

1 [Settlement of Unlitigated Claims - East Bay Regional Park District - Public Utilities  
2 Commission Calaveras Dam Replacement Project]

3 **Resolution approving the settlement of the unlitigated claims between the City and**  
4 **County of San Francisco and the East Bay Regional Park District (EBRPD) related to**  
5 **the San Francisco Public Utilities Commission (SFPUC) Water System Improvement**  
6 **Program, Calaveras Dam Replacement Project, in Alameda County, calling for SFPUC**  
7 **to pay EBRPD \$2,000,000 related to project construction activities, and including other**  
8 **material terms and conditions in a settlement and release agreement.**

9  
10 WHEREAS, In response to concerns of the California Department of Water Resources,  
11 Division of Safety of Dams (DSOD), the SFPUC proposed the Calaveras Dam Replacement  
12 Project, in Alameda County, which entails rebuilding the dam in order to eliminate the seismic  
13 safety concerns associated with the original dam. The Project would replace the existing dam  
14 with a new dam to accommodate a public water supply reservoir of the same size as the  
15 original plans (96,850 AF) and meet current seismic safety design requirements. Completion  
16 of the proposed project would help the SFPUC achieve the Water System Improvement  
17 Program (WSIP) Level of Service goals and objectives adopted by the SFPUC in 2008.

18 WHEREAS, An environmental impact report (EIR) as required by the California  
19 Environmental Quality Act (CEQA) was prepared for the Project in Planning Department File  
20 No. File No. 2005.0161E; and

21 WHEREAS, The Project is a capital improvement project approved by the SFPUC as  
22 part of the WSIP; and

23 WHEREAS, The Final EIR (FEIR) was certified by the San Francisco Planning  
24 Commission on January 27, 2011 by Motion No. M-18261; and

1           WHEREAS, The FEIR prepared for the Project is tiered from the WSIP Program  
2 Environmental Impact Report (PEIR) certified by the Planning Commission on October 30,  
3 2008 by Motion No. 17734; and

4           WHEREAS, Thereafter, the SFPUC approved the WSIP and adopted findings and a  
5 Mitigation Monitoring and Reporting Program (PEIR MMRP) as required by CEQA on October  
6 30, 2008 by Resolution No. 08-200; and

7           WHEREAS, On January 27, 2011, the San Francisco Public Utilities Commission  
8 (SFPUC), by Resolution No. 11-0015, a copy of which is included in Board of Supervisors File  
9 No. 110187 (for the related Board Resolution adopting CEQA Findings for the Calaveras Dam  
10 Replacement Project) and which is incorporated herein by this reference: (1) approved the  
11 Project; (2) adopted findings (CEQA Findings), including a statement of overriding  
12 considerations, and a Mitigation Monitoring and Reporting Program (MMRP) required by  
13 CEQA; and

14           WHEREAS, The existing Calaveras Dam is located on Calaveras Creek upstream of  
15 the Sunol Regional Wilderness operated by EBRPD, and EBRPD raised concerns related to  
16 Project construction activities and EBRPD operations, reflected in comments submitted on the  
17 Project Draft EIR, and the SFPUC seeks the cooperation of EBRPD with respect to ongoing  
18 activities by both agencies in the Sunol Valley. By its Resolution No. 11-0015, the SFPUC  
19 also authorized SFPUC's General Manager ("General Manager") to negotiate and execute  
20 agreements with EBRPD to address coordination of the parties' respective operations, and  
21 address issues related to construction of the CDRP, subject to approval of the Board of  
22 Supervisors, as required, and in such form approved by the City Attorney. The EBRPD and  
23 the SFPUC have executed a settlement and release agreement recommended by the City  
24 Attorney (Agreement), on file with the Board of Supervisors in File No. 110175, subject  
25

1 to this Board's approval of this Resolution and other conditions precedent to effectiveness;  
2 and

3 WHEREAS, On February 14, 2011, EBRPD filed an appeal of the Planning  
4 Commission's certification of the Project FEIR, to preserve its right to object to the Project  
5 approval, pending Board approval of this Resolution approving the Agreement. If effective,  
6 the Agreement provides that EBRPD will take action to terminate or withdraw its appeal of the  
7 Project FEIR, and release the City from claims or actions related to approval of the Project or  
8 related actions and all permits issued by other governmental agencies, as identified in the  
9 Project FEIR, section 3.7.3. The Clerk of the Board of Supervisor has noticed a hearing on  
10 the appeal of the certification of the Project FEIR for March 15, 2011; and

11 WHEREAS, The conditions precedent to the effectiveness of the Agreement include:  
12 (a) The Board, acting in its sole discretion, adopts legislation approving this Agreement, and  
13 the legislation becomes effective; and (b) The San Francisco Planning Commission's January  
14 27, 2011 certification of the FEIR for the Calaveras Dam Replacement Project is final, and any  
15 appeal of that determination to the Board has been rejected or withdrawn by all appellants,  
16 and the 30 (thirty) day statute of limitations has run following posting of the Project Notice of  
17 Determination without challenge to the FEIR or Project approval, pursuant to CEQA; and (c)  
18 The Controller certifies the availability of funds appropriated for the Calaveras Dam  
19 Replacement Project, as the source of the funding for the Settlement Amount under this  
20 Agreement, which can not occur unless the Board first (i) adopts a resolution approving the  
21 Final EIR for the Calaveras Dam Replacement Project, adopting findings as required under  
22 CEQA, including the Mitigation Monitoring Program and statement of overriding  
23 considerations, and (ii) the Board Budget and Finance Committee releases the reserve placed  
24 on appropriations for the Project. Notwithstanding the foregoing, in the event of a third party  
25 appeal or litigation challenging the certification of the FEIR, this Agreement shall become

1 effective upon the resolution of the third party appeal or litigation provided that a new EIR for  
2 the Calaveras Dam Replacement Project is not required; and

3 WHEREAS, The Agreement requires the SFPUC to pay \$2 million dollars to EBRPD  
4 ("Settlement Amount") for use, in its sole discretion, to assume the additional responsibilities  
5 to coordinate with SFPUC and its Calaveras Dam Replacement Project contractor, address  
6 visitor use, operational and maintenance issues, including cleaning and maintenance of  
7 facilities within the Sunol Regional Wilderness during construction, produce public outreach  
8 material related to Sunol Regional Wilderness operations during Project construction, and  
9 improve recreational opportunities or facilities in Sunol Valley and the surrounding Alameda  
10 Creek watershed. The Agreement contains other material terms, including but not limited to,  
11 provisions whereby the SFPUC will, subject to compliance and the exercise of the parties'  
12 reserved discretion under CEQA, where required: (1) accommodate EBRPD should it decide  
13 to seek an alternative location for the deployment of Sunol Regional Wilderness park staff  
14 during Project construction, by providing a lease option for the area shown on Exhibit 1 to the  
15 Agreement at the SFPUC's property in the Sunol Valley, or another location subject to the  
16 terms of the Agreement, including that the total cost to the SFPUC shall not exceed Five  
17 Hundred Fifty Thousand dollars (\$550,000); (2) agree to a timetable and negotiated terms for  
18 inclusion in the proposed renewal of the existing Sunol Regional Park Wilderness Lease  
19 between the SFPUC and EBRPD, subject to further approval by EBRPD, the SFPUC and this  
20 Board; (3) agree to install a system for the provision of potable water to Sunol Regional  
21 Wilderness from the SFPUC water system as shown on Exhibit 2 to the Agreement, with  
22 EBRPD ownership and operation of the system following completion of construction; (4)  
23 assume sole responsibility for the replacement of the Geary Road bridge over Alameda Creek  
24 serving EBRPD and SFPUC lands and facilities, and (5) releases of claims; and

1           WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No. 11-  
2 0015 have been made available for review by the Board and the public, and those files are  
3 considered part of the record before this Board; and

4           WHEREAS, The Board of Supervisors has reviewed and considered the information  
5 and findings contained in the FEIR, PEIR and SFPUC Resolution No. 11-0015, and all written  
6 and oral information provided by the Planning Department, the public, relevant public  
7 agencies, SFPUC and other experts and the administrative files for the Project; now,  
8 therefore, be it

9           RESOLVED, That the Board of Supervisors has reviewed and considered the FEIR  
10 and record as a whole, finds that the FEIR is adequate for its use as the decision-making  
11 body for the action taken herein including, but not limited to, approval of the Project and this  
12 Agreement, adopts and incorporates by reference as though fully set forth herein the CEQA  
13 Findings, including the statement of overriding considerations, and the MMRP contained in  
14 Resolution No. 11-0015; and be it

15           FURTHER RESOLVED, That the Board finds that the Project mitigation measures set  
16 forth in the FEIR and the MMRP, including but not limited to the Mitigation Habitat Actions,  
17 and adopted by the SFPUC and herein by this Board will be implemented as reflected in and  
18 in accordance with the MMRP; and be it

19           FURTHER RESOLVED, The Board finds that since the FEIR was finalized, there have  
20 been no substantial project changes and no substantial changes in Project circumstances that  
21 would require major revisions to the FEIR due to the involvement of new significant  
22 environmental effects or an increase in the severity of previously identified significant impacts,  
23 and there is no new information of substantial importance that would change the conclusions  
24 set forth in the FEIR; and be it

1 FURTHER RESOLVED, That pursuant to Section 10.22 and 10.24 of the San  
2 Francisco Administrative Code, settlement and compromise of said unlitigated claims by and  
3 between the SFPUC and EBRPD, including the SFPUC's payment to EBRPD of \$2 million  
4 dollars and other material terms, is hereby approved, subject to the terms and conditions in  
5 the Agreement between the SFPUC and EBRPD, dated February 18, 2011, on file with the  
6 Board of Supervisors in file no. \_\_\_\_\_; and be it

7 FURTHER RESOLVED, That this Board authorizes the General Manager to enter into  
8 any subsequent additions, amendments, or other modifications to this Agreement, that the  
9 General Manager, in consultation with the City Attorney, determines are in the best interests  
10 of the SFPUC and the City, do not materially decrease the benefits to the SFPUC or the City,  
11 and do not materially increase the obligations or liabilities of the SFPUC or the City, such  
12 determination to be conclusively evidenced by the execution and delivery of any such  
13 additions, amendments, or other modifications.

14  
15 APPROVED:

RECOMMENDED:

16 DENNIS J. HERRERA  
17 City Attorney

San Francisco Public Utilities Commission

18 \_\_\_\_\_  
19 Noreen Ambrose  
20 Utilities General Counsel

\_\_\_\_\_ Edward M. Harrington  
General Manager, Public Utilities  
Commission

AUTHORIZED BY SFPUC Resolution No.  
11-0015

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