wildlife, or other instream beneficial uses or injury to any legal user of water.

(ii) EBMUD will notify BAWSCA of any such modification at the earliest reasonable opportunity.

(iii) By BAWSCA. BAWSCA may propose modifications to any operational term described in the approved Initial Written Notice or in this Article at any time it determines modifications would be necessary or beneficial. EBMUD will consider the proposed modifications in good faith and will not unreasonably withhold its approval of any modification that it determines can be accomplished without adversely impacting

EBMUD or its water rights, water supply, infrastructure, operations, or its legal, financial or other interests.

(iv) Disputed Modifications. If a Party modifies, or proposes to modify, any operational term described in the approved Initial Written Notice or in this Article in a manner that is not acceptable to the other Party, the Parties shall meet and confer as soon as practicable to discuss the modification and the attendant circumstances. The Parties may agree on an alternative operational modification. If the Parties cannot reach agreement, either Party may elect to temporarily suspend this Agreement or to terminate it early in accordance with the procedures in Article 9 (Suspension; Early Termination).

(v) EBMUD may modify operations described in the Intertie Operations Plan in the manner set forth in that document, notwithstanding the other provisions of this subsection (d).

## 7. Wheeling of Water.

(a) The quantity of Pilot Transfer Water made available by AWA shall be metered by EBMUD at the Points of Measurement. EBMUD shall meter the quantity of Pilot Transfer Water diverted at the Point of Diversion. EBMUD shall also meter the quantity of water that it makes available to BAWSCA at the Point of Delivery. These meters shall be used to determine the quantities released by AWA, and diverted and made available by EBMUD.

(b) BAWSCA will be solely responsible for obtaining the Pilot Transfer Water from AWA and paying all associated charges. BAWSCA shall take possession of the Pilot Transfer Water at the Point of Release.

(c) Upon the satisfaction of all Conditions Precedent set forth in Article 3 (Conditions Precedent), and subject to the other provisions of this Agreement, EBMUD agrees to make every reasonable effort to complete the following actions:

(i) Divert the Pilot Transfer Water at the Point of Diversion in accordance with the quantity, rate, schedule, and other terms specified in the approved Initial Written Notice.

(ii) Convey the raw water through EBMUD's Mokelumne Aqueducts to the EBMUD Service Area.

(iii) Treat the conveyed raw water at one of EBMUD's treatment plants, in the same manner as EBMUD treats other surface water supplies, including fluoridation.

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(iv) Convey the treated water through EBMUD's treated water distribution system to the Point of Delivery.

(v) Make the Pilot Transfer Water, less the quantity of Wheeling Losses, available to BAWSCA at the Point of Delivery in accordance with the quantity, rate, schedule, and other terms specified in the approved Intertie Operations Plan and this Agreement. For example, if the total quantity of Pilot Transfer Water is 1,000 acre-feet, EBMUD would make available 800 acre-feet at the Point of Delivery. The rate of delivery is currently anticipated to be approximately 15 million gallons per day but is subject to change.

(vi) BAWSCA acknowledges that a portion of the Pilot Transfer Water to be made available at the Point of Delivery shall be provided in the form of pre-transfer flushing water as described in the Intertie Operations Plan. **The pre-transfer flushing water is expected to be provided before AWA makes water available at the Point of Release and shall be used to flush the Hayward Intertie. [PENDING FURTHER REVIEW.]**

(d) Ownership of the Pilot Transfer Water will remain with BAWSCA at all times except as expressly provided in this Agreement. EBMUD will have no responsibility for the Pilot Transfer Water once it has made such water available to BAWSCA at the Point of Delivery. BAWSCA shall ensure that all water it takes at the Point of Delivery pursuant to this Agreement is reasonably and beneficially used within the BAWSCA Service Area.

(e) EBMUD will not store any water under this Agreement on a temporary or long-term basis. The Pilot Transfer Water will be conveyed directly from Pardee Reservoir, to the Mokelumne Aqueducts, to EBMUD's water treatment and distribution facilities, to the Point of Delivery. BAWSCA acknowledges it must be prepared to take delivery without delay. Any water that is made available to BAWSCA in accordance with this Agreement and is not taken by BAWSCA shall be deemed forfeited by BAWSCA and shall become the exclusive property of EBMUD.

(f) It is understood and agreed that, while EBMUD will make every reasonable effort to wheel Pilot Transfer Water pursuant to the terms of this Agreement, EBMUD is not warranting or guaranteeing that it will be able to divert, treat, and/or make available Pilot Transfer Water, nor shall EBMUD be liable for any failure to wheel water to BAWSCA hereunder except for liability within the scope of the indemnity obligation described in subsection (b) of Article 10 (Indemnity).

**8. Wheeling Expenses and Charges.**

(a) BAWSCA shall pay EBMUD a per-acre-foot charge consisting of two components: the Reimbursable Wheeling Expenses, plus the Replacement Water Charge. These components

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are described in subsections (b) and (c) of this Article, respectively, and shall be calculated as described therein.

**(b) Reimbursable Wheeling Expenses.**

**(i)** The purpose of the Reimbursable Wheeling Expenses is to reimburse EBMUD for the capital and operational costs EBMUD will incur to perform its obligations under this Agreement. BAWSCA shall bear EBMUD's capital and operational costs of wheeling services provided by EBMUD under this Agreement as set forth in this Article.

**(ii)** BAWSCA will pay Reimbursable Wheeling Expenses to EBMUD in the amount of \$600.00 per acre-foot for Pilot Transfer Water that is actually made available to BAWSCA at the Point of Delivery. Such Reimbursable Wheeling Expenses shall accrue on an ongoing basis as water is made available to BAWSCA at the Point of Delivery, whether or not BAWSCA actually takes possession of such water, including Pilot Transfer Water provided as pre-transfer flushing water. BAWSCA shall not be required to pay Reimbursable Wheeling Expenses in any amount with respect to Pilot Transfer Water that is not made available at the Point of Delivery.

**(iii)** The Reimbursable Wheeling Expenses are intended for the one-time wheeling of up to 1,000 acre-feet of Pilot Transfer Water, less Wheeling Losses, from the Point of Diversion to the Point of Delivery. EBMUD's wheeling rates and methodologies remain under development. Because of the short-term, limited-volume, one-time nature of this pilot transfer project, the Reimbursable Wheeling Expenses do not necessarily include all operational expenses for which EBMUD is lawfully entitled to reimbursement. Accordingly, the amount and methodology of the Reimbursable Wheeling Expenses is not precedential for any other water transfer.

**(c) Replacement Water Charge.**

**(i)** In addition to paying the Reimbursable Wheeling Expenses, BAWSCA shall pay EBMUD a charge of \$35.00 per acre-foot of Pilot Transfer Water diverted by EBMUD at the Point of Diversion. For example, if EBMUD diverts 1,000 acre feet of Pilot Transfer Water at the Point of Diversion, BAWSCA shall pay EBMUD a total Replacement Water Charge of \$35,000.00.

**(ii)** The purpose of the Replacement Water Charge is to address the potential adverse water supply impact EBMUD may experience as a result of wheeling water under this Agreement. The Replacement Water Charge will partially offset EBMUD's anticipated cost to obtain replacement water, should EBMUD determine a need to obtain such water.

(iii) EBMUD is not obliged to seek or obtain replacement water. It may decide to do so in its sole discretion, taking into account hydrological conditions, water supply conditions, customer demand, and other factors. BAWSCA shall pay the Replacement Water Charge regardless of whether EBMUD actually seeks or obtains replacement water. BAWSCA acknowledges the agreed Replacement Water Charge has been discounted, relative to the actual replacement costs EBMUD would incur, in consideration of the possibility that EBMUD will not need to seek or obtain replacement water.

(iv) Provided BAWSCA pays the Replacement Water Charge, BAWSCA shall have no further obligation to mitigate any water supply impact to EBMUD that may result from the transfer nor will BAWSCA bear any liability to EBMUD which may arise from such a water supply impact.

(d) Invoicing. EBMUD will invoice BAWSCA within 30 days of completing its wheeling obligations under this Agreement. The amount owed will be calculated in accordance with this Article. If this agreement is terminated early, EBMUD will provide the invoice within 30 days following this Agreement's early termination, and the amount owed will be calculated in accordance with subsection (b)(iv) of Section 9 (Suspension; Early Termination). Two (2) copies of the invoice, together with supporting documentation, will be submitted to the Chief Executive Officer/General Manager of BAWSCA at the address listed in Section 14 (Notices). BAWSCA shall pay the invoiced amount to EBMUD within 30 days after it receives the invoice from EBMUD. Payment shall be addressed to the Director of Water & Natural Resources of EBMUD at the address set forth in Section 14 (Notices).

**9. Suspension; Early Termination.**

(a) Temporary Suspension. At any time after AWA has made available the Pilot Transfer Water, either Party may provide a written notice to the other Party temporarily suspending wheeling operations. Such suspension shall be effective immediately. Should the Parties be unable to adequately resolve the circumstances which created the need for the suspension within the suspension period, either Party may provide notice of early termination of this Agreement. EBMUD may suspend wheeling operations without notice if it determines there is an immediate threat to public health or safety or to the EBMUD System, provided it will provide written notice to BAWSCA as soon thereafter as practicable.

(b) Early Termination.

(i) This agreement may be terminated by mutual consent at any time.

(ii) Each Party shall reserve the right to terminate this Agreement early in the event that it reasonably determines, in its sole discretion, that any Condition Precedent

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set forth in Article 3 (Conditions Precedent) has not been satisfied prior to the time for wheeling operations to commence, or that the Parties have been unable to adequately resolve any circumstances which created a need for a temporary suspension, or that early termination is necessary to:

- (1) protect the integrity of such Party's facilities;
- (2) address an actual or potential significant adverse impact to such Party's water supply, water rights, or entitlements, or to its water system, or to the treatment or distribution of water to its customers;
- (3) respond to regulatory directives from state and/or federal agencies;
- (4) fully comply with permits, water rights, laws, and regulations applicable to such Party;
- (5) protect the health and safety of such Party's employees and/or customers;
- (6) respond to emergencies or operational issues that may arise during the period of wheeling;
- (7) avoid unreasonable effects to fish, wildlife, or other instream beneficial uses or injury to any legal user of water;
- (8) affect termination of the Pilot Water Transfer due to termination of another agreement that is required to implement the Pilot Water Transfer
- (9) address any disputed operational modification, which cannot be resolved pursuant to section 6(d)(iv), or address any modification to the Intertie Operations Plan, which BAWSCA finds to be unacceptable; and/or [PENDING FURTHER REVIEW.]
- (10) avoid overly burdensome costs of any litigation, any restrictions, fees, charges or costs imposed in the approvals of any regulatory agency, or any relief afforded to third parties in any action brought in state or federal court involving this Agreement or the Pilot Water Transfer.

(iii) Early termination may be effected by providing five days' prior written notice. Prior to giving notice of early termination, the Party electing to terminate will meet and confer to discuss and attempt to reasonably resolve the issues giving rise to

the proposed termination. If the Parties are unable to resolve the issues, termination will take effect five days after receipt of the written notice. In the event of termination of this Agreement as provided herein, the Parties thereafter will be under no further obligation or responsibility under this Agreement, and will release each other from further obligations under this Agreement, except as provided in this Article and in subsection (b) of Article 2 (Effective Date and Termination).

(iv) If this Agreement is terminated early for any reason, BAWSCA shall be responsible for payment of Reimbursable Wheeling Expenses on each acre-foot of water made available at the Point of Delivery on or before the effective date of the early termination, and for payment of the Replacement Water Charge on each acre-foot diverted at the Point of Diversion on or before the effective date of the early termination. EBMUD shall invoice, and BAWSCA shall reimburse, such costs in the manner provided in Article 8. The Parties' obligations under this paragraph will survive this Agreement's termination.

(v) Any Pilot Transfer Water contained within the EBMUD System upon the Agreement's early termination and not yet made available to BAWSCA at the Point of Delivery shall be deemed forfeited by BAWSCA and shall become the exclusive property of EBMUD.

**10. Indemnification.**

(a) To the extent permitted by State law, BAWSCA will indemnify, defend and hold safe and harmless EBMUD and its directors, officers, agents, and employees from any and all claims, suits, legal proceedings, judgments, damages, penalties, costs, expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) (collectively, "Claims") to the extent such Claims arise from or are related in any way to one or more of the following: (i) anything done or omitted to be done by AWA, BAWSCA, Hayward, SFPUC, or any of the aforementioned entities' respective associates, employees, subconsultants, or other agents in connection with this Agreement, (ii) any allegation that the performance of this Agreement may injure or damage any non-Party to this Agreement, whether such allegation is premised in tort, contract, or other law, and/or (iii) any claim arising under CEQA or another State or Federal environmental law or regulation. BAWSCA will defend EBMUD in any such action or lawsuit using counsel approved by EBMUD.

(b) To the extent permitted by State law, EBMUD will indemnify, defend and hold BAWSCA and its directors, officers, agents, and employees safe and harmless from any and all claims, suits, legal proceedings, judgments, damages, penalties, costs, expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees,

paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) (collectively, "Claims") to the extent such Claims arise from the negligent acts or omissions of EBMUD, or of its associates, employees, subconsultants, or other agents, in connection with its performance of its obligations under this Agreement. EBMUD will defend BAWSCA in any such action or lawsuit using counsel approved by BAWSCA.

**11. Water Rights.**

(a) As between the Parties, BAWSCA will obtain assurances that all reports are submitted to the State Water Resources Control Board which may be required as a result of the activities to be performed under this Agreement. BAWSCA shall coordinate with AWA and/or PG&E as necessary to satisfy the reporting obligation.

(b) The execution of this Agreement is not intended by either Party to endorse any right or entitlement to water, or to the use of water, claimed by the other Party or any third party. BAWSCA is solely responsible to ensure that all activities contemplated under this Agreement, including but not limited to the conveyance and use of the Pilot Transfer Water, comply with applicable water rights laws and regulations and EBMUD shall bear no liability in connection with same.

(c) Neither Party will assert that activities under this Agreement affect any existing water rights or contracts held by either Party to this Agreement, as the sole purpose of this Agreement is to establish a procedure for using EBMUD facilities to wheel Pilot Transfer Water to be made available to BAWSCA. This Agreement does not authorize the wheeling of any water obtained pursuant to EBMUD's water rights and entitlements. Wheeling of water pursuant to this Agreement will not confer any appropriative, public trust or other right to water to any person or entity.

**12. Disputes.**

Any claim that a Party may have against the other Party regarding the performance of this Agreement including, but not limited to, claims for compensation or extension of time, will be submitted to the other Party. The Parties will attempt to negotiate a resolution of such claim and, if necessary and warranted, process an amendment to this Agreement or a settlement agreement to implement the terms of any such resolution.

**13. Agreement Not a Precedent.**

The Parties intend that the provisions of this Agreement will not bind the Parties as to the provisions of any future agreement between them. This Agreement was developed specifically for the one-time pilot water transfer that is the subject of this Agreement. The parties will use this pilot water transfer to identify any unexpected impacts and costs. Any

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future wheeling agreement may contain different terms and conditions including, without limitation, different Conditions Precedent, different Wheeling Losses, and/or different or increased reimbursable costs, expenses, or fees. EBMUD reserves all rights under applicable law to (i) undertake a case-by-case evaluation of each future proposed wheeling transaction and determine whether and upon which terms and conditions it would enter into any future wheeling agreement, and (ii) challenge or protest a proposed future water transfer which it believes may injure any legal user of water, unreasonably affect fish, wildlife, or other instream beneficial uses, or otherwise fail to comport with applicable law.

**14. Notices.**

Any notice, demand, or request made in connection with this Agreement must be in writing and will be deemed properly served if delivered in person or sent by United States mail, postage prepaid, to the addresses specified below:

To EBMUD: Michael T. Tognolini, Director of Water & Natural Resources  
East Bay Municipal Utility District  
P.O. Box 24055, MS 901  
Oakland, CA 94623-1055  
Telephone: (510) 287-0125

With Copy to: East Bay Municipal Utility District  
Attn: Jon Salmon, Office of General Counsel  
P.O. Box 24055, MS 904  
Oakland, CA 94623-1055  
Telephone: (510) 287-0174

To BAWSCA: Nicole Sandkulla, CEO/General Manager  
Bay Area Water Supply and Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402  
Telephone: (650) 349-3000

With Copy to: Allison Schutte  
Hanson Bridgett, LLP  
425 Market Street, 26th Floor  
San Francisco, CA 94105  
Telephone: (415) 995-5823

Notwithstanding the foregoing, (i) the Parties will follow any informal notice requirements set forth in the Intertie Operations Plan, and (ii) the Initial Written Notice and invoices may be provided by emailing the applicable Party's designated recipient for notice, so

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long as the recipient confirms receipt by email or other writing. The notices described in this paragraph need not be sent to either Party's legal counsel.

**15. Modification of Agreement.**

This Agreement may be modified only upon the mutual written consent of the Parties.

**16. No Third-Party Beneficiaries.**

No third-party beneficiaries are intended or created by this Agreement. No person or entity other than a Party to this Agreement shall have any right to enforce its provisions or to receive any benefits hereunder.

**17. Severability.**

If any term or provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it will not affect the validity of any other provision, each of which will remain in full force and effect.

**18. Complete Agreement.**

This writing constitutes the entire agreement between the Parties as to the subject matter described herein. No other document or communication shared between the Parties will be deemed to be part of this Agreement, whether shared before, during or after the negotiation and execution of this Agreement.

**19. Construction and Interpretation.**

It is agreed and acknowledged by the parties hereto that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

**20. Counterparts.**

This Agreement may be executed in counterparts. BAWSCA will deliver two copies of an executed counterpart to EBMUD, and EBMUD will then execute two copies of an executed counterpart. One fully executed agreement will remain with EBMUD and the other fully executed agreement will be delivered to BAWSCA. Facsimile and electronic signatures shall be binding.

**21. Assignment.**

This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, provided, however, that this Agreement shall only be assigned with the written consent of all parties hereto, and any attempt to assign this Agreement without such consent shall be void.

**22. Time of the Essence.**

Time is of the essence in the performance of this Agreement.

**23. Waiver.**

The waiver at any time by either Party of its right with respect to default or other matter arising in connection with this Agreement will not be deemed a waiver by that Party with respect to any subsequent default or matter.

**24. Governing Law.**

This Agreement is governed by and will be interpreted in accordance with the laws of the State of California.

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**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date first above written.

**EAST BAY MUNICIPAL UTILITY DISTRICT**

Approved as to legal form:

\_\_\_\_\_  
Michael T. Tognolini  
Director of Water & Natural Resources

Dated: \_\_\_\_\_

\_\_\_\_\_  
for the Office of General Counsel

**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

Approved as to legal form:

\_\_\_\_\_  
Nicole M. Sandkulla  
CEO/General Manager

Dated: \_\_\_\_\_

\_\_\_\_\_  
Allison Schutte, Legal Counsel

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E.3. BAWSCA-Hayward Pilot Transfer Agreement

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[SUBJECT TO REVIEW BY CITY OF HAYWARD]

**AGREEMENT  
BETWEEN THE CITY OF HAYWARD  
AND THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
FOR MODIFYING OPERATION OF THE HAYWARD WATER SYSTEM TO ALLOW  
FOR DELIVERY OF PILOT TRANSFER WATER**

This Agreement (AGREEMENT) between the City of Hayward, a municipal corporation, hereinafter referred to as “CITY,” and the Bay Area Water Supply and Conservation Agency, a public agency, hereinafter referred to as “BAWSCA,” setting forth the respective roles and responsibilities of CITY and BAWSCA in connection with BAWSCA’s proposed 2020 Pilot Water Transfer. This AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_ 2019.

**RECITALS**

WHEREAS, BAWSCA is a public agency created under a special act of the California Legislature and formed by its member agencies to provide regional water supply planning, resource development, and conservation program services for the benefit of its 26 member agencies; and

WHEREAS, CITY is a member agency of BAWSCA; and

WHEREAS, CITY receives wholesale water supplies from the San Francisco Public Utility Commission (“SFPUC”) Regional Water System under the terms of two agreements: 1) the 1962 Water Sales Contract between CITY and the City and County of San Francisco; and 2) the 2018 Amended and Restated Water Supply Agreement between BAWSCA member agencies and the City and County of San Francisco; and

WHEREAS, the Hayward Intertie is jointly owned by East Bay Municipal Utilities District (“EBMUD”) and SFPUC, and connects the EBMUD and SFPUC regional water systems through the CITY and using CITY-owned infrastructure; and

WHEREAS, the First Amended Joint Exercise of Powers Agreement between City and County of San Francisco Public Utilities Commission, East Bay Municipal Utility District, and City of Hayward for Long-term Operation and Maintenance of the Emergency/Maintenance Water System Intertie Project dated July 10, 2007 (“Hayward Intertie Operating Agreement”), provides for the use of the Hayward Intertie only during emergencies or planned critical maintenance work, and under no other circumstances; and

WHEREAS, SFPUC has planned shutdowns of the Hetch Hetchy supply system for critical maintenance during the winter of 2019-2020, which will require the entire San Francisco Regional Water System to be served by local water supplies; and [PENDING REVIEW FOR CONSISTENCY WITH THE INTERTIE SIDE AGREEMENT.]

DRAFT

[SUBJECT TO REVIEW BY CITY OF HAYWARD]

WHEREAS, BAWSCA has proposed a Pilot Water Transfer, in which the CITY would re-operate the Hayward Intertie during the SFPUC's planned 2019-2020 Hetch Hetchy shutdown, in order to accept transferred water deliveries from an alternative source arranged by BAWSCA in lieu of the CITY's SFPUC supply; and

WHEREAS, the purpose of the Pilot Transfer is to (1) identify technical, financial and institutional issues associated with a potential water transfer and (2) test the ability to implement a water transfer by securing approvals needed to deliver transfer water for a limited duration during planned critical maintenance work; and

WHEREAS, the terms of this AGREEMENT, including pricing and reimbursement, shall not be a precedent to future agreements between the Parties, including but not limited to any future water transfers; and

WHEREAS, during the Pilot Transfer, the CITY will pay SFPUC for the amount of transfer water delivered to the CITY at SFPUC's wholesale water rate, versus a water rate based on the cost of Pilot Transfer Water being purchased, delivered, and used by the CITY; and

WHEREAS, under normal operating conditions, the CITY receives water from the Regional Water System through two connections located in the southern part of the CITY and delivers water primarily by gravity to its customers, except for a small percentage of water delivered to higher elevations through a series of pump stations and reservoirs; and

WHEREAS, under these unique circumstances, the CITY is willing to alter its regular operations for a short, defined duration in order to accept the delivery of Pilot Water Transfer Water on a temporary basis through the Hayward Intertie and with reliance on pump stations to deliver water in the reverse direction, which has the potential to change water pressure at various locations throughout the CITY; and

WHEREAS, under no circumstances is or shall the CITY's modification of water system operations for the Pilot Transfer be deemed an acknowledgment of unused capacity under Water Code section 1810; and

WHEREAS, during the Pilot Transfer, CITY will be served Pilot Transfer Water supply from EBMUD during the same period that other BAWSCA member agencies are served with SFPUC local water supplies due to the planned 2019-2020 Hetch Hetchy shutdown and the Pilot Transfer Water supply from EBMUD will be of a different quality from the local water supplies received from the SFPUC Regional Water System, to which the CITY is entitled under its SFPUC Water Sales Contract; and

WHEREAS, the changes in Hayward Intertie operations required to carry out the Pilot Transfer may have unanticipated adverse consequences on the CITY's operations, and it is the Parties' intent to reduce or mitigate any such impacts; and

WHEREAS, CITY and BAWSCA have agreed that this AGREEMENT shall govern their respective roles and obligations related to the Pilot Transfer.

NOW THEREFORE, CITY and BAWSCA agree as follows:

### AGREEMENT

In consideration of the foregoing recitals and the terms and conditions contained herein, CITY and BAWSCA agree to the following:

#### 1. DEFINITIONS.

When used in this AGREEMENT, the following definitions will apply:

- a. “First Cooperative Agreement” means the agreement, dated February 5, 2015, between the CITY and BAWSCA for the development of a short term Pilot Transfer.
- b. “Hayward Intertie” means the Regional Emergency Intertie, jointly owned by EBMUD and SFPUC and operated by CITY, that connects the EBMUD and SFPUC regional water systems through the CITY and using CITY-owned infrastructure.
- c. “Hayward Water System” means the 350 miles of pipeline, 16 water storage reservoirs, and 10 pump stations used by CITY to provide water service to its customers.
- d. “Parties” means CITY and BAWSCA.
- e. “Party” means CITY or BAWSCA.
- f. “Pilot Transfer” means the purchase and delivery of up to 1,000 acre-feet of water, conveyed through EBMUD’s water system and delivered to the CITY, through the Hayward Intertie, in-lieu of the CITY’s regular SFPUC supply, with a small portion also being delivered to the San Francisco Regional Water System.
- g. “Pilot Transfer Water” means the water purchased by BAWSCA from Amador Water Agency and delivered under the Pilot Transfer.
- h. “Point of Delivery” means the existing Hayward Intertie operated by CITY.
- i. **“Point of Diversion” means EBMUD’s raw water intake facility located within Pardee Reservoir, at which EBMUD would, under a separate agreement with BAWSCA, assume responsibility for delivering water to the Hayward Intertie. [REVISED TO ALIGN WITH OTHER AGREEMENTS; PENDING REVIEW BY HAYWARD.]**

- j. “Second Cooperative Agreement” means the agreement, dated April 24, 2017, between the CITY and BAWSCA to continue the agreement to cooperate in the planning of the Pilot Transfer.
- k. “SFPUC Water Sales Contract” means the contract for water service titled “Application for Water Supply between the CITY and the City and County of San Francisco,” dated February 6, 1962.
- l. “Water Supply Agreement” means the agreement titled “Water Supply Agreement Between the City and County of San Francisco and Wholesale Customers in Alameda, San Mateo and Santa Clara Counties,” dated July 2009, as amended and restated in November 2018.
- m. “Water Transfer Agreement” means a defined transfer agreement between BAWSCA and Amador Water Agency for the purchase of 1,000 acre-feet of water by BAWSCA.

**2. TERM.**

This AGREEMENT shall become effective upon its execution by the Parties. AGREEMENT will terminate on June 30, 2020, or when all obligations under this AGREEMENT have been performed, whichever occurs first, unless this AGREEMENT is cancelled pursuant to Section 8 (Cancellation). The Parties shall have the option to extend the AGREEMENT by up to six months, until December 31, 2020, by mutual written agreement.

**3. DELIVERY OF PILOT TRANSFER WATER**

- a. Pilot Transfer Quantity and Route. BAWSCA will divert, with the aid of EBMUD under a separate agreement, 1,000 acre-feet of Pilot Transfer Water at the selected Point of Diversion, and deliver that amount, less any losses, to CITY at the Point of Delivery. The Pilot Transfer Water will be conveyed from the Point of Diversion through EBMUD’s Mokelumne Aqueduct and treated at one of EBMUD’s treatment plants before being routed to the Point of Delivery.
- b. Notice. BAWSCA shall provide CITY with a minimum of twenty-eight (28) calendar days’ notice of a request for CITY to begin to take delivery of Pilot Transfer Water. CITY shall in turn respond to BAWSCA within ten (10) business days regarding whether CITY can accommodate BAWSCA’s requested schedule. In the event that CITY is unable to accommodate BAWSCA’s requested Pilot Transfer delivery schedule, the Parties agree to meet and confer as soon as practicable in order to identify an alternative schedule.
- c. Requirements for Accepting Delivery of Pilot Transfer Water. CITY shall not accept delivery of water from the Pilot Transfer under this AGREEMENT until all of the following has occurred:

- (i) BAWSCA conducts environmental review, including CEQA, and obtains approvals necessary: (1) to secure a Water Transfer Agreement with Amador Water Agency; (2) to secure an agreement with EBMUD to convey Pilot Transfer Water to the CITY; (3) and to secure a delivery agreement with SFPUC to allow Pilot Transfer Water to be conveyed to and through its CITY-owned facilities into the SFPUC Regional Water System; and
- (ii) Upon request by the CITY, SFPUC provides written approval for the CITY to receive and use water from the Pilot Transfer for use within its service area, as provided by Section C.2 of the SFPUC Water Sales Contract; and
- (iii) CITY receives all approvals from the Division of Drinking Water necessary to receive water from an alternate source; and
- (iv) SFPUC, CITY and EBMUD enter into an agreement for this one-time use of the Hayward Intertie for the Pilot Transfer; and
- (v) The Parties to this agreement, together with EBMUD and SFPUC, have developed a mutually agreeable Pilot Transfer Operations Plan; and
- (vi) SFPUC has initiated its planned shutdown of the Hetch Hetchy system; and
- (vii) BAWSCA obtains insurance in accordance with Section 11.

#### **4. PILOT TRANSFER OPERATIONS PLAN.**

CITY, EBMUD, SFPUC and BAWSCA shall develop a mutually agreeable Pilot Transfer Operations Plan prior to the commencement of the delivery of water, which shall govern the operational parameters, communications procedures, timing, and rates of delivery necessary to carry out the Pilot Transfer.

#### **5. PILOT NATURE OF PROPOSED TRANSFER AND RE-OPERATION**

The Parties acknowledge that the proposed Pilot Transfer is an exploratory project intended to provide additional information regarding regional water supply and operations, and made possible as a result of planned critical maintenance shutdowns of the Hetch Hetchy Regional Water System. Nothing in this AGREEMENT shall be construed as an acknowledgement of capacity or a determination of fair compensation pursuant to Water Code section 1810, as a commitment to or precedent for future water transfers, or as an alteration of the terms of the 2007 Hayward Intertie Operating Agreement.

**6. REGULATORY APPROVALS, ENVIRONMENTAL COMPLIANCE AND ENVIRONMENTAL REVIEWS.**

The obligations of the Parties under this AGREEMENT are conditioned upon compliance with all applicable environmental laws, including CEQA, and attainment of all required regulatory approvals to carry out the Pilot Transfer. The CITY shall not be responsible for funding that work effort.

The Parties understand that to facilitate use of the Hayward Intertie, BAWSCA, the CITY, or any other entity considering a discretionary approval for the Pilot Transfer may need to perform additional environmental review. This AGREEMENT is intended to provide a working framework for the planning, evaluation, and execution of the Pilot Transfer; it does not limit the discretionary authority of any Party under CEQA.

**7. REIMBURSABLE DELIVERY EXPENSES, OTHER EXPENSES, AND PAYMENTS. [PENDING REVISIONS FOR CONSISTENCY WITH THE INTERTIE SIDE AGREEMENT; PENDING REVIEW BY HAYWARD.]**

- a. Reimbursement of Costs. BAWSCA shall reimburse CITY for costs in the amounts and according to the schedule identified in **Table 1** to this AGREEMENT. BAWSCA shall additionally bear cost responsibilities for those documented engineering and technical expenses required to obtain regulatory approvals for the Pilot Transfer.

The costs in **Table 1** have been developed for reimbursement to the CITY related to the unique circumstances surrounding this Pilot Transfer, and shall not serve as a precedent to any future agreement.

Notwithstanding the items identified in Table 1, BAWSCA shall be solely responsible for the cost of any repairs or damages incurred to the Hayward Water System as a result of the Pilot Transfer. Provided, however, that BAWSCA will not be responsible for the cost of any repairs or damage incurred to the Hayward System caused by the sole negligence or willful misconduct of Hayward or its associates', employees', subconsultants', or agents'.

- b. Invoicing. CITY will invoice BAWSCA for each cost item according to the schedule identified in Table 1. Two (2) copies of each invoice for Payments, together with supporting documentation, will be submitted to the Chief Executive Officer / General Manager of BAWSCA at the following address:

Nicole Sandkulla  
CEO / General Manager  
Bay Area Water Supply and Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402

- c. Payment. BAWSCA agrees to pay approved invoices within 30 days.

**8. SUSPENSION AND CANCELLATION [PENDING REVISIONS FOR CONSISTENCY WITH THE INTERTIE SIDE AGREEMENT; PENDING REVIEW BY HAYWARD.]**

At any time after the Pilot Water Transfer has begun, either Party may suspend the AGREEMENT and the Pilot Water Transfer by providing written notice to the other Party. The start of the Pilot Water Transfer shall be deemed to occur once CITY initiates flushing activities as provided for in the Pilot Transfer Operations Plan. Such suspension shall be effective immediately. Should the Parties be unable to adequately resolve the circumstances giving rise to the suspension, the suspending Party may cancel this AGREEMENT as set forth below.

Cancellation of this AGREEMENT by each Party may be effected by delivering to the other Party written notice of cancellation. Cancellation shall take effect five (5) days following the receipt of notice by the other Party. Upon receipt of such notice, the CITY may not commit itself to any further expenditure of time or resources beyond costs reasonably and necessarily incurred to effect such cancellation.

- a. Cancellation Following Suspension. As set forth above, a suspending party will have the right to cancel this AGREEMENT and the Pilot Water Transfer if the circumstances giving rise to the suspension cannot be adequately resolved.
- b. Cancellation by BAWSCA. This AGREEMENT may be canceled by BAWSCA if the conditions or obligations required through environmental compliance and permitting as associated with this AGREEMENT, or separate agreements as required to implement the Pilot Transfer, are unacceptable, if BAWSCA reasonably determines that the costs of any litigation, any restrictions, fees, charges or costs imposed in the approvals of any regulatory agency, or any relief afforded to third parties in any action brought in state or federal court involving this Agreement or the Pilot Transfer, are too burdensome in relation to the benefits to be received under this Agreement, or if a separate agreement required to implement the Pilot Transfer is terminated. The Parties will consult with each other and make a good faith effort to amend this AGREEMENT to attempt to resolve any issues giving rise to the proposed cancellation.
- c. Cancellation by the CITY. This AGREEMENT may be terminated by CITY if it determines, at its sole discretion, that taking delivery of Pilot Transfer Water is causing or has the potential to cause adverse impacts to the CITY's water supplies, quality, or operations; or if a separate agreement required to implement the Pilot Transfer is terminated. In the event that the CITY determines that it may be necessary to cancel the delivery of water due to such impacts, the Parties shall meet and confer as soon as practical to determine if the issues can be addressed and/or mitigated such that deliveries could continue.

- d. Payment Upon Cancellation. Within 30 days of cancellation of this AGREEMENT by either Party, CITY will invoice BAWSCA for all pro-rated sums actually due and owing for all services performed and all expenses incurred up to the day written notice of cancellation is given, plus any costs reasonably and necessarily incurred by CITY to effect such cancellation. BAWSCA will pay such invoice within 30 days of receipt.

**9. WATER RIGHTS PROTECTION AND RESPONSIBILITIES FOLLOWING POINT OF DELIVERY.**

Neither Party will assert that activities under this AGREEMENT affect any existing water rights or contracts held by either Party to this AGREEMENT, including but not limited to the SFPUC Water Sales Contract; Water Supply Agreement; First Cooperative Agreement; Second Cooperative Agreement; or Hayward Intertie Operating Agreement. The execution of this AGREEMENT is not intended by either Party to endorse water rights claimed by the other Party. Delivery of water pursuant to this AGREEMENT will not confer any appropriative, public trust or other right to water to any person or entity.

**10. HOLD HARMLESS, INDEMNIFICATION AND REMEDIES.[REVISED TO ALIGN WITH OTHER AGREEMENTS; PENDING REVIEW BY HAYWARD.]**

To the extent permitted by State law, BAWSCA will indemnify, defend and hold CITY and its Mayor and City Council, officers, agents, and employees safe and harmless from any and all claims, suits, judgments, damages, penalties, costs, expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) that: (1) arise from BAWSCA's, its associates', employees', subconsultants', or agents' negligent acts, errors, or omissions or willful misconduct, in the performance of this AGREEMENT; (2) any allegation that the performance of this Agreement may injure or damage any non-Party to this Agreement, whether such allegation is premised in tort, contract, or other law; and/or (3) any claim arising under CEQA or another State or Federal environmental law or regulation. This indemnification shall include, but is not limited to, damages awarded against the CITY, if any, costs of suit, attorneys' fees, expert consultant or witness fees, and other expenses incurred in connection with any such action. BAWSCA will defend CITY in any such action or lawsuit using counsel approved by CITY.

To the extent permitted by State law, CITY will indemnify, defend and hold BAWSCA and its directors, officers, agents, and employees safe and harmless from any and all claims, suits, judgments, damages, penalties, costs, expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) that arise from CITY's, its associates', employees', subconsultants', or agents' negligent acts, errors, or omissions or willful misconduct, in the performance of this AGREEMENT. This indemnification shall include, but is not limited to, damages awarded against BAWSCA, if any, costs of suit, attorneys' fees, expert consultant or witness fees, and other expenses incurred in connection with any such action.

CITY will defend BAWSCA in any such action or lawsuit using counsel approved by BAWSCA.

This indemnification will survive cancellation or expiration of this AGREEMENT.

**11. INSURANCE [PENDING REVIEW BY HAYWARD.]**

Prior to the commencement of the Pilot Water Transfer, BAWSCA shall procure and maintain, through the Special District Risk Management Authority and in a form acceptable to CITY, all-risk property insurance with a limit of \$10 million, which coverage shall specifically include damages to the Hayward Water System during the term of the Pilot Transfer and for 14 days following the completion or termination of the Pilot Transfer. Equivalent insurance will satisfy BAWSCA's obligation under this Section.

CITY (including its elected officials, officers, employees, agents, and volunteers) shall be named as an additional insured on policies procured pursuant to this AGREEMENT. For any claims related to this AGREEMENT, BAWSCA's coverage shall be primary insurance with respect to CITY. Any insurance maintained by CITY shall be excess of BAWSCA's insurance and shall not contribute with it.

**12. DISPUTE RESOLUTION.**

The Parties agree to attempt in good faith to resolve all disputes informally. If agreed to by the Parties, alternate methods of dispute resolution, such as Mediation, may be utilized.

**13. AGREEMENT NOT A PRECEDENT.**

The Parties agree that the provisions of this AGREEMENT shall not be a precedent and shall not bind the Parties as to the provisions of any future agreement between them.

**14. NOTICES.**

Except as specified in the Pilot Transfer Operations Plan and except the notice and response detailed in Section 3(b), any notice, demand, or request made in connection with this AGREEMENT must be in writing and will be deemed properly served if delivered in person or sent by United States mail, postage prepaid, to the addresses specified below:

To BAWSCA: Nicole Sandkulla, CEO / General Manager  
155 Bovet Road, Suite 650  
San Mateo, CA 94402  
Telephone: (650) 349-3000

To CITY: Alex Ameri, Director of Public Works  
City of Hayward  
777 B Street

Hayward, CA 94541  
Telephone: (510) 583-4720

**15. AMENDMENTS.**

No amendment or modification to this AGREEMENT shall be valid unless executed in writing and approved by both Parties.

**16. SEVERABILITY.**

If any term or provision of this AGREEMENT is deemed invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it will not affect the validity of any other provision, which will remain in full force and effect.

**17. COMPLETE AGREEMENT.**

This AGREEMENT, including the Attachments, represents the full and entire agreement between the Parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

**18. COUNTERPARTS.**

This AGREEMENT may be executed in counterparts by each signatory. The separate executed counterparts, taken together, shall constitute a single agreement.

**19. SUCCESSORS AND ASSIGNS.**

This AGREEMENT shall be binding on, and shall inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment or transfer in violation of this covenant shall be void.

**20. TIME IS OF THE ESSENCE.**

Time is of the essence in this AGREEMENT.

**21. WAIVER.**

The waiver by either Party of any breach or violation of any provisions of this AGREEMENT shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any monies that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this AGREEMENT.

**22. GOVERNING LAW.**

This AGREEMENT is governed by and will be interpreted in accordance with the laws of the State of California.

**23. NO THIRD PARTY BENEFICIARY.**

This AGREEMENT is exclusively for the benefit of the Parties and not for the benefit of any other person. There are no third-party beneficiaries of this AGREEMENT and no person not a Party shall have any rights under or interests in this AGREEMENT.

No Party may assert a claim for damages on behalf of a person other than itself, including a person that is not a Party.

**24. INCORPORATION OF ATTACHMENTS.**

Table 1, referred to herein, is incorporated in and made a part of this AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT the day and year first above written.

CITY OF HAYWARD

Recommended by:

\_\_\_\_\_  
ALEX AMERI  
Director of Public Works

By: \_\_\_\_\_  
KELLY McADOO  
City Manager

Approved as to form:

\_\_\_\_\_  
MICHAEL LAWSON  
City Attorney

Attest: \_\_\_\_\_  
MIRIAM LENS  
City Clerk

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

By: \_\_\_\_\_

NICOLE SANDKULLA  
Chief Executive Officer/General Manager

Attachments:

1. BAWSCA Pilot Water Transfer City of Hayward Reimbursable Costs

TABLE 1

**BAWSCA PILOT WATER TRANSFER  
CITY OF HAYWARD REIMBURSABLE COSTS**

COST ITEM	COST	COST BASIS	PAYMENT SCHEDULE
Pre-Transfer System Preparation and Startup	\$50,000	Lump sum cost includes staffing and materials needed to perform bi-directional flushing for at least four hours/direction at 18 MGD and adjust and program SCADA controls. Cost also includes staff time required to coordinate with the Division of Drinking Water and outside legal services incurred by the City for development of agreements. Total costs for pre-transfer system preparation and startup have been capped at \$50,000.	Billed to BAWSCA upon initiation of flushing activities
Pilot Transfer Operational Cost	\$160/AF <sup>1</sup>	<p>Unit Cost charged for Hayward's operation of the Intertie facilities and Hayward water system for the pilot water transfer. Cost will be charged per AF of transfer water delivered to Hayward through the Intertie, as measured by the flowmeter at the Skywest Pump Station.</p> <p>Cost includes staffing levels needed to monitor and operate the Intertie facilities and Hayward water system for delivery of transfer water, energy costs for operating Hesperian Pump Station, and staffing and outside services to monitor and perform water quality sampling.</p>	Billed to BAWSCA upon completion of pilot water transfer
Post-Transfer System Shutdown and Reporting	\$10,000	Staff time need to shutdown the Intertie and prepare all necessary reports related to Hayward's use of an alternate source of water during the pilot transfer.	Billed to BAWSCA upon completion of pilot water transfer

<sup>1</sup> Unit cost does not include electric power costs for operating Skywest Pump Station, which are assumed to be directly paid for by the San Francisco Public Utilities Commission. In the event Hayward is billed directly, BAWSCA agrees to reimburse Hayward for all electric power costs for operating Skywest Pump Station for the Pilot Water Transfer. Unit cost does not include BAWSCA's use of the Hayward transmission mains for this one-time pilot transfer.

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E.4. BAWSCA-Hayward 2nd Cooperative Agreement (2017)

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**COOPERATIVE AGREEMENT  
BETWEEN THE CITY OF HAYWARD  
AND THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
FOR PRELIMINARY PLANNING AND ANALYSIS FOR DEVELOPMENT OF A  
SHORT-TERM PILOT WATER TRANSFER PLAN**

This Cooperative Agreement (AGREEMENT) between the City of Hayward, a municipal corporation, hereinafter referred to as "CITY," and the Bay Area Water Supply and Conservation Agency, a public entity hereinafter referred to as "BAWSCA," setting forth the respective roles and responsibilities of CITY and BAWSCA in regard to the preliminary planning and analysis associated with a one-year pilot water transfer (hereinafter referred to as "PLAN") is made and entered into this 5<sup>th</sup> day of February 2014. 5

W I T N E S S E T H

WHEREAS, BAWSCA is exploring potential strategies to meet the water supply reliability needs of its member agencies; and

WHEREAS, alternative water supplies, such as a long-term water transfer, may potentially reduce BAWSCA-wide required cutbacks during a drought; and

WHEREAS, BAWSCA has proposed a one-year pilot water transfer (Pilot Water Transfer) that will benefit the BAWSCA member agencies, including CITY, by (1) testing the viability of water transfers, (2) identifying the technical, financial and institutional issues associated with a potential long-term water transfer, and (3) providing an additional water supply for a limited duration during drought; and

WHEREAS, CITY is the operator of the group of facilities collectively known as the Hayward Intertie, which is jointly owned by the East Bay Municipal Utility District (EBMUD) and the San Francisco Public Utilities Commission (SFPUC); and

WHEREAS, during normal operations, the CITY's water system runs from south to north by gravity; and

WHEREAS, in the event of the operation of the Hayward Intertie to deliver water from EBMUD to the SFPUC (north to south operations), the CITY water system is fully pumped to run from north to south with the potential to impact CITY's water operations and infrastructure; and

WHEREAS, the reverse flow and pumped flow anticipated during the Pilot Water Transfer may adversely impact the CITY water distribution system, including changes in water system pressure and flows, including those at fire hydrants; and

WHEREAS, in the event of operation of the existing Hayward Intertie to deliver water from EBMUD to SFPUC, Hayward will be exclusively served by EBMUD water supply, which may be of a different quality from SFPUC water delivered to the rest of BAWSCA member agencies; and

WHEREAS, BAWSCA's proposed Pilot Water Transfer will benefit the CITY by offering the CITY the ability to operate the existing Hayward Intertie during a non-emergency condition to

(1) assess the impacts of north to south operations of the Hayward Intertie and (2) collect important real-time information needed to evaluate the effects of future water transfer projects; and

WHEREAS, BAWSCA recognizes the CITY's desire for a potential option to purchase additional drought year supply in the event of a future long-term dry year water transfer; and

WHEREAS, CITY and BAWSCA have agreed that engaging in a Pilot Water Transfer would provide important information needed to evaluate the costs and benefits of partnering in future water transfer projects; and

WHEREAS, CITY and BAWSCA agree that information developed under the PLAN will help develop (1) the CITY'S operational protocols for managing and monitoring water supplies during a north to south operation and (2) a plan and protocols for the CITY to communicate information related to the Pilot Water Transfer to CITY water customers; and

WHEREAS, CITY and BAWSCA have agreed that this AGREEMENT shall govern the PLAN.

NOW THEREFORE, CITY and BAWSCA agree as follows:

**I. ROLES AND RESPONSIBILITIES**

CITY and BAWSCA agree to cooperate to complete the PLAN and use their best efforts to perform the roles and responsibilities as described in Attachment A, PLAN SCOPE OF WORK.

**II. COSTS**

BAWSCA and CITY shall share costs equally for work done by West Yost Associates related to evaluating the potential impacts of intertie operations during the Pilot Water Transfer. Each party shall be solely responsible for its share of the costs to complete the work described in Attachment A, PLAN SCOPE OF WORK, to the AGREEMENT.

**III. SCHEDULE**

CITY and BAWSCA agree to cooperate and work diligently to complete the PLAN according to the schedule shown on Attachment B, PLAN SCHEDULE, which may be revised from time to time by the parties. If either party is unable to substantially meet the agreed upon PLAN SCHEDULE, the party unable to meet the PLAN SCHEDULE shall promptly notify the other party to attempt to revise the PLAN SCHEDULE to the mutual satisfaction of both parties.

**IV. HOLD HARMLESS AND LIABILITY**

CITY and BAWSCA each agree to hold harmless, indemnify, and defend the other from and against any and all liability claims, costs, penalties, causes of action, demands, and losses of any nature whatsoever, including reasonable attorneys' fees, arising from the performance of this AGREEMENT, including but not limited to personal injury and injury to property, or any violation of any law or ordinance, or other harm caused by any negligent act, error or omission, or willful acts or omissions of the indemnifying party or

its officers, employees, subcontractors, or agents acting pursuant to this AGREEMENT, provided that neither party shall be indemnified hereunder for any loss, liability, damage or expense arising from its sole negligence or willful misconduct. This indemnification shall survive termination or expiration of this AGREEMENT.

**V. TERM**

This AGREEMENT shall be effective until June 30, 2015, unless extended by mutual agreement. Either party may terminate participation in this AGREEMENT by providing 30-day written notice.

**VI. NOTICE**

All notices required to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, registered and postage prepaid and addressed to the respective parties as follows:

CITY: Alex Ameri  
Director of Utilities & Environmental Services  
City of Hayward  
777 B. Street  
Hayward, California 94541

BAWSCA: Nicole M. Sandkulla  
Chief Executive Officer  
Bay Area Water Supply and Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402

Notification of a change in the name of the contact person shall be in writing.

**VII. MISCELLANEOUS**

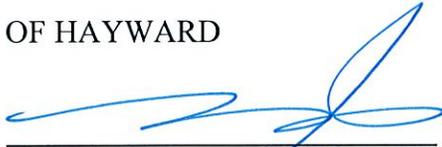
- A. This AGREEMENT may be amended as circumstances necessitate by written agreement executed by both parties.
- B. Each party agrees that it will not assign its interest in this AGREEMENT, or any part thereof, without the express written consent of the other party.
- C. In the event of a dispute between the parties over the meaning of this AGREEMENT, the parties shall meet in good faith to attempt to resolve the matter.

D. Each party shall comply with all laws, ordinances, regulations and orders all applicable to work it will perform under this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF HAYWARD

By:

  
\_\_\_\_\_  
Frances David  
City Manager

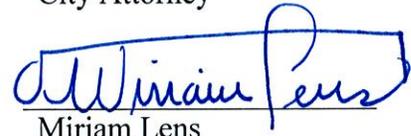
Recommended by:

  
\_\_\_\_\_  
Alex Ameri  
Director of Utilities &  
Environment Services

Approved as to form:

  
\_\_\_\_\_  
For Michael Lawson  
City Attorney

Attest:

  
\_\_\_\_\_  
Miriam Lens  
City Clerk

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

By:

  
\_\_\_\_\_

Title: Chief Executive  
Officer/General Manager  
\_\_\_\_\_

Attachments: A. Plan Scope of Work (consisting of one single side page)

## ATTACHMENT A – PLAN SCOPE OF WORK

### BAWSCA responsibilities:

1. Work with the CITY to identify potential impacts related to the delivery of pilot transfer water to the CITY, including, but not limited to, impacts on system pressure and flows and changes in water quality affecting customers.
2. Support CITY efforts during the pilot to assess the impact of water quality changes on customers, particularly the industrial sector.
3. Prepare a draft Pilot Water Transfer Agreement between the CITY and BAWSCA for the implementation of the Pilot Water Transfer.
4. Work with the CITY to develop a public communications plan to establish effective communications to residential, commercial and industrial water customers regarding the use of the Hayward Intertie, including potential impacts and benefits to all CITY water customers.
5. Identify estimated costs specifically associated with operation of the Hayward Intertie during the Pilot Water Transfer. BAWSCA anticipates reimbursing the CITY for actual costs incurred with operation of the Hayward Intertie if transfer occurs. These costs would be subject to the terms of the subsequent Pilot Water Transfer Agreement between the CITY and BAWSCA noted above.
6. Develop a list of reimbursable costs for use of the 33” and 42” CITY transmission pipelines and the Hesperian Pump Station for the duration of the Pilot. BAWSCA anticipates reimbursing the CITY for subsequent agreed upon costs if the Pilot Water Transfer occurs.

### CITY responsibilities:

1. Identify potential water quality and operational impacts to CITY related to the north to south operations of the Hayward water distribution system and the use of the Hayward Intertie.
2. Implement a study evaluating the potential impacts of intertie operations during the Pilot Water Transfer to be performed by West Yost Associates prior to potential execution of the Pilot Water Transfer that will help the CITY:
  - a) better understand potential impacts on the Hayward water distribution system of a north to south operation of the Hayward Intertie and
  - b) develop operational protocols for managing water supply during a north to south operation.

The cost of this study will not exceed \$25,000, to be shared equally by BAWSCA and CITY.

3. Develop a monitoring and mitigation plan to be implemented during the next north to south operation of the Hayward Intertie (either for an emergency or as part of the Pilot Water Transfer).
4. Develop a public communications plan to be implemented as part of the execution of the Pilot Water Transfer to establish effective communications to all residential, commercial and industrial water customers regarding the use of the Hayward Intertie including potential impacts and benefits to CITY water customers.

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E.5. BAWSCA-SFPUC Pilot Transfer Agreement

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**AGREEMENT BETWEEN  
THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
AND THE SAN FRANCISCO PUBLIC UTILITIES COMMISSION  
FOR OPERATION AND COST ALLOCATION  
OF THE PILOT WATER TRANSFER**

**RECITALS**

This Agreement (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ between the City and County of San Francisco, acting by and through the San Francisco Public Utilities Commission (“SFPUC”), and the Bay Area Water Supply and Conservation Agency (“BAWSCA”) regarding the operation and allocation of costs for a pilot transfer of water purchased by BAWSCA from Amador Water Agency (“AWA”) and delivered through the East Bay Municipal Utility District (“EBMUD”) water facilities and the SFPUC/EBMUD/City of Hayward (“Hayward”) Water System Intertie Project (“Hayward Intertie”) to wholesale customers of the San Francisco Regional Water System (“RWS”). Throughout the Agreement, the SFPUC and BAWSCA may be referred to collectively as the “Parties” or individually as “Party.”

WHEREAS, The SFPUC owns and operates the RWS that delivers potable water to San Francisco retail customers, and to twenty-four cities and water districts and two private utilities that purchase water from the SFPUC (“Wholesale Customers”); and

WHEREAS, BAWSCA represents the Wholesale Customers; and

WHEREAS, BAWSCA has completed long-term water supply planning studies to identify the future water supply needs of its member agencies (collectively referred to herein as the "Long-Term Reliable Water Supply Strategy"); and

WHEREAS, Based on the Long-Term Reliable Water Supply Strategy, BAWSCA is exploring potential long-term strategies to reliably meet the future water supply needs of its member agencies; and

WHEREAS, BAWSCA desires to engage in a one-time pilot water transfer in January 2020 ("Pilot Water Transfer") in partnership with the SFPUC, EBMUD, Hayward, and AWA, as described in Attachment 1, to evaluate the costs and benefits of partnering in future water transfer projects; and

WHEREAS, For the Pilot Water Transfer, BAWSCA is entering into an agreement with AWA to purchase up to 1,000 acre feet of water (“Pilot Transfer Supplies”) from AWA; and

WHEREAS, Pursuant to the July 10, 2007 “*First Amended Joint Exercise of Powers Agreement between the City and County of San Francisco Public Utilities Commission, East Bay Municipal Utility District, and City of Hayward for Long Term Operation and Maintenance of the Emergency/Maintenance Water System Intertie Project,*” the SFPUC and EBMUD jointly own, and Hayward operates, the Hayward Intertie, through which BAWSCA desires to deliver the Pilot Transfer Supplies to the Wholesale Customers (as illustrated in Attachment 2); and

WHEREAS, BAWSCA is entering into an agreement with EBMUD to wheel Pilot Transfer Supplies through the EBMUD system and deliver Pilot Transfer Supplies through the Hayward Intertie for delivery to the Wholesale Customers; and

WHEREAS, Hayward is entering into an agreement with BAWSCA to receive and use the Pilot Transfer Supplies through the Hayward Intertie in lieu of RWS water that is normally delivered to Hayward through the Mission and Newark Turnouts on the RWS; and

WHEREAS, The SFPUC, EBMUD, and Hayward are entering into an agreement authorizing the one-time use of the Hayward Intertie for the Pilot Water Transfer described in this Agreement, with a specific operations plan for that one-time use jointly developed by the SFPUC, EBMUD, Hayward, and BAWSCA; and

WHEREAS, Hayward, the City and County of San Francisco, and the Wholesale Customers are signatories to the Amended and Restated Water Supply Agreement (“WSA”), approved by the SFPUC on December 11, 2018, by Commission Resolution No. 18-0212, and subsequently approved by the Wholesale Customers, that governs water supply reliability and quality, as well as the allocation of RWS capital and operating costs; and

WHEREAS, In general, the WSA allocates costs between the SFPUC and Wholesale Customers based on their respective share of expenses incurred by the SFPUC in delivering water to them on the basis of proportional annual use; and

WHEREAS, The SFPUC and BAWSCA desire to enter into an agreement that authorizes BAWSCA to deliver the Pilot Transfer Supplies through the Hayward Intertie and into the RWS for delivery to the Wholesale Customers for this one-time pilot water transfer and establishes operational guidelines and a cost allocation method that places responsibility for any incremental costs related to the Pilot Water Transfer on BAWSCA;

NOW THEREFORE, the SFPUC and BAWSCA hereby agree as follows:

**1. GENERAL PRINCIPLES FOR PILOT WATER TRANSFER IMPLEMENTATION**

A. In addition to this Agreement, the terms of the Pilot Water Transfer will be defined by agreements between: (1) BAWSCA and AWA to purchase the Pilot Transfer Supplies; (2) BAWSCA and EBMUD to wheel the Pilot Transfer Supplies through the EBMUD’s facilities, including EBMUD’s raw water, treatment, and distribution system; (3) BAWSCA and Hayward to operate the Hayward Intertie and receive delivery of the Pilot Transfer Supplies into its system; and (4) the SFPUC, EBMUD, and Hayward to authorize the one-time use of the Hayward Intertie for the Pilot Water Transfer, with a specific operations plan for that one-time use. EBMUD and AWA will also be executing a separate agreement under mutually agreeable terms under which those agencies agree to work to address the permissible uses and transferability of AWA’s claimed entitlement to pre-1914 conserved water.

B. The SFPUC agrees that BAWSCA may deliver the Pilot Transfer Supplies through the Hayward Intertie and into the RWS for delivery to the Wholesale Customers, and the quality of water supplied through the Hayward Intertie shall be consistent with the water quality parameters of the July 2008 “*Intertie Project Operations Plan*.”

C. Any Pilot Transfer Supplies introduced into the RWS as part of the Pilot Water Transfer will be considered water additional to the RWS supply for the exclusive benefit of BAWSCA member agencies.

D. The SFPUC's role as conveyor of the Pilot Transfer Supplies, BAWSCA's role as purchaser and owner of the Pilot Transfer Supplies, and the allocation of costs related to moving the Pilot Transfer Supplies through the RWS to the Wholesale Customers, will be carried out pursuant to this Agreement and the cost allocation provisions of the WSA.

E. The SFPUC consents to the purchase, receipt, delivery and use of the Pilot Transfer Supplies by the Wholesale Customers under WSA section 3.07.

F. The allocation of Pilot Water Transfer costs and water supplies applies only to Pilot Transfer Supplies transferred under this Agreement.

G. The SFPUC is willing to proceed with the Pilot Water Transfer on a one-time basis on the terms and conditions set forth in this Agreement, which are non-precedential for any other water transfer.

## **2. RESPONSIBILITIES OF BAWSCA**

### **BAWSCA shall:**

A. Contract for purchase of the Pilot Transfer Supplies from AWA, and contract with EBMUD for the wheeling of the Pilot Transfer Supplies through the EBMUD system and delivery to the Hayward Intertie.

B. Contract with Hayward to provide that Hayward will (1) operate the Hayward Intertie to effectuate the Pilot Water Transfer as provided in the agreement between the SFPUC, Hayward, and EBMUD for the one-time use of the Hayward Intertie for the Pilot Water Transfer; (2) accept the Pilot Transfer Supplies into Hayward's system; and (3) manage Hayward's reimbursable costs incurred as a result of accepting the Pilot Transfer Supplies in Hayward's system.

C. Ensure full cost recovery of the SFPUC for any and all operational costs directly attributable to the delivery of Pilot Transfer Supplies, including, but not limited to, the additional Skywest Pump Station power costs, additional water quality monitoring costs, and additional SFPUC staff time, as well as other reasonable charges incurred by the SFPUC as a result of BAWSCA's use of the RWS for the Pilot Water Transfer, as provided in California Water Code Section 1811(c). The Parties anticipate that the total for any and all operational costs directly attributable to the delivery of the Pilot Transfer Supplies will not exceed one hundred and fifty thousand dollars (\$150,000), and BAWSCA agrees to reimburse the SFPUC for any and all such costs incurred by the SFPUC up to this amount. In the event the costs exceed \$150,000, BAWSCA will meet and confer with the SFPUC to discuss the costs in excess of that amount, and agrees to reimburse the SFPUC for additional costs that are reasonable and supported by documentation demonstrating that those costs are directly attributable to the delivery of the Pilot Transfer Supplies.

D. Provide written notice to the SFPUC at least fourteen (14) calendar days in advance of the Pilot Water Transfer stating BAWSCA's intent to commence the Pilot Water Transfer. The notice will include the planned timing and quantity of water anticipated to be delivered.

## **3. RESPONSIBILITIES OF THE SFPUC**

### **The SFPUC shall:**

A. Notify BAWSCA in writing whether, and to what extent, RWS facilities have sufficient capacity to accept the Pilot Transfer Supplies within seven (7) calendar days of receipt of BAWSCA's notification under section 2.D above, or at such time as may be mutually agreed to by SFPUC and BAWSCA staff.

B. Deliver the Pilot Transfer Supplies to the Wholesale Customers, primarily to Hayward, in lieu of water from the RWS. The SFPUC's accounting of water deliveries to the Wholesale

Customers shall include the quantity of Pilot Transfer Supplies actually delivered to the Hayward Intertie in the total of RWS water deliveries available to the Wholesale Customers. The SFPUC will report the Pilot Transfer Supplies in Table J-1, "Base Usage and Allocation Rates," as shown in Attachment 3 and in accordance with Article 3.14 of the WSA.

C. Track and document all operational costs directly attributable to the delivery of Pilot Transfer Supplies, as specified in Section 2.C of this Agreement. These costs will be recovered by the SFPUC either in accordance with the terms of the WSA, or via a direct bill to BAWSCA payable within thirty (30) days. The SFPUC's calculation and reporting to BAWSCA of the operational costs directly attributable to the delivery of the Pilot Transfer Supplies for this Pilot Water Transfer is not precedential for any other water transfer.

D. Bill each individual Wholesale Customer in accordance with the terms of the WSA for its respective use of the RWS for the entire volume of water transported to the Wholesale Customers during the period of the Pilot Water Transfer.

E. Work with Hayward to determine the volume of water delivered to Hayward and the RWS during the period of the Pilot Water Transfer. (Attachment 2 shows locations of the meters.)

#### **4. TERM**

This Agreement shall be effective upon the execution of the Agreement by both Parties for a term of twelve (12) months, unless extended by mutual written agreement, or terminated early pursuant to Section 15 of this Agreement. The cost recovery and indemnification obligations of this Agreement shall survive the termination of this Agreement.

#### **5. CONDITIONS PRECEDENT**

The Parties are not obligated to perform under this Agreement unless and until (1) each of the agreements that define the terms of the Pilot Water Transfer as identified in Section 1.A of this Agreement have been approved and executed by BAWSCA and the other parties involved; and (2) EBMUD and AWA have executed a separate agreement under mutually agreeable terms under which those agencies agree to work to address the permissible uses and transferability of AWA's claimed entitlement to pre-1914 conserved water. If nonattainment of one or more of these conditions precedent would prevent the Pilot Water Transfer from being completed, the Parties will consult with each other and make a good faith effort to determine if such circumstances could be addressed and/or mitigated in some manner and, if so, to amend this Agreement to the extent practicable. If, after undertaking such consultation, either Party determines the circumstances cannot be adequately addressed, this Agreement may be suspended or terminated, pursuant to Section 15 of this Agreement.

#### **6. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The obligations of the Parties under this Agreement are conditioned upon compliance with all applicable environmental laws, including CEQA. BAWSCA shall serve as lead agency of the Pilot Water Transfer project for purposes of CEQA. The SFPUC shall be a responsible agency.

#### **7. MODIFICATION**

This Agreement may be modified or amended only by a written document signed by both Parties.

**8. DISPUTE RESOLUTION**

In the event of any dispute, the Parties will promptly meet and confer, first at a staff level and then elevated to a meeting of executives, in a good faith attempt to resolve the dispute. If a dispute cannot be resolved by the Parties independently, they may agree to submit such dispute to non-binding mediation by a mutually agreed-upon neutral third party with offices in the San Francisco Bay Area. The cost of mediation will be shared equally.

**9. NOTICE**

Except as specified elsewhere in this Agreement, all notices required to be given, or which may be given by either Party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, registered and postage prepaid and addressed to the respective Parties as follows:

If to Agency: Bay Area Water Supply & Conservation Agency  
155 Bovet Road, Suite 650  
San Mateo, CA 94402  
Attention: Chief Executive Officer/General Manager

If to SFPUC: San Francisco Public Utilities Commission  
525 Golden Gate Avenue  
13<sup>th</sup> Floor  
San Francisco, CA 94102  
Attention: General Manager

Notification of a change in the name of the contact person shall be in writing.

**10. WAIVER**

A waiver of any requirement of this Agreement must be in writing by an authorized representative of the Party waiving the requirement. The waiver by either Party of a breach of any requirement of this Agreement will not be deemed a waiver of any such breach in the future or of a breach of any other requirement.

**11. INTERPRETATION**

Section headings are solely for convenience and are not intended to affect the interpretation of the Agreement. The Agreement will be interpreted reasonably, not in favor of or against either Party.

**12. NO THIRD PARTY RIGHTS**

The Parties do not intend this Agreement to create rights in any third parties and nothing in this Agreement should be construed to do so.

**13. SEVERABILITY**

If any provision of this Agreement or any portion thereof is held to be invalid or unenforceable for any reason, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event such provision will be severable and will not affect the validity or enforceability of any other provision.

#### **14. APPLICABLE LAW**

This Agreement, its interpretation and all work performed under it will be governed by the laws of the State of California.

#### **15. SUSPENSION AND TERMINATION**

The Parties may suspend the Agreement and the Pilot Water Transfer due to any of the following: (1) operational, mechanical, health and safety, and/or water quality issues that arise during the Pilot Water Transfer that might adversely affect the RWS, its employees, and/or its customers; (2) a natural disaster; or (3) suspension of a separate agreement required to implement the Pilot Water Transfer. Such suspension under this Agreement will be effective after the suspending Party provides written notice to the other Party via U.S. mail per Section 9 of this Agreement, or in the event of an emergency or time-sensitive circumstances, via email to the other Party's designated representative(s) and/or appropriate staff.

A Party will have the right to terminate this Agreement and the Pilot Water Transfer for any of the following reasons: (1) the Parties are unable to adequately resolve the issues or circumstances giving rise to a suspension of the Pilot Water Transfer under the Agreement; (2) a required regulatory approval or third party agreement cannot be obtained to carry out the Pilot Water Transfer; (3) a separate agreement required to implement the Pilot Water Transfer is terminated; or (4) a Party reasonably determines that the costs of any litigation related to the Pilot Water Transfer, any restrictions, fees, charges or costs imposed in the approvals of any regulatory agency for the Pilot Water Transfer, or any relief afforded to third parties in any action brought in state or federal court involving this Agreement or the Pilot Water Transfer, are too burdensome in relation to the benefits to be received from the Pilot Water Transfer.

It is understood that SFPUC, Hayward, and EBMUD may modify operations described in the operations plan for the one-time use of the Hayward Intertie for the Pilot Water Transfer in the manner set forth in that document. If an operational modification is made which may significantly affect the delivery of transfer water, SFPUC will notify BAWSCA as soon as practicable. If BAWSCA disputes any such modification, the Parties shall meet and confer as soon as practicable to discuss the modification and the attendant circumstances. If the Parties cannot reach agreement, either Party may elect to temporarily suspend this Agreement and the Pilot Water Transfer or to terminate it early in accordance with the procedures of this Section 15.

In the event of termination, the Parties thereafter will be under no further obligation or responsibility under this Agreement, and will release each other from further obligations under this Agreement, except as provided in this section. Prior to giving notice of termination, the Party electing to terminate will confer with the other Party to discuss and attempt to reasonably resolve the issues or circumstances giving rise to the proposed termination. If the Parties are unable to resolve those issues or circumstances, a Party may provide written notice of termination per Section 9 of this Agreement, or in the event of an emergency or time-sensitive circumstances, via email from the terminating Party's general manager and/or senior management to the other Party's general manager and/or senior management. The Parties will comply with written notice of termination no later than five (5) calendar days after receipt.

If this Agreement and/or the Pilot Water Transfer is terminated early for any reason, BAWSCA shall be responsible for payment of all operational costs directly attributable to the delivery of Pilot Transfer Supplies, as specified in Section 2.C of this Agreement, which were actually incurred by the SFPUC on or before the effective date of the early termination. These costs will be recovered by the SFPUC either in accordance with the terms of the WSA, or via a direct bill to BAWSCA payable within thirty (30) days, as provided in Section 3.C of this Agreement. The Parties' obligations under this section will survive this Agreement's termination.

**16. AGREEMENT NOT A PRECEDENT**

The Parties intend that the provisions of this Agreement will not bind the Parties as to the provisions of any future agreement between them. This Agreement was developed specifically for the one-time pilot water transfer that is the subject of this Agreement. The Parties will use this Pilot Water Transfer to identify any unexpected impacts and costs. Any future agreement between the Parties for another water transfer may contain different terms and conditions. SFPUC reserves all rights under applicable law to (i) undertake a case-by-case evaluation of each future proposed water transfer and determine whether and upon which terms and conditions it would enter into any future agreement for such transfer, and (ii) challenge or protest a proposed future water transfer which it believes may injure any legal user of water, unreasonably affect fish, wildlife, or other instream beneficial uses, or otherwise fail to comport with applicable law.

**17. INDEMNIFICATION.**

To the extent permitted by State law, BAWSCA will indemnify, defend, and hold safe and harmless the SFPUC and its directors, officers, agents, and employees from any and all claims, suits, legal proceedings, judgments, damages, penalties, costs, expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) (collectively, "Claims") to the extent such Claims arise from or are related in any way to one or more of the following: (i) anything done or omitted to be done by BAWSCA, or its associates, employees, subconsultants, or other agents, in connection with, or related in any way to, this Agreement, (ii) any allegation that the performance of this Agreement may injure or damage any non-Party to this Agreement, whether such allegation is premised in tort, contract, or other law, and/or (iii) any claim arising under CEQA or another State or Federal environmental law or regulation. BAWSCA will defend the SFPUC in any such action or lawsuit using counsel approved by the SFPUC.

To the extent permitted by State law, the SFPUC will indemnify, defend, and hold BAWSCA and its directors, officers, agents, and employees safe and harmless from any and all claims, suits, legal proceedings, judgments, damages, penalties, costs, expenses, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) (collectively, "Claims") to the extent such Claims arise from anything done or omitted to be done by the SFPUC, or its associates, employees, subconsultants, or other agents, in connection with, or related in any way to, this Agreement. The SFPUC will defend BAWSCA in any such action or lawsuit using counsel approved by BAWSCA.

**18. ENTIRE AGREEMENT**

This Agreement including any exhibits or attachments, constitutes the complete agreement between the Parties and supersedes any prior agreements, promises, and understandings whether written or oral. This Agreement may be modified or amended only by written instrument signed by both Parties.

**19. ATTACHMENTS TO THIS AGREEMENT**

- (1) Attachment 1: Project Description for the Bay Area Water Supply and Conservation Agency's Pilot Water Transfer

- (2) Attachment 2: Diagrams of the intersection of the EBMUD system, the Hayward Intertie, the Hayward water system, and the RWS, including pump stations, turnouts, and meter locations and intertie system schematic. Two figures are included:

Diagram 2(a). Diagram of flow through the Hayward water system under normal conditions. Arrows indicate the anticipated direction of flow. Flow meters are located at the pump stations and the turnouts.

Diagram 2(b). Diagram of flow through the Hayward Intertie during the pilot water transfer (running in intertie operations mode 5, as defined in the July 2008 “Intertie Project Operations Plan”). Arrows indicate the anticipated direction of flow. Flow meters are located at the pump stations.

- (3) Attachment 3: Example: Revised Table J-1 for Use in Accounting for Pilot Transfer Supplies According to Article 3.14 of the WSA.

*[Signatures on Following Page]*

IN WITNESS WHEREOF the Parties have executed this Agreement by their duly authorized officers as of the day and year first above written.

BAY AREA WATER SUPPLY & CONSERVATION AGENCY

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2019  
Nicole M. Sandkulla, CEO/General Manager

Title: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO  
ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION

Authorized by SFPUC Res. No. \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2019  
Harlan L. Kelly, Jr., General Manager

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

## Project Description for the Bay Area Water Supply and Conservation Agency's Pilot Water Transfer

### SUMMARY:

The Bay Area Water Supply and Conservation Agency (BAWSCA) is proposing a one-time pilot water transfer under which BAWSCA would purchase up to 1,000 acre-feet of water from Amador Water Agency (AWA) for delivery and use within the BAWSCA service area. AWA holds an entitlement of up to 15,000 acre-feet of water supplies provided by the 1985 Stipulation and Agreement with the Pacific Gas and Electric Company (PG&E) (1985 Stipulation) under various pre-1914 appropriative water rights PG&E holds on the Mokelumne River. The proposed transfer water originates from AWA's contractual Mokelumne River water supply entitlement pursuant to the 1985 Stipulation.

The Project would be located in Amador, Calaveras, San Joaquin, Contra Costa, and Alameda Counties. Water deliveries will occur in Alameda County and may occur in Santa Clara and San Mateo Counties. AWA would make the transfer water available to BAWSCA from PG&E's Electra Powerhouse, upstream of East Bay Municipal Utility District's (EBMUD) Pardee Reservoir. The transfer water would be released into the North Fork of the Mokelumne River and flow into Pardee Reservoir. EBMUD would then divert and convey the transfer water through its existing conveyance system, which includes raw water aqueducts, treatment plants, and potable distribution systems, and make the transfer water, less 20% for system losses, available to BAWSCA at the Hayward Intertie at a rate of approximately 13 to 16 million gallons per day over an estimated duration of 20 days. The Hayward Intertie is jointly owned by EBMUD and SFPUC and operated by the City of Hayward. It connects the EBMUD and San Francisco Public Utilities Commission (SFPUC) Regional Water System (RWS) through the City of Hayward aqueduct system.

The City of Hayward, a BAWSCA member agency, holds a water supply contract with SFPUC. Under the proposed Project, the City of Hayward would modify operation of its water system to take delivery of the Project transfer water through the Hayward Intertie. Transfer water coming through the Intertie would be used by Hayward, in-lieu of water from SFPUC, and additional transfer water would be pumped into the RWS using the City of Hayward-owned Hesperian Pump Station and delivered to other BAWSCA member agencies. Figure 1 illustrates the pathway that the pilot transfer will follow. The Project relies on existing facilities, and will not involve any expansion of those facilities.

The goal of this pilot Project is to evaluate the feasibility of delivering alternative water supplies to BAWSCA member agencies in times of future supply interruptions or water shortages. This pilot transfer will assist with (1) testing the viability of and impacts to the existing infrastructure described above and (2) identifying the necessary elements of the multiple institutional approvals and agreements required to deliver such transfer supplies.

The pilot transfer is planned to occur in January 2020. The pilot would be timed to coincide with a temporary shutdown of the Hetch Hetchy conveyance portion of the RWS.

**PARTICIPANTS:**

*BAWSCA* – BAWSCA provides regional water supply planning, resource development, and conservation program services for the benefit of its 26 member agencies. These activities include the planning and acquisition of supplemental water supplies to enhance the supply reliability of 16 cities, 8 water districts, and 2 private water providers that purchase wholesale water supplies from the SFPUC. These agencies provide water to 1.8 million people and businesses in Alameda, Santa Clara, and San Mateo Counties. Under the proposed Project, BAWSCA would manage the pilot transfer and coordinate the scheduling and delivery of transfer water with AWA, EBMUD, Hayward, and SFPUC.

*EBMUD* – EBMUD provides water to approximately 1.4 million people in parts of Alameda and Contra Costa counties in the San Francisco Bay Area. EBMUD owns and operates a system of surface water reservoirs, raw water aqueducts, water treatment plants, local storage facilities, and distribution pipelines and facilities. EBMUD uses these facilities to supply drinking water to its East Bay service area. Under the proposed Project, EBMUD would use its existing facilities to wheel the transfer water under agreements with AWA and BAWSCA, agree to the use of the Hayward Intertie for the pilot transfer, and make delivery of the wheeled quantity of water, less 20% system losses, to BAWSCA.

*AWA* – AWA provides water and wastewater services to a large portion of Amador County, including all 5 cities within the County. AWA provides both retail and wholesale water to approximately 27,000 residents through just under 7,000 service connections. Under the proposed Project, AWA would transfer water which it has determined can be made available through its water conservation efforts to BAWSCA.

*City of Hayward* – The City of Hayward delivers water to over 160,000 residents. The City of Hayward operates and maintains the Hayward Intertie. Under the proposed Project, the City of Hayward would agree to operate the Hayward Intertie and Hayward water system to receive pilot transfer water for use in the City of Hayward, and deliver transfer water south through the City of Hayward-owned conveyance system to SF RWS transmission lines.

*SFPUC* – San Francisco Public Utilities Commission manages the RWS and provides retail drinking water services to the City of San Francisco and wholesale water to three Bay Area counties. Under the proposed Project, SFPUC would agree to the use of the Hayward Intertie for the pilot transfer and receive transfer water into the RWS. SFPUC will deliver the pilot transfer water received into the RWS to BAWSCA member agencies.

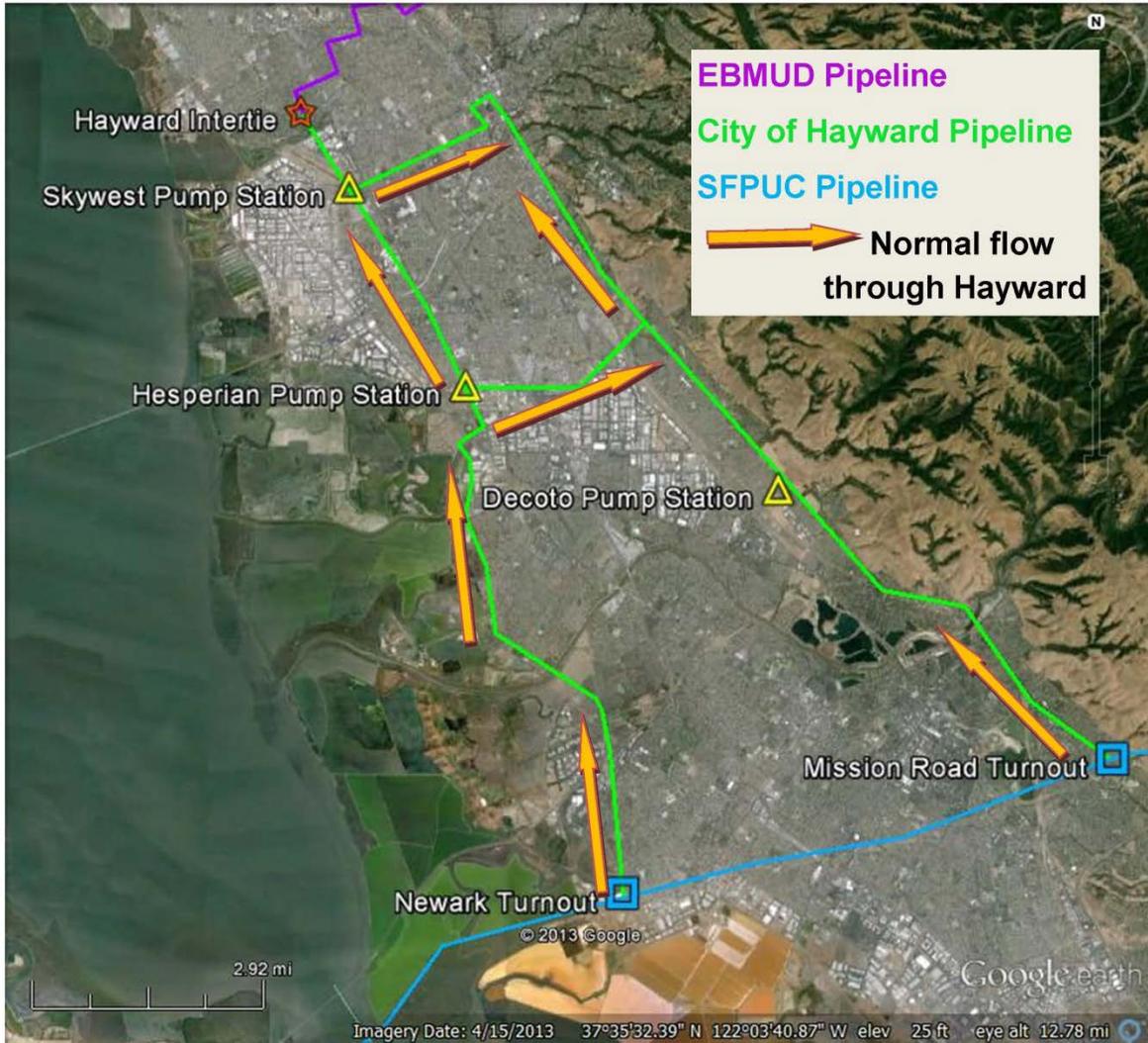


Figure 2a. Diagram of flow through the City of Hayward under normal conditions. Arrows indicate the anticipated direction of flow. Flow meters are located at the pump stations and the turnouts.

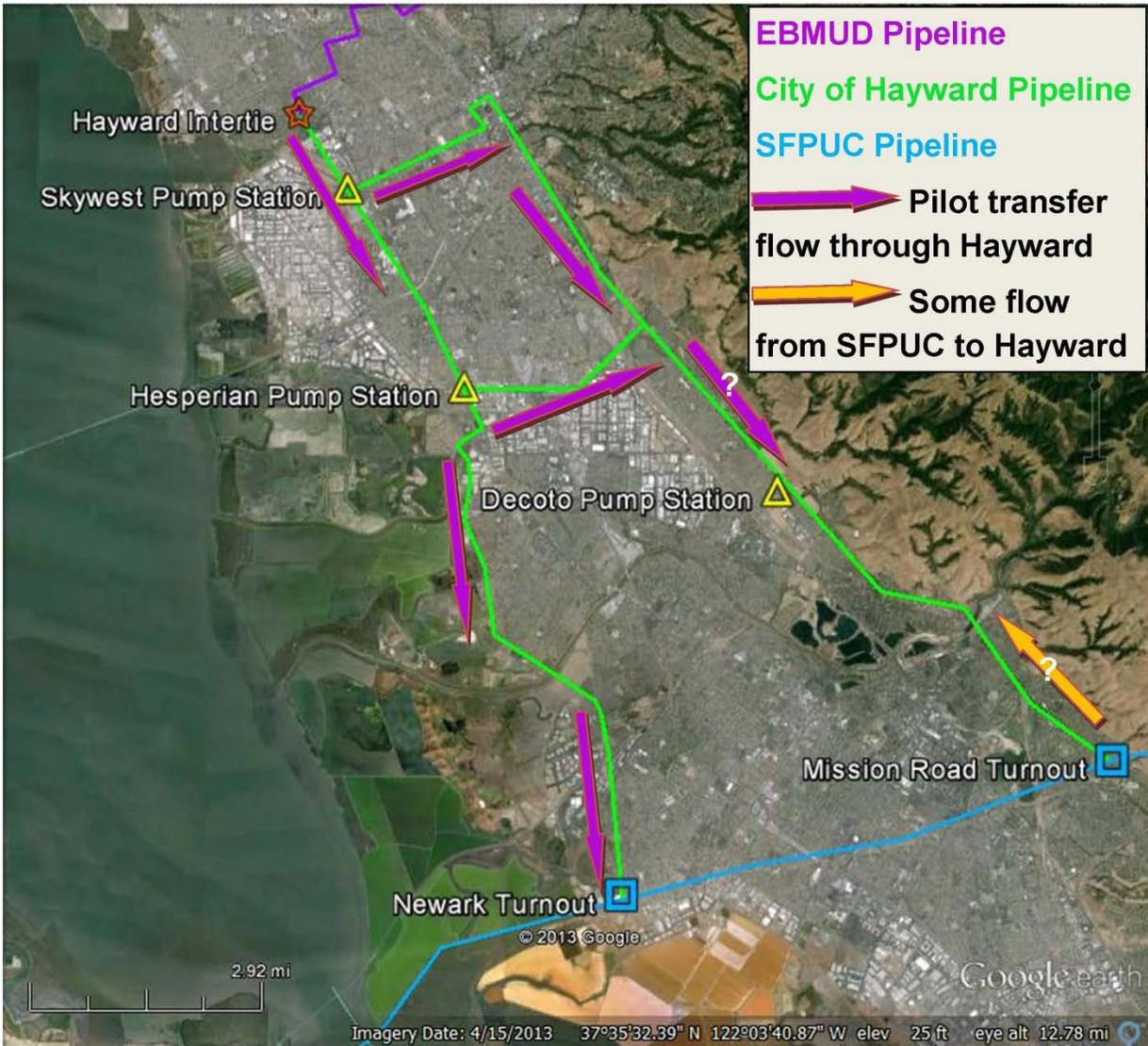


Figure 2b. Diagram of flow through the Hayward Intertie during the pilot water transfer (running in Intertie operations mode 5). Arrows indicated the anticipated direction of flow. Flow meters are located at the pump stations and the turnouts. During the transfer of water from EBMUD to SFPUC in 2009 and 2010, SFPUC served some water to the Hayward system through the Mission Road Turnout in order to meet demand. This could potentially occur again during the pilot water transfer.

9/20/2019

Illustration of how a water transfer of 0.9 mgd through the EBMUD Intertie would effect the FY2017-18 J-table calculations, and proposed changes to Table J-1 to account for and footnote the transfer water.

**Table J-1**  
**Base Usage (mgd) and Allocation Rates**

(1) Usage	(2) Definition	(3) 2012-13 <sup>7</sup>	(4) 2013-14	(5) 2014-15	(6) 2015-16	(7) 2016-17	(8) 2017-18	Mock 2019-20	Notes
1. Gross S.F. Co. line <sup>1</sup>	B.1	71.2	68.4	64.0	61.8	61.6	64.3	64.3	
2. Daly City portion	B.2	0.3	0.1	0.1	0.1	0.1	0.2	0.2	
3. Net S.F.	(1-2)	70.9	68.3	63.9	61.7	61.5	64.1	64.1	
4. Other suburban raw water	B.4	0.5	0.5	0.4	0.4	0.2	0.2	0.2	
5. Other suburban treated water	B.5	3.1	2.8	2.6	2.2	2.5	2.8	2.8	
6. Total other suburban	(4+5)	3.6	3.3	3.0	2.6	2.7	3.0	3.0	
7. Total City usage	(3+6)	74.5	71.6	66.9	64.3	64.2	67.1	67.1	
8. Total wholesale usage <sup>2</sup>	B.8	148.3	149.6	128.0	110.8	115.5	128.9	128.9	Total Wholesale Customer usage would remain unchanged.
9. Total system usage	(7+8)	222.8	221.2	194.9	175.1	179.7	196.0	196.0	
10. Wholesale alloc. rate	(8/9)	66.56%	67.63%	65.67%	63.28%	64.27%	65.77%	65.77%	
11. City alloc. rate	(100%-10)	33.44%	32.37%	34.33%	36.72%	35.73%	34.23%	34.23%	
12a. HHWPD input (Oakdale)	B.12	205.2	239.7	187.6	150.2	128.9	210.2	209.3	System Input from HH would be lower by an amount equivalent to the transfer water received (0.9 mgd).
12b. Deliveries to LLNL	B.12	-0.8	-0.7	-0.6	-0.6	-0.1	-0.2	-0.2	
12c. HH to San Ant. Res.	B.12	-7.9	-21.2	-12.1	-4.2	-4.7	-15.3	-15.3	
12d. Sunol Valley WTP	B.12	21.4	10.1	16.8	27.0	39.5	16.5	16.5	
12e. Harry Tracy WTP	B.12	26.1	21.2	29.3	35.9	45.3	33.2	33.2	
12f. Raw water deliveries	B.12	0.5	0.5	0.4	0.4	0.2	0.2	0.2	
12g. Deliveries to Coastside Co. WD	B.12	1.7	1.9	1.5	1.2	1.1	1.0	1.0	
12h. Crys. Sprs. Bal. Res.	B.12	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
12i. Spill to CS Res.	B.12	-24.4	-28.5	-31.3	-28.1	-26.2	-41.3	-41.3	
12j. Terminal Reservoirs	B.12	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
12k. Other Sources <sup>3</sup>	B.12	0.0	-0.2	-0.3	-1.0	-3.8	-7.6	-6.7	Total Other Sources would increase by the amount of the transfer water received (0.9 mgd)
12k. (1) SCVWD Intertie <sup>4,6</sup>	B.12	0.0	-0.2	-0.3	-0.4	1.5	-2.3	-2.3	
12k. (2) EBMUD Intertie <sup>4,9</sup>	B.12	0.0	0.0	0.0	0.0	0.0	0.0	0.9	
12k. (3) Conj. Use Groundwater <sup>5</sup>	B.12	0.0	0.0	0.0	-0.6	-5.3	-5.3	-5.3	
13. Total system input	B.13	221.8	222.8	191.3	180.8	180.2	196.7	196.7	Total System Input would remain unchanged.
14. Jt. sys. loss red. fact.	(9/13)	1.0000	0.9928	1.0000	0.9685	0.9972	0.9964	0.9964	
15. Daly City red. factor	(3/1)	0.9958	0.9985	0.9984	0.9984	0.9984	0.9969	0.9969	
16. Total suburban	(6+8)	151.9	152.9	131.0	113.4	118.2	131.9	131.9	
17. Suburban red. factor	(8/16)	0.9763	0.9784	0.9771	0.9771	0.9772	0.9773	0.9773	
18. HHWPD Deliveries above Oakdale <sup>6</sup>	B.18	0.4	0.4	0.3	0.3	0.3	0.4	0.4	
19. HH Reduction Factor <sup>6</sup>	B.19	99.81%	99.83%	99.84%	99.80%	99.77%	99.81%	99.81%	

1. Beginning FY2017-18, Gross S.F. Co. line usage may be adjusted for water pumped from the Lake Merced well. The water pumped from this In-City well passes through the Sunset/Sutro meters, but is not part of the RWS supply. A deduction was made to the Gross S.F. Co. line deliveries in FY2017-18 (0.04 mgd).

2. Total Wholesale Customer usage is adjusted to account for water delivered to Wholesale Customers participating in the groundwater conjunctive use project [line 12k.(3)].

3. Other sources of water were not separately identified in J-tables prior to FY2009-10.

4. Negative values represent water delivered from SFPUC to EBMUD and/or SCVWD. Positive values represent water delivered to SFPUC from EBMUD and/or SCVWD.

5. Negative values represent water delivered to participating Wholesale Customers in lieu of groundwater pumping. Positive values represent water added to the system in the form of increased groundwater pumping by the participating Wholesale Customers or the SFPUC, when SFPUC wells become operational (target date 2018).

6. Not calculated in J-tables prior to FY2009-10.

7. Adjustment Line 8, FY2012-13: Total Wholesale Usage. Line 8 adjusted higher by 0.4 mgd over the Sept. 20, 2013 submitted FY2012-13 Table J-1. The adjustment is due to meter error at Cal Water Service - San Mateo.

8. Original FY2014-15 SCVWD Intertie value -0.6 submitted Sep 18, 2015. The revised value -0.3 replaces the original value. Table J-1 with revised value of -0.3 resubmitted on Oct 27, 2015.

9. Water transfer received through the EBMUD Intertie in FY2019-20 is for BAWSCA's Pilot Water Transfer (0.9 mgd) is accounted for as an input to the system and is reflected in the Total Wholesale Customer usage (Line 8). The Pilot Water Transfer water was transferred from Amador Water Agency through the EBMUD intertie to BAWSCA.

# Appendix F: Agreements that do not Include BAWSCA – Second Attempt

F.I. Hayward Intertie Pilot Transfer Agreement

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F.I. Hayward Intertie Pilot Transfer Agreement

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**AGREEMENT  
AMONG THE CITY OF HAYWARD,  
EAST BAY MUNICIPAL UTILITY DISTRICT  
AND SAN FRANCISCO PUBLIC UTILITIES COMMISSION  
REGARDING THE ONE-TIME USE OF THE HAYWARD INTERTIE  
FOR THE BAWSCA PILOT WATER TRANSFER**

This Agreement (“AGREEMENT”) among the City of Hayward, a municipal corporation, hereinafter referred to as “CITY,” and the East Bay Municipal Utility District, a public agency, hereinafter referred to as “EBMUD,” and the San Francisco Public Utilities Commission, a public agency, hereinafter referred to as “SFPUC,” individually referred to as “PARTY” and collectively referred to as the “PARTIES,” sets forth the terms and conditions for the one-time use of the EBMUD-SFPUC-Hayward Emergency/Maintenance Water System Intertie Project (“Hayward Intertie”) for the proposed 2020 Bay Area Water Supply and Conservation Agency (“BAWSCA”) Pilot Water Transfer and the respective roles and responsibilities of the PARTIES in connection therewith. This AGREEMENT is made and entered into this \_\_\_\_ day of December, 2019.

**RECITALS**

WHEREAS, the Hayward Intertie is jointly owned by EBMUD and SFPUC, and connects the EBMUD and SFPUC regional water systems through the CITY and using CITY-owned infrastructure; and

WHEREAS, the *First Amended Joint Exercise of Powers Agreement between SFPUC, EBMUD, and Hayward for Long-term Operation and Maintenance of the Emergency/Maintenance Water System Intertie Project* dated July 10, 2007 (“2007 JPA”) provides for the operation of the Hayward Intertie only during initial testing or “Maintenance,” during an “Emergency” or “Planned Critical Work”, or to provide “Reimbursement Water,” within the meaning given to those terms by the 2007 JPA; and

WHEREAS, the SFPUC regional water system includes Hetch Hetchy and local Bay Area water supplies; and

WHEREAS, the SFPUC has a planned shutdown of the Hetch Hetchy conveyance portion of its regional water system for critical maintenance work during January and early February 2020, during which the SFPUC will serve its wholesale and retail customers local Bay Area water supplies; and

WHEREAS, the SFPUC has requested that Hayward and EBMUD prepare the Intertie to be placed in standby mode during the Hetch Hetchy shutdown; and

WHEREAS, the CITY is one of the wholesale water customers of the SFPUC whose water supply is purchased from the SFPUC and delivered through an existing connection with SFPUC facilities; and

WHEREAS, BAWSCA represents the collective interests of the wholesale water customers of the SFPUC; and

WHEREAS, BAWSCA has proposed a pilot water transfer in January 2020 during the planned Hetch Hetchy shutdown, whereby BAWSCA would purchase up to 1,000 acre feet of water from an alternative source that would be conveyed through EBMUD's water system and delivered to the CITY through the Hayward Intertie, and used primarily by the CITY in-lieu of the CITY's regular SFPUC supply, with a small portion also being delivered to the San Francisco Regional Water System ("Pilot Water Transfer"); and

WHEREAS, EBMUD has expressed to certain non-parties to this AGREEMENT its legal and other concerns regarding the Pilot Water Transfer, including but not limited to water rights issues arising from the source of water to be used for the Pilot Water Transfer, but has nonetheless agreed to facilitate the Pilot Water Transfer on a one-time non-precedential basis without waiving its rights in any respect; and

WHEREAS, the SFPUC is willing to proceed with the Pilot Water Transfer on a one-time non-precedential basis on the condition that all other parties involved in the proposed water transfer are willing, subject to the conditions and limitations identified in the SFPUC's separate agreement with BAWSCA; and

WHEREAS, having received assurances from BAWSCA that the CITY will be appropriately indemnified, the CITY is willing to proceed with the Pilot Water Transfer on a one-time non-precedential basis, subject to the conditions and limitations identified in its agreement with BAWSCA; and

WHEREAS, BAWSCA has negotiated separate agreements with each of the PARTIES to effectuate the Pilot Water Transfer on a one-time non-precedential basis; and

WHEREAS, the PARTIES acknowledge the 2007 JPA does not expressly authorize the Hayward Intertie to be operated for the purposes of the Pilot Water Transfer; and

WHEREAS, it is nevertheless agreed among the PARTIES that is desirable to enter into this AGREEMENT on a voluntary and non-precedential basis to authorize the one-time use of the Hayward Intertie for the Pilot Water Transfer during the planned Hetch Hetchy shutdown in January/February 2020, subject to the terms and conditions of this AGREEMENT and the separate agreements between BAWSCA and each of the PARTIES; and

WHEREAS, use of the Hayward Intertie to conduct the Pilot Water Transfer during the Hetch Hetchy shutdown in accordance with this AGREEMENT and each PARTY's separate agreement with BAWSCA provides the PARTIES with an opportunity to exercise the Hayward Intertie; and

WHEREAS, the PARTIES have agreed that this AGREEMENT shall govern their respective roles and obligations related to the Pilot Water Transfer with respect to the use of the Hayward Intertie;

NOW THEREFORE, the PARTIES agree as follows:

## **AGREEMENT**

### **1. PURPOSE**

The purpose of this Agreement is to provide for the one-time use of the Hayward Intertie for the Pilot Water Transfer on a voluntary and non-precedential basis during the planned shutdown of the Hetch Hetchy conveyance portion of the SFPUC regional water system in January/February 2020, subject to the terms and conditions herein and in separate agreements between BAWSCA and each of the PARTIES.

Notwithstanding the limitations of Section 4(b) and 15 of the 2007 JPA, the PARTIES agree that the delivery of Pilot Transfer Water, subject to the terms and conditions of this AGREEMENT and each PARTY's separate agreement with BAWSCA, is an opportunity to exercise the Hayward Intertie and is a permissible use of the Hayward Intertie in these limited circumstances.

Except as specifically provided herein, the Hayward Intertie will be used for the Pilot Water Transfer in accordance with the terms of the 2007 JPA. In particular, the use of the Hayward Intertie to move water during an Emergency pursuant to the 2007 JPA will take precedence over the Pilot Water Transfer.

### **2. TERM.**

This AGREEMENT shall become effective upon its execution by the PARTIES. The AGREEMENT will terminate on June 30, 2020, or upon completion of the Pilot Water Transfer, whichever is sooner. Prior to termination, the PARTIES shall have the option to extend the AGREEMENT by up to six months, until a date no later than December 31, 2020, by mutual written agreement.

### **3. PILOT WATER TRANSFER OPERATIONS PLAN**

The operational parameters, communications procedures, timing, and rates of delivery necessary to carry out the Pilot Water Transfer shall be governed by the Pilot Water Transfer Operations Plan in Attachment 1 of this AGREEMENT. The Pilot Water Transfer Operations Plan may be modified from time to time by the mutual agreement of the PARTIES without the need for further amendment of this AGREEMENT, provided that such agreement is memorialized in writing.

Except as specifically provided for in the Pilot Water Transfer Operations Plan, operations during the Pilot Water Transfer will be governed by the 2008 Intertie Project Operations Plan.

### **4. SUSPENSION OF PILOT WATER TRANSFER DELIVERIES**

Any PARTY shall have the right to immediately suspend Pilot Transfer Water deliveries at its sole discretion, if necessary, to (i) Protect the integrity of facilities involved in the Pilot Water Transfer; (ii) Respond to regulatory directives from state and or federal agencies or fully comply with applicable permits, water rights, laws, and/or regulations; (iii) Protect the health and safety of employees and or customers; (iv) Protect water supplies, quality or operations; (v) Respond to emergencies or operational issues that may arise during the Pilot Water Transfer, (vi) Avoid

unreasonable effects to fish, wildlife, or other instream beneficial uses or injury to any legal user of water, or (vii) Address an actual or potential significant adverse impact to such PARTY's water supply, water rights, or entitlements, or to its water system, or to the treatment or distribution of water to its customers. The suspending PARTY shall notify the other PARTIES of the suspension by sending an email as soon as possible to all of the individuals listed on the Operational Contact List in the Pilot Water Transfer Operations Plan. Upon suspension of Pilot Water Transfer deliveries, CITY shall immediately resume receiving water deliveries from the SFPUC Regional Water System.

## **5. SPECIAL CONDITIONS RELATED TO PILOT WATER TRANSFER DELIVERY**

Pre-Transfer Flushing. CITY will conduct bi-directional flushing prior to the Pilot Water Transfer. EBMUD will provide sufficient water as reasonably required to complete north-to-south flushing to CITY's satisfaction. Water used to flush the system shall be discharged by CITY in compliance with the Statewide National Pollutant Discharge Elimination System (NPDES) Permit for Drinking Water Discharges to Waters of the United States, Order WQ 2014-0194-DWQ and CITY shall be the sole PARTY responsible for such permit compliance with respect to the Pilot Water Transfer. .

Water Quality. The water transferred to the CITY will, prior to being made available at the Hayward Intertie, be treated by EBMUD at one of EBMUD's water treatment plants, in the same manner and to the same extent as EBMUD treats water it makes available to its own customers for human consumption, including fluoridation.

No Reimbursement Water. No PARTY shall be obligated to provide Reimbursement Water as a result of any activities undertaken in connection with this Pilot Water Transfer, notwithstanding any provision in the 2007 JPA to the contrary.

## **6. OPERATION & MAINTENANCE COSTS; DAMAGE TO FACILITIES**

Operation and Maintenance Costs. The costs of pre-transfer flushing and other activities required to carry out the Pilot Transfer shall be borne by BAWSCA under the PARTIES' separate agreements with that entity. Neither SFPUC nor EBMUD shall be responsible for these costs including, but not limited to, the pre-transfer flushing. The costs of Maintenance that are not directly related to or necessitated by the Pilot Water Transfer, such as routine preventative maintenance and/or Maintenance that is necessary to place the Intertie in standby mode during the Hetch Hetchy shutdown, shall be governed by Section 13(a) of the 2007 JPA. As used in this paragraph, "Maintenance" shall have the meaning set forth in Section 2 of the 2007 JPA. In the event of a dispute as to the assignment of Maintenance costs under this section, the disputing PARTIES will meet and confer under Section 27 of the 2007 JPA. No PARTY shall be liable to reimburse operating costs incurred by another PARTY in connection with the Pilot Water Transfer. Any PARTY which incurs such costs may obtain reimbursement from BAWSCA in accordance with any separate agreement between such PARTY and BAWSCA.

Damage to Facilities. The PARTIES agree that operation of the Hayward Intertie in accordance with the Pilot Water Transfer Operations Plan, including any amendments which may be made

thereto, is operation within the Operating Standards for purposes of Section 10 of the 2007 JPA. Repair costs resulting from the Pilot Water Transfer shall be allocated among the PARTIES in accordance with Section 10 of the 2007 JPA, which PARTIES may assign responsibilities for those costs to BAWSCA by separate agreement.

Conflict or Inconsistency. For purposes of allocating Pilot Water Transfer costs and damages among the PARTIES under this AGREEMENT, the provisions of Section 6 are controlling. Nothing in this section shall prohibit any PARTY from separately recovering costs, whether or not disputed, from BAWSCA under a separate agreement. In the event of a conflict or inconsistency between any provision of Section 6 of this AGREEMENT and any provision of the 2007 JPA, the provision in Section 6 of this AGREEMENT shall control.

## **7. PILOT NATURE OF PROPOSED WATER TRANSFER**

The PARTIES acknowledge that the proposed Pilot Water Transfer is one-time pilot project intended to provide additional information regarding the institutional arrangements needed to implement water transfers, and has been specifically designed to take place in coordination with the planned shutdown of the Hetch Hetchy conveyance portion of the SFPUC Regional Water System in January/February 2020.

Nothing in this AGREEMENT shall be construed as an acknowledgement of capacity or a determination of fair compensation pursuant to Water Code section 1810 et seq., as a commitment by any PARTY to participate in future water transfers, or (except as expressly provided in this AGREEMENT with respect to the Pilot Water Transfer) as an alteration of the terms of the 2007 JPA.

## **8. CANCELLATION**

Cancellation of this AGREEMENT by any PARTY may be effected by delivering to the other PARTIES written notice of cancellation. Cancellation shall take effect five (5) business days following the receipt of notice by the other PARTIES. Upon receiving notice of such cancellation, each PARTY will take immediate action to suspend Pilot Water Transfer deliveries under its respective agreement with BAWSCA, and the CITY shall immediately resume receiving water deliveries from the SFPUC Regional Water System.

## **9. DISPUTE RESOLUTION.**

The PARTIES agree to attempt in good faith to resolve all disputes informally. If agreed to by the PARTIES, alternate methods of dispute resolution, such as Mediation, may be utilized.

## **10. AGREEMENT NOT A PRECEDENT.**

The PARTIES intend that the provisions of this AGREEMENT shall not be a precedent and shall not bind the PARTIES as to the provisions of any future agreement between them. By entering into this AGREEMENT, the PARTIES do not intend to amend or modify in any way the 2007 JPA or the 2008 Intertie Project Operations Plan except with respect to the one-time Pilot Water Transfer specifically, and even in that case only to the extent expressly specified herein.

**11. NOTICES.**

Any notice, demand, or request made in connection with this AGREEMENT must be in writing and will be deemed properly served if delivered in person or sent by United States mail, postage prepaid, to the addresses specified below.

If to CITY: City of Hayward  
777 "B" Street  
Hayward, CA 94541  
Attention: Director of Public Works

If to EBMUD: East Bay Municipal Utility District  
375 11th Street  
Oakland, CA 94607  
Attention: Director of Water & Natural Resources, MS 901

If to SFPUC: San Francisco Public Utilities Commission  
525 Golden Gate Avenue  
13<sup>th</sup> Floor  
San Francisco, CA 94102  
Attention: General Manager

**12. AMENDMENTS.**

No amendment or modification to this AGREEMENT shall be valid unless executed in writing and approved by all PARTIES, provided that the Pilot Water Transfer Operations Plan may be amended or modified in the manner specified in this AGREEMENT.

**13. SEVERABILITY.**

If any term or provision of this AGREEMENT is deemed invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it will not affect the validity of any other provision, which will remain in full force and effect.

**14. COMPLETE AGREEMENT.**

This AGREEMENT, including the Attachment, represents the full and entire agreement among the PARTIES with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

**15. COUNTERPARTS.**

This AGREEMENT may be executed in counterparts by each signatory. The separate executed counterparts, taken together, shall constitute a single agreement.

**16. SUCCESSORS AND ASSIGNS.**

This AGREEMENT shall be binding on, and shall inure to the benefit of, the PARTIES and their respective successors and permitted assigns. Any assignment or transfer in violation of this covenant shall be void.

**17. TIME IS OF THE ESSENCE.**

Time is of the essence in this AGREEMENT.

**18. WAIVER.**

The waiver by any PARTY of any breach or violation of any provisions of this AGREEMENT shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by any PARTY of any monies that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other PARTIES of any provision of this AGREEMENT.

**19. GOVERNING LAW.**

This AGREEMENT is governed by and will be interpreted in accordance with the laws of the State of California.

**20. NO THIRD PARTY BENEFICIARY.**

This AGREEMENT is exclusively for the benefit of the PARTIES and not for the benefit of any other person or entity. There are no third-party beneficiaries of this AGREEMENT and no person or entity not a PARTY shall have any rights under or interests in this AGREEMENT.

No PARTY may assert a claim for damages arising under this AGREEMENT on behalf of a person other than itself, including a person that is not a PARTY.

**21. INCORPORATION OF ATTACHMENT.**

Attachment 1, the Pilot Water Transfer Operations Plan, is hereby incorporated into and made a part of this AGREEMENT.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the day and year first above written.

CITY OF HAYWARD

Recommended by:

\_\_\_\_\_  
ALEX AMERI  
Director of Public Works

By: \_\_\_\_\_  
KELLY McADOO  
City Manager

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
MICHAEL T. TOGNOLINI  
Director of Water & Natural Resources

Date: \_\_\_\_\_, 2019

APPROVED AS TO FORM:

By: \_\_\_\_\_  
for the Office of General Counsel

CITY AND COUNTY OF SAN FRANCISCO  
ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION

Authorized by SFPUC Res. No. \_\_\_\_\_

By: \_\_\_\_\_  
Harlan L. Kelly, Jr., General Manager

Date: \_\_\_\_\_, 2019

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

Attachment:

- 1. Pilot Water Transfer Operations Plan

# Bay Area Water Supply & Conservation Agency (BAWSCA) Pilot Water Transfer Operations Plan

## **Pilot Water Transfer Description**

The Bay Area Water Supply and Conservation Agency (BAWSCA) will purchase up to 1,000 acre-feet of water from Amador Water Agency (AWA) that will be wheeled by East Bay Municipal Utility District (EBMUD) from Pardee Reservoir through its conveyance and treatment systems through the Hayward Intertie (Intertie), which connects the EBMUD distribution system and San Francisco Public Utilities Commission (SFPUC) Regional Water Systems (RWS) through the City of Hayward (COH) water system. The water will be used to serve the COH in lieu of water from SFPUC during a planned outage of the Hetch Hetchy conveyance portion of the RWS in January 2020. Transfer water will also be pumped into the RWS using the COH owned Hesperian Pump Station and transmission pipeline between Hesperian Pump Station and RWS, and delivered to other BAWSCA member agencies.

Figure 1 illustrates the pathway that the BAWSCA pilot transfer water will follow, from the Point of Release at PG&E's Electra Powerhouse, through the Point of Diversion at EBMUD's Pardee Reservoir Raw Water Intake, through the Point of Delivery at Hayward Intertie. The Intertie is jointly owned by EBMUD and SFPUC and operated by the COH.

Wheeling losses from the release point of transfer water on the Mokelumne River and through Pardee Reservoir, the Mokelumne Aqueducts, and other EBMUD treatment and transmission facilities will be calculated as 20% of the total volume released by AWA. For example, if the full 1,000 acre-feet of water is released by AWA, then wheeling losses will equal 200 acre-feet, and 800 acre-feet would be made available by EBMUD inclusive of (1) pre-transfer flushing water and (2) water delivered through the Intertie for use within the RWS. Assuming the maximum volume of approximately 800 acre-feet of water is delivered at the expected continuous rate of 15 million gallons per day (MGD), the duration of the operation will be approximately 18 days depending on flushing volume. The actual transfer flow rate will be mutually determined in the first couple days of operation by EBMUD, COH and SFPUC.

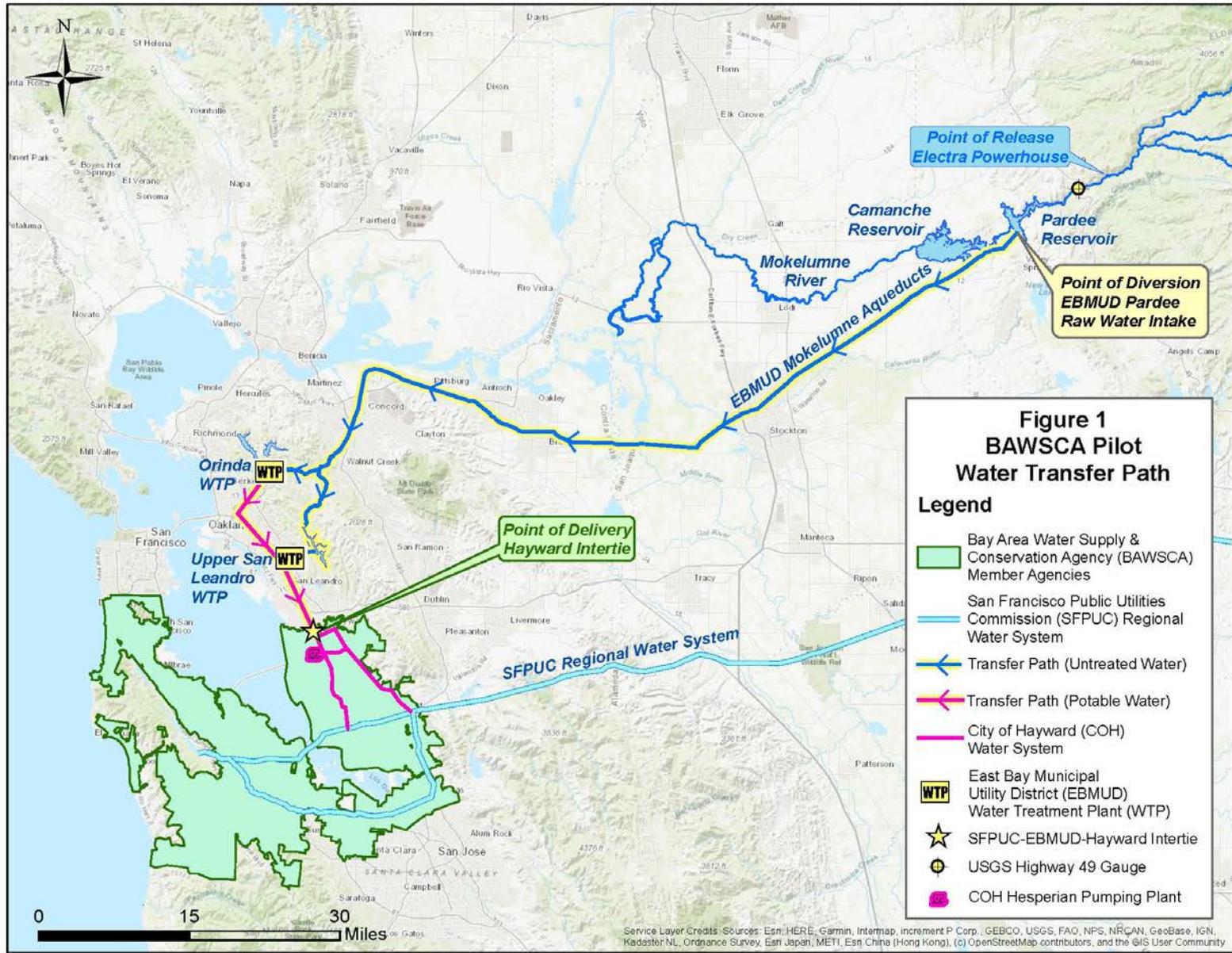
## **System Description**

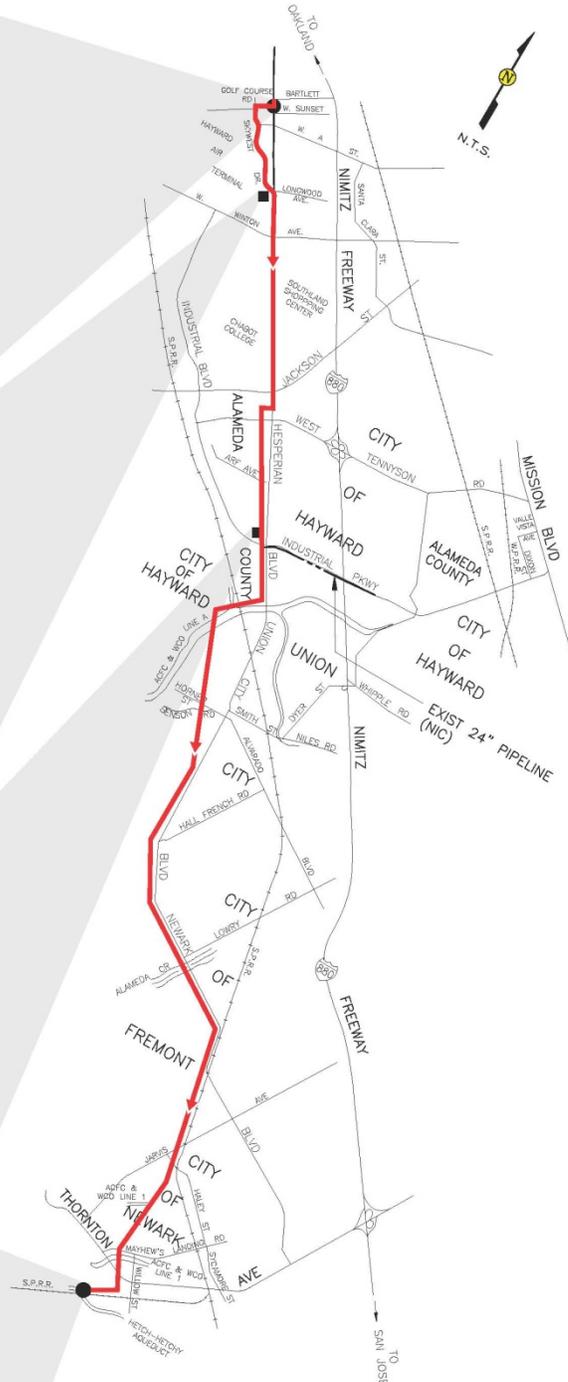
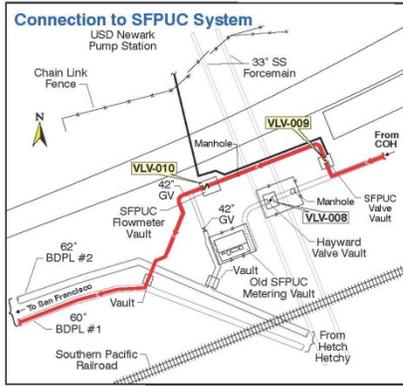
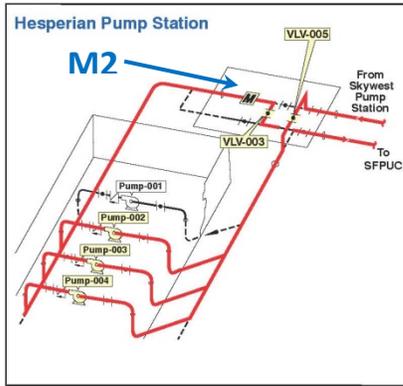
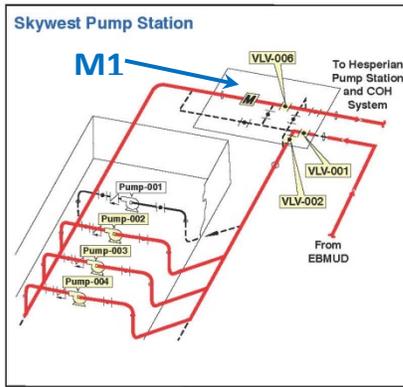
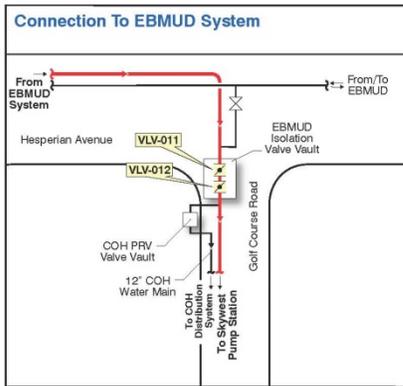
The Hayward Intertie (Figure 2) is located primarily along Hesperian Blvd in the COH and consists of approximately 1.5 miles of 36-inch transmission pipeline and the Skywest Pump Station. The Intertie connects the EBMUD and SFPUC water systems with bidirectional flow through the COH water system and was designed to provide up to 30 MGD between the systems during emergencies or planned critical work. The BAWSCA pilot will transfer water from EBMUD to COH with the Skywest Pump Station turned on to supply COH and Hesperian Pump Station turned on to convey the remaining supply into the SFPUC system. Metering will occur at the Skywest Pump Station for water delivered by EBMUD (M1) and at the Hesperian Pump Station (M2) for the amount delivered to SFPUC's RWS for use by other wholesale customers. The difference between these two meters represents flow to COH.

## **Schedule**

The pilot transfer must coincide with the outage of the Hetch Hetchy source, planned for January 6, 2020 to February 5, 2020. Flushing of the Intertie is scheduled to occur a week before the start of the

water transfer. Duration of the transfer will depend on the delivery rate and the volume of transfer water, which will not exceed 800 acre-feet.





**Figure 2**  
**Intertie Components & Locations**

## Operational Contact List and Modifications

The Skywest Pump Station is intended to be operated at a constant flowrate. City of Hayward is the operator of the Skywest Pump Station. Operational issues (i.e. pressure, water quality, flow impacts, consumer complaints, etc.) will be communicated to all parties using the operational contact list below.

Operational flow changes can be made at the operator level. The SFPUC, City of Hayward and EBMUD can each make reasonable modifications to operations during the pilot water transfer that it deems necessary to address operational, mechanical, health and safety, and/or water quality issues that arise during the pilot water transfer. A party planning to make any such modifications will notify the other two parties before making any changes, to the extent circumstances allow, by sending an email as soon as possible to all of the individuals in the operational contact list below. If circumstances do not allow for written notice in advance of the changes, notice will be sent by email as soon as possible after the fact. If an operational modification is made which may significantly affect the delivery of transfer water, then BAWSCA shall be notified as soon as practicable. A party planning to make significant modifications to operations during the pilot water transfer will provide the other parties with the opportunity to meet and confer to discuss the proposed modifications and potential alternatives. In the event that the pilot water transfer is stopped for any reason, notice will be sent by email as soon as possible to all of the individuals in the operational contact list below, and the SFPUC will immediately resume deliveries of water to the City of Hayward from the SFPUC Regional Water System.

Agency	Name	Role	Email	Phone
EBMUD	Damon Hom	Water Distribution Superintendent	dhom@ebmud.com	(510) 287-0893 (O) (510) 501-5037 (C)
EBMUD	Anthony Fio	Water Distribution Supervisor	anthony.fio@ebmud.com	(510) 287-7191 (O) (510) 772-9904 (C)
EBMUD	Oakland Control Center	Control Room Monitoring (24/7)	occ@ebmud.com	(510) 287-0755 (O)
Hayward	Bob Gerena	Utilities O&M Supervisor	Robert.Gerena@hayward-ca.gov	(510) 881-7978 (O) (510) 714-0622 (C)
Hayward	Bert Weiss	Utilities O&M Manager	bert.weiss@hayward-ca.gov	(510) 881-7901 (O) (510) 246-2827 (C)
Hayward	Ben Foreman	Utilities Maintenance Mechanic	Benjie.Foreman@hayward-ca.gov	(510) 881-7978 (O) (510) 385-1090 (C)
SFPUC	Angela Cheung	System Operations Manager	acheung@sflower.org	(650) 871-3034 (408) 313-8085
SFPUC	Patrick Kerrisk	Senior Water Service Inspector	PEKerrisk@sflower.org	(650) 871-3029
SFPUC	Colm Conefrey	Water Construction and Maintenance Superintendent	CConefrey@sflower.org	(650) 872-5910
SFPUC	Millbrae Dispatch	After Hours Contact	MillbraeDispatchers@sflower.org	(650) 872-5900

## Intertie Preparation

Date	Activity	Agency
One month prior to startup	Provide City of Hayward and SFPUC with water quality data from Orinda WTP and Upper San Leandro WTP	EBMUD
One month prior to startup	Perform required startup preventative maintenance activities for Skywest PS and Hesperian PS	Hayward
Two weeks prior to startup	Notify State Water Board of upcoming flushing operation	Hayward
One week prior to startup	Open valves in EBMUD isolation valve vault	EBMUD
One week prior to startup	Flush intertie pipeline from EBMUD system	Hayward / EBMUD
One week prior to startup	Close valves in EBMUD isolation valve vault	EBMUD
One week prior to startup	Open valve in City of Hayward isolation valve vault at Skywest PS	Hayward
One week prior to startup	Flush intertie pipeline from City of Hayward system	Hayward
One week prior to startup	Flush Newark Turnout bypass from SFPUC system	SFPUC
One week prior to startup	Close valve in City of Hayward isolation valve vault at Skywest PP	Hayward
One week prior to startup	Notify SFPUC and EBMUD of completion of flushing activity	Hayward
One day prior to startup	Determine pre-transfer flushing volume and calculate volume to be delivered through the intertie during the pilot water transfer	Hayward / EBMUD / SFPUC

### Intertie Startup and Steady State Operation

Date	Activity	Agency
Startup Prep	Open valves in EBMUD isolation valve vault and notify City of Hayward	EBMUD
Startup Prep	Open valve in City of Hayward isolation valve vault at Skywest PS	Hayward
Startup Prep	Set Skywest PS and Hesperian PS startup valve lineup per the 2008 Intertie Project Operations Plan, Appendix D, Mode 5: EBMUD to COH/SFPUC Operation Procedure	Hayward
Startup Prep	Confirm valves at Newark Turnout are open and notify City of Hayward	SFPUC
Startup Prep	Communicate Skywest PS startup with EBMUD OCC and SFPUC	Hayward
Startup	Read totalizers (M1 and M2). Start Skywest PS and Hesperian PS per the 2008 Intertie Project Operations Plan, Appendix D, Mode 5: EBMUD to COH/SFPUC Operation Procedure	Hayward
Startup	Once transfer water is in City of Hayward's system and Hesperian PS valving configuration is made, open Newark Turnout bypass valves	SFPUC
Startup	Coordinate operation to dial in preferred steady state flow. Monitor pressures in respective water systems and manage within acceptable operating range.	Hayward / EBMUD / SFPUC
Steady State Operation	Monitor Skywest PS flow and system pressures in respective water systems. Adjust system operations to maintain system pressure and Skywest PS steady state flow.	Hayward / EBMUD / SFPUC
Weekly	Submit Orinda and Upper San Leandro WTP water quality data to City of Hayward and SFPUC	EBMUD
Weekly	Record volume of water delivered at Skywest PS and Hesperian PS and report to BAWSCA, EBMUD and SFPUC	Hayward

## Intertie Shutdown

Date	Activity	Agency
Shutdown Prep	Communicate Skywest PS shutdown with EBMUD OCC and SFPUC	Hayward
Shutdown	Shutdown Skywest PS and Hesperian PS per the 2008 Intertie Project Operations Plan, Appendix D, Mode 5: EBMUD to COH/SFPUC Operation Procedure. Final read of totalizers.	Hayward
Shutdown	Close valves in EBMUD isolation valve vault	EBMUD
Shutdown	Close valve in City of Hayward isolation valve vault at Skywest PS	Hayward
Shutdown	Close Newark Turnout bypass valves	SFPUC
Shutdown	Set Skywest PS and Hesperian PS shutdown valve lineup per the 2008 Intertie Project Operations Plan, Mode 1: SFPUC to COH by gravity	Hayward

## References

- Intertie Project Operations Plan (2008)

# Appendix G: MOUs Negotiated BAWSCA was not a party to - Second Attempt

G.I. AWA-EBMUD MOU

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**MEMORANDUM OF UNDERSTANDING  
BETWEEN AMADOR WATER AGENCY  
AND EAST BAY MUNICIPAL UTILITY DISTRICT  
REGARDING DETERMINATION OF WATER TRANSFER  
RIGHTS AND OBLIGATIONS**

THIS MEMORANDUM OF UNDERSTANDING (“Agreement”) is made effective on \_\_\_\_\_, 2019, by and between Amador Water Agency, a public entity created by a special act of the Legislature of the State of California (“Agency”), and East Bay Municipal Utility District, a California municipal utility district (“District”). The Agency and the District are collectively referred to herein as the “Parties” and individually as a “Party.”

RECITALS

- A. The Agency owns and operates the Amador Water System (“AWS”), a network of reservoirs, pipelines, canals and treatment works serving Mokelumne River water to various communities within Amador County, including the main cities in the County.
- B. The District owns water supply facilities on the Mokelumne River which supply its customers in the eastern San Francisco Bay Area, and which facilities lie downstream of the AWS.
- C. Pacific Gas and Electric Company (“PG&E”) provides the Agency with a supply of water for the consumptive needs of the AWS, not exceeding 15,000 acre-feet annually at a maximum rate of 30 cubic feet per second, from the Mokelumne River Watershed in accordance with the Stipulation and Agreement between the Agency and PG&E filed with the Amador County Superior Court on March 13, 1985, in the action entitled *Amador County Water Agency v. Pacific Gas and Electric Company, a Corporation* (Amador County Superior Court Action No. 12672) (“1985 Stipulation”). The Agency’s entitlement under the 1985 Stipulation is based on certain pre-1914 appropriative rights held by PG&E on the North Fork of the Mokelumne River and streams tributary thereto.
- D. On August 16, 2000, the Agency, the District and Amador County entered into the Amended and Restated Agreement Concerning the Amador Water System Transmission Project under which the District provided \$4,500,000 in financing to the Agency to construct an eight-mile, large diameter transmission main to convey AWS water supplies to replace the use of the 23-mile Amador Canal, which reduced water losses in the Amador

Canal resulting from seepage, evaporation, and evapotranspiration (the “Project”). In the aforementioned 2000 agreement, the District conditioned its participation in the financing of the Project upon the District’s entitlement to the use of water conserved by the Project, but at the same time the District also recognized the Agency’s entitlement to use the additional water made available as a result of the Project to meet water demands within its service area. The Parties amended the aforementioned 2000 agreement in 2018 to provide for a termination date of December 31, 2022.

- E. The Agency and PG&E have negotiated and executed the Third Amendment to the 1985 Stipulation, under which PG&E acknowledges the Agency’s right to use water which the Agency contends it has conserved under the Project and by other measures within and without Amador County.
- F. The Agency has agreed to transfer 1,000 acre-feet of its claimed conserved AWS water supplies from sources other than conservation from the Project to the Bay Area Water Supply and Conservation Agency (“BAWSCA”) as a one-time pilot action to evaluate the feasibility of delivering alternative water supplies to BAWSCA member agencies in times of future supply interruptions or water shortages. The pilot transfer would be facilitated by the District through an agreement with BAWSCA to wheel the transfer water through the District’s water supply system (the “Pilot Transfer”). The Pilot Transfer is expected to occur in or about January 2020 and conclude within one month or less.
- G. The District disputes the Agency’s right to transfer any portion of the water supply provided to the Agency by PG&E under the 1985 Stipulation, including but not limited to any conserved water derived therefrom, for use outside of the Agency’s service area but is willing, on a one-time non-precedential basis, to forgo opposition to the Agency’s transfer of up to 1,000 acre-feet of water to BAWSCA for purposes of permitting the Pilot Transfer to proceed, subject to the Agency and the District entering into this Agreement for purposes of permitting the Parties to continue negotiating issues related to the Agency’s possible future transfers of its conserved water supplies to buyers outside of the Agency’s service area.
- H. The Agency disputes the District’s refusal to acknowledge what the Agency believes are its legal rights under Water Code sections 1011, 1706 and 1810, and other constitutional, statute, and decisional laws to make full economic use of its conserved water supplies by

transferring them to other water users outside of Amador County, but is willing to enter into negotiations with the District to resolve this dispute to avoid unnecessary litigation and expense to the parties.

NOW, THEREFORE, the Parties mutually agree as follows:

1. Term of Agreement.

This Agreement shall become effective on the date first above written and shall remain in effect until terminated by the Parties' mutual consent or superseded by an agreement entered into by the Agency and District or a judgment or decision rendered by a court or tribunal of competent jurisdiction providing a permanent resolution of the issues described in this Agreement.

2. Pilot Water Transfer Permitted; No Precedent; Reservation of Rights

In consideration of the Agency's promises under this Agreement, and as an accommodation to the Agency and to BAWSCA, the District agrees not to oppose the Agency's one-time transfer of water to BAWSCA for the Pilot Transfer. The Agency acknowledges that a separate wheeling agreement between the District and BAWSCA will set forth additional rights and obligations of the District regarding the Pilot Transfer. The District's non-opposition to the Pilot Transfer is unique and is conditioned on the Agency's willingness to execute this Agreement, and the Parties shall not consider such non-opposition as precedent for future agreements concerning water transfers by the Agency or wheeling by the District. The District expressly reserves all rights to object to, decline to facilitate, or challenge any transfer or wheeling arrangement involving the transfer or sale of water by the Agency to a recipient outside the Agency's service area, other than the Pilot Transfer and related wheeling agreement; and the Agency expressly reserves all rights to object to and assert any and all claims it may have against the District for any refusal to acknowledge the Agency's rights to use its water supplies for all permitted beneficial purposes within and without Amador County, and to provide all legally-required cooperation to transfer or wheel water for the Agency. Nothing in this Agreement, however, is intended to dispute the Agency's right to receive a water supply from PG&E for the consumptive needs of the AWS consistent with the terms of the 1985 Stipulation or the Agency's right to use water supplies lawfully available to it within its service area.

### 3. Process to Seek Resolution of Dispute over Transfer of Conserved Water

The Parties have a dispute regarding the transferability of the Agency's water supplies and the District's legal obligations to facilitate transfers of those supplies. The Agency and the District desire to work collaboratively and promptly to resolve their dispute. The parties will engage in a dispute resolution process in two phases. During Phase One, the parties will attempt to resolve threshold questions of law arising from any water transfer by the Agency. If the parties agree at the close of Phase One to resolve those legal issues in the Agency's favor (in whole or part), then the Agency may propose a specific transfer, and the parties will then engage in Phase Two to address fact-specific issues which must be addressed in the context of a specific transfer proposal.

#### a. Phase One

To begin the dispute resolution process, the District has provided the Agency with an analysis of the following: (i) its view of the Agency's rights and obligations relative to transferring water, including conserved water, derived from Agency's contractual supply obtained pursuant to the 1985 Stipulation, and (ii) its view of the District's rights and obligations relative to facilitating Agency water transfers. Within a reasonable time after receiving the District's analysis, but without unnecessary delay, the Agency shall provide an analysis setting forth its view of the same issues. Each party may choose to provide additional legal analysis.

For purposes of Phase One only, the parties will consider a hypothetical transfer in which it is assumed (without deciding) that the water to be transferred is (1) appropriated pursuant to the PG&E water rights which serve as the legal basis of the water supply available made to the Agency by 1985 Stipulation, (2) "conserved" within the meaning of Water Code section 1011(a) (referred to herein as "Conserved Water"), and (3) will ultimately be used outside Amador County.

Phase One will address the following issues with respect to transfers of Conserved Water:

- (1) Whether and to what extent water available to the Agency under the 1985 Stipulation may be transferred outside Amador County, giving consideration to the scope of the underlying water rights held by PG&E;
- (2) The extent to which a transfer would be permissible under Water Code sections 1011 and 1706, giving consideration to the circumstances under which a transfer would, or would not, result in legal injury to the District; and
- (3) The extent of the District's legal obligations under Water Code section 1810, et seq.

The Parties shall meet to discuss the two analyses, determine the areas of agreement and disagreement in those analyses, and to determine a schedule and process to attempt to negotiate a final resolution of any areas of disagreement. It is the Parties' intention that the above-described exchange of analyses will be completed by no later than March 31, 2020 and that the dispute resolution process provided in this section will be concluded by September 20, 2020, although these deadlines may be extended by mutual consent. At the conclusion of Phase One, the parties shall memorialize any agreement reached in writing, and the parties' respective rights and obligations with respect to water transfers shall be as set forth in that writing. To the extent possible, the Agency and the District shall agree in Phase One to the principles and concepts that would be applied to future Agency-proposed water transfers, which may be memorialized in a written agreement.

b. Phase Two

Unless the parties determine and agree at the close of Phase One that all Conserved Water transfers by Agency are prohibited as a matter of law, the parties will undertake a second phase of dispute resolution when the Agency proposes a specific transfer other than the pilot transfer now under development.

In Phase Two, the parties will consider issues which can only be properly addressed with reference to the facts of a specific proposed transfer. The Agency agrees that, before its next proposed transfer may proceed, it will provide advance notice to the District sufficient to allow a reasonable opportunity before the transfer commences for the parties to address fact-dependent issues. At any time after Phase One is complete, the Agency shall give the District

notice as soon as possible of the next proposed transfer. The issues to be addressed in Phase Two are the following:

- (1) The specific findings required by the wheeling statute, including but not limited to whether unused water conveyance capacity is available at the time of the transfer, and the fair compensation to be paid;
- (2) Whether a sufficient quantity of Conserved Water is in fact available to the Agency to support the proposed transfer;
- (3) Whether the proposed transfer would in fact result in a legal injury to the District; and
- (4) All other legal and factual issues necessary or appropriate to resolve in the context of a future, proposed transfer, based on the circumstances existing at that time.

Phase Two shall have two goals: (1) with respect to the specific proposed transfer under consideration, to determine whether and under what conditions the transfer may proceed, and (2) with respect to subsequent transfers that may be proposed by Agency, to develop a framework for the consideration of fact-dependent issues, which may be memorialized in a written agreement.

c. General Provisions Regarding Dispute Resolution

The parties may rely on any relevant law or evidence in addressing these matters.

The matters listed above may be interrelated, and the list is not necessarily exhaustive. Accordingly, the parties may frame the questions in a different manner or raise additional relevant issues, provided the parties seek to address in substance the legal matters listed above.

The Agency believes PG&E need not participate in this dispute resolution process. The District believes PG&E should participate. The parties agree to attempt to resolve this disputed issue.

The Parties agree that all communications or offers of compromise that may be made in the course of this dispute resolution process shall constitute settlement discussions which may not be used for any purpose not allowed by section 1152 of the California Evidence Code.

If the parties are unable to timely resolve any issues described above, each party may seek resolution before a court or tribunal of competent jurisdiction. Neither party shall conduct a judicial action or proceeding in the county in which the initiated party is "situated" within the meaning of Code of Civil Procedure section 394(a). The parties agree in advance to stipulate to promptly moving any action or proceeding out of the county in which it is originally filed if such county is one in which either party is situated. Unless otherwise agreed in writing, the parties shall petition the court for transfer to Sacramento County.

4. Opinions and Determinations.

Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of either Party, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable.

5. Notices.

All notices, analyses, approvals, requests, or other communications that are required either expressly or by implication to be given by either Party to the other under this Agreement shall be in writing and signed for each Party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or delivered by a commercially recognized overnight courier service, or three days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the Parties at their addresses as shown below:

Amador Water Agency  
12800 Ridge Road  
Sutter Creek, CA 95685  
Attn: General Manager

East Bay Municipal Utility District  
P.O. Box 24055, MS 901  
Oakland, CA 94623-1055  
Attn: Director of Water & Natural  
Resources

6. Entire Agreement.

This Agreement is freely and voluntarily entered into by the Parties after having had the opportunity to consult with their respective attorneys. The Parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. This Agreement represents the entire agreement of the Parties regarding the subject matter described herein. All prior agreements between the Parties shall remain in full force and effect and shall not be construed to be modified by this Agreement. This Agreement may be modified only by a written amendment to this Agreement agreed to by the Parties. The Parties and the Party representatives executing this Agreement have the power and authority to execute this Agreement, and once executed by all Parties, this Agreement shall be binding upon the Parties.

7. Interpretation of Agreement.

The Parties acknowledge that each Party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any Party in connection with the transactions contemplated by this Agreement.

8. Cooperation.

Each Party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

9. Paragraph Headings.

The paragraph headings used in this Agreement are for reference only and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

10. Recitals.

The recitals on pages 1, 2, and 3 of this Agreement are true and are incorporated herein by this reference and made a part hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written as follows:

AMADOR WATER AGENCY:

By: Paul Molinelli, Jr.  
Paul Molinelli, Jr.  
President, Board of Directors

ATTEST:

[Signature]  
Clerk of the Board of Directors

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Alexander R. Coate  
General Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of General Counsel