



**BOARD OF DIRECTORS
EAST BAY MUNICIPAL UTILITY DISTRICT**

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

**AGENDA
REGULAR CLOSED SESSION**

Tuesday, January 10, 2023

11:00 a.m.

Boardroom

375 11th Street

Oakland, CA 94607

*****Please see appendix for public participation instructions*****

ROLL CALL:

PUBLIC COMMENT: The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

BROWN ACT BRIEFING:

- Presentation on the Ethics Policy of the EBMUD Board of Directors and Updates to the Brown Act and Ethics Laws

ANNOUNCEMENT OF CLOSED SESSION AGENDA:

1. Existing litigation pursuant to Government Code section 54956.9(a):
 - a. *Waste Management of Alameda County, Inc. v. East Bay Municipal Utility District*
Alameda County Superior Court, Case No. RG21094336
2. Conference with Labor Negotiators Clifford C. Chan, General Manager; Sophia D. Skoda, Director of Finance; Cindy R. Charan, Director of Human Resources; and Lisa A. Sorani, Manager of Employee Services, pursuant to Government Code section 54957.6: Employee Organizations International Union of Operating Engineers, Local 39; American Federation of State, County and Municipal Employees, Locals 444 and 2019; and International Federation of Professional & Technical Engineers, Local 21.

(The Board will discuss Closed Session agenda items in the Training Resource Center.)

REGULAR BUSINESS MEETING
1:15 p.m.

*****Please see appendix for public participation instructions*****

ROLL CALL:

BOARD OF DIRECTORS:

- Pledge of Allegiance
- Election of 2023 Officers
- 2023 Board Assignment Preferences for Committees, Joint Powers Authorities and Associations

ANNOUNCEMENTS FROM CLOSED SESSION:

PUBLIC COMMENT: The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

CONSENT CALENDAR: (Single motion and vote approving 6 recommendations.)

1. Approve the Regular Meeting Minutes of December 13, 2022.
2. File correspondence with the Board.
3. Authorize an agreement beginning on or after January 10, 2023 with AECOM Technical Services, Inc. in an amount not to exceed \$891,276 for engineering services to support the Camanche Dam and Pardee Dam Seismic Study.
4. Authorize an agreement beginning on or after January 10, 2023 with AECOM Technical Services, Inc. in an amount not to exceed \$172,260 for the conceptual design of a solution to restore the eroded soil cover that protects Mokelumne Aqueducts No. 1 and No. 2 under the riverbed of Old River in the California Delta.
5. Authorize an amendment to the agreement previously authorized under Board Motion No. 182-16, with Western Area Power Administration to extend the contract termination date from December 31, 2024, to December 31, 2029, for electricity purchases at select District facilities.
6. Authorize the amendment and approve the assignment of the Camanche Reservoir Recreation Contract with Urban Park Concessionaires to Vista Recreation.

DETERMINATION AND DISCUSSION:

7. Appoint Manager of Employee Relations. (Resolution)
8. Legislative Update:
 - State Legislative Initiatives for 2023 Legislative Year
 - Federal Initiatives for 2023
 - Update on Legislative Issues of Interest to EBMUD

DETERMINATION AND DISCUSSION: (Continued)

9. General Manager's Report:
- Coronavirus Update
 - Water Supply Update – Water Year 2022 review, and briefing on supplemental, current and California water supply, and water supply projections
 - Six-Month Forecast of Board Committee and Workshop Agenda Topics for 2023 and Summary of 2022 Committee and Workshop Topics
 - 2022 Interdepartmental Committees Annual Report
 - Monthly Report – December 2022

REPORTS AND DIRECTOR COMMENTS:

10. Committee Reports:
- Planning
 - Legislative/Human Resources
11. Other Items for Future Consideration.
12. Director Comments.

ADJOURNMENT:

The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, January 24, 2023.

Disability Notice

If you require a disability-related modification or accommodation to participate in an EBMUD public meeting please call the Office of the Secretary (510) 287-0404. We will make reasonable arrangements to ensure accessibility. Some special equipment arrangements may require 48 hours advance notice.

Document Availability

Materials related to an item on this agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11th Street, Oakland, California, during normal business hours, and can be viewed on our website at www.ebmud.com.

BOARD CALENDAR

Meeting dates, times, and locations are subject to change

Date	Meeting	Time/Location	Topics
Tuesday, January 10	Planning Committee	9:00 a.m. Boardroom	<ul style="list-style-type: none"> Wildcat Pumping Plant Project Update and Availability of the Draft Mitigated Negative Declaration Quarry Site Restoration Project Update and Availability of the Draft Environmental Impact Report Fiscal Year 2022 Annual Readiness Report
	Legislative/Human Resources Committee	10:00 a.m. Boardroom	<ul style="list-style-type: none"> Diversity, Equity, and Inclusion Strategic Plan State Legislative Initiatives for 2023 Federal Initiatives for 2023
	Board of Directors	11:00 a.m. Boardroom 1:15 p.m. Boardroom	<ul style="list-style-type: none"> Closed Session Regular Meeting
Monday, January 16	Martin Luther King, Jr. Day		<i>District Offices Closed</i>
Tuesday, January 24	Sustainability/Energy Committee	TBD	
	Finance/Administration Committee	TBD	
	FY 2024/2025 Budget Workshop No. 1	TBD	
	Board of Directors	11:00 a.m. Boardroom 1:15 p.m. Boardroom	<ul style="list-style-type: none"> Closed Session Regular Meeting

2022 Board Committee Members

Finance/Administration	Patterson {Chair}, Coleman, Katz
Legislative/Human Resources	Coleman {Chair}, McIntosh, Patterson
Planning	Young {Chair}, McIntosh
Sustainability/Energy	Young {Chair}, Katz
Redistricting Ad Hoc	Coleman, Linney, Young

Closed Session and Regular Business Meetings

Tuesday, January 10, 2023

11:00 a.m. and 1:15 p.m.

*EBMUD public Board meetings will be conducted in person in the Boardroom and via Zoom.
These meetings are recorded, live-streamed, and posted on the District's website.*

In Person

In accordance with District safety protocols, masks are required while in the building and Boardroom regardless of vaccination status.

Online*

<https://ebmud.zoom.us/j/97065086667?pwd=eUdZSGh5SG82akZiRDF2UDg2b0IyUT09>

Webinar ID: 970 6508 6667

Passcode: 238500

By Phone*

Telephone: 1 669 900 6833

Webinar ID: 970 6508 6667

Passcode: 238500

International numbers available: <https://ebmud.zoom.us/u/adMXn1VnPp>

*To familiarize yourself with Zoom, please visit <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

Providing public comment - *The EBMUD Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.*

- Each speaker is allotted 3 minutes to speak; the Board President has the discretion to amend this time based on the number of speakers
- The Secretary will track time and inform each speaker when the allotted time has concluded
- Comments on **non-agenda items** will be heard at the beginning of the meeting
- Comments on **agenda items** will be heard when the item is up for consideration
- The Secretary will call each speaker in the order received

In person

- Fill out and submit a blue speaker card which is available in the foyer of the Boardroom

Via Zoom

- Use the raise hand feature in Zoom to indicate you wish to make a public comment
<https://support.zoom.us/hc/en-us/articles/205566129-Raising-your-hand-in-a-webinar>
- If you participate by phone, press *9 to raise your hand
- When prompted by the Secretary, please state your name, affiliation if applicable, and topic

Submitting written comments or materials

- Email written comments or other materials for the Board of Directors to SecOffice@ebmud.com
- Please indicate the meeting date and agenda item number or non-agenda item in the subject of the email. Contact information is optional.
- **Please email by 4 p.m. the day prior to the scheduled regular meeting;** written comments and other materials submitted to the Board of Directors will be filed in the record.

To view the livestream of meetings of the Board, please visit:
<https://www.ebmud.com/about-us/board-directors/board-meetings/>

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EAST BAY MUNICIPAL UTILITY DISTRICT
Office of the General Counsel

DATE: January 5, 2023

MEMO TO: Board of Directors

FROM: Derek McDonald, General Counsel



SUBJECT: Reference Documents for the Annual Brown Act and Ethics Update Presentation

Before adjourning for closed session at the January 10, 2023 Board meeting, the Office of General Counsel will present to the Board its annual Brown Act and Ethics Update. Enclosed please find the packet of documents relevant to this presentation, as follows:

1. Power Point Presentation – Annual Brown Act and Ethics Update
2. Policy 6.04 – Ethics of the EBMUD Board of Directors
3. Government Code § 54953 (as amended by Assembly Bill 2449)
4. Government Code § 54957.5 (as amended by Assembly Bill 2647)
5. Government Code § 54957.95 (added by Senate Bill 1100)
6. The Hon. Christopher M. Ward, Attorney General Opinion No. 21-1102
7. Government Code § 84308 (as amended by Senate Bill 1439)
8. Ballinger Advice Letter, No. A-22-001
9. Engberg Advice Letter, No. A-22-008
10. Zutler Advice Letter, No. A-21-132
11. Brady Advice Letter, No. A-22-027

DM:ctd

Attachments

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Document 1

Power Point Presentation

Annual Brown Act and Ethics Update

Annual Brown Act and Ethics Update

January 10, 2023

Agenda



- Review of Ethics Policy 6.04
- Update on Legal Developments in 2022
 - The Ralph M. Brown Act
 - Conflicts of Interest under the Political Reform Act
 - Conflicts of Interest under Government Code § 1090

Policy 6.04

Annual Review Mandate



Board Resolution No. 33414-04, adopted March 23, 2004

- Adopted Policy 6.04, “Ethics of the EBMUD Board of Directors”
- Mandates: “Policy 6.04 shall be annually reviewed by the Board of Directors, together with a review of the Ralph M. Brown Act, at the first meeting of the Board in each calendar year, or as soon thereafter as practicable.”

Policy 6.04

Ethics of the EBMUD Board of Directors



- **Purpose:** “This policy promotes awareness of ethics, integrity and fidelity as critical elements in Board members’ conduct and in achievement of the EBMUD mission.”
- **References:** Summarizes the ethical duties of public office, referencing numerous legal authorities and District Policies, including (but not limited to):
 - The California Constitution
 - The Political Reform Act
 - Government Code Section 1090
 - The Penal Code
 - The Elections Code
 - The Municipal Utility District Act

Policy 6.04

Ethical Duties Under Policy 6.04



- Uphold the State and Federal Constitutions and other laws applicable to the District
- Promote fair and open government
- Promote fair and equal treatment and avoid discrimination
- Safeguard the proper use of District property and resources
- Safeguard confidential information
- Avoid conflicts of interest
- Adhere to political contribution laws, the District Campaign Finance Ordinance and election laws
- Avoid holding incompatible offices
- Exercise responsible financial management
- Ensure a healthy and transparent work environment

The Ralph M. Brown Act

Purpose of the Brown Act



[P]ublic agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their *actions be taken openly and that their deliberations be conducted openly*. ... The people insist on remaining informed so that they may retain control over the instruments they have created.

(Gov. Code § 54950 [emphasis added].)

The Ralph M. Brown Act

Remote Meeting Attendance (AB 361)



AB 361 (2021) amended the Brown Act to allow governing bodies to hold meetings solely via teleconference so long as:

1. A State of Emergency under the California Emergency Services Act has been declared and is in effect; and
2. State or local officials have imposed or recommended measures to promote social distancing; or
3. The governing body has determined that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of meeting attendees.

The Ralph M. Brown Act

Remote Meeting Attendance (AB 2449)



- AB 2449 (2022) amended Brown Act to allow a member of governing body to participate remotely in “emergency circumstances” or for “just cause.”
- In such circumstances, the governing body need not:
 - List the remote location on the meeting notice;
 - Post the agenda at the remote location, or
 - Allow public access to the remote location.

The Ralph M. Brown Act

Remote Meeting Attendance (AB 2449)



- Just Cause:
 - A childcare or caregiving need that requires remote participation
 - A contagious illness that prevents a member from attending in person
 - A need related to a physical or mental disability; or
 - Travel while on official business of the legislative body or another state or local agency
- Emergency Circumstances:
 - A physical or family medical emergency that prevents in-person attendance.

The Ralph M. Brown Act

Remote Meeting Attendance (AB 2449)



Requirements

- Only less than a quorum may participate remotely
- A member may not participate remotely for “just cause” more than twice in a calendar year
- Member must make request for each meeting, as soon as possible
- Request must be placed on the agenda, including brief description of reason for request
- Board must vote on the request
- Remote member must disclose presence of other adults in the room

The Ralph M. Brown Act

Posting Updated Board Materials (AB 2647)



- Existing Law:
 - Updated agenda materials provided to governing body less than 72 hours prior to meeting must be made available for physical inspection at agency's office.
- Updated Law:
 - If original agenda materials were made available for physical public inspection at least 72 hours prior to Board meeting,
then
 - Updated materials need only be posted on agency's website.

The Ralph M. Brown Act

Removal of Disruptive Individuals (SB 1100)



- Existing Law:
 - Allows the removal of an individual or individuals when a “group or groups of persons” willfully disrupts a meeting.
- Updated Law:
 - SB 1100 makes clear that the Board may remove an individual when an individual disrupts the meeting.
 - Requires presiding member to warn the individual.
 - Defines disrupting behavior.

The Ralph M. Brown Act

Removal of Disruptive Individuals (SB 1100)



- “Disrupting” means engaging in behavior ... that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, *but is not limited to*, one of the following:
 - (A) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or any other law.
 - (B) Engaging in behavior that constitutes use of force or a true threat of force.
- “True threat of force” means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

The Ralph M. Brown Act

Closed Session Attendees (Attorney General Opinion 21-1102)



Background

- State Assemblymember requested opinion regarding legislative support staff attendance at city council closed session meetings, and whether two public agencies could meet jointly in closed session.
- Requestor reasoned that legislative support staff were necessary to (1) administer the meeting, (2) take notes, and (3) provide their councilmember with relevant information.

The Ralph M. Brown Act

Closed Session Attendees (Attorney General Opinion 21-1102)



- ***Question 1:*** May city councilmember support staff attend closed session meetings to assist councilmembers and advise on their duties?
- ***Opinion:*** No. Only persons with an “official or essential role” in a particular closed session may attend the closed session meeting.

The Ralph M. Brown Act

Closed Session Attendees (Attorney General Opinion 21-1102)



- ***Question 2:*** May councilmember share information from closed session with their support staff to assist in performance of official duties?
- ***Opinion:*** No, unless the city council has authorized the disclosure of such information.

The Ralph M. Brown Act

Closed Session Attendees (Attorney General Opinion 21-1102)



- **Question 3:** May city council meet jointly in closed session with city's board of housing commissioners?
- **Opinion:** Yes, provided that statutory authority exists for each body to meet in closed session and the Brown Act authority for the closed session applies to both.
- Must be a fact-specific inquiry.

Governs:

- Conflicts of interests in decisions affecting a financial interest
 - Including public disclosure of personal financial information
- Political campaign contributions, spending and advertising
- Lobbyist financial disclosures and practices

Political Reform Act Conflicts of Interest - Overview



- The Act prohibits a Board member from directly or indirectly participating in a governmental decision in which the member has a financial interest.
- Five types of interests that may result in disqualification:
 - Investment of \$2,000 or more in a business entity.
 - Real property valued at \$2,000 or more.
 - Income source of \$500 or more in prior 12 months.
 - Gifts of \$520 or more (cumulative) in prior 12 months.
 - Personal finances of official or immediate family.

Political Reform Act

Conflicts of Interest – Gift Limit Increase



- Act currently prohibits receipt of gifts from a single source with a total value of more than \$520. (Govt. Code § 89503(a).)
- Act requires cost of living adjustment on January 1 of each odd-numbered year. (Govt. Code § 89503(f).)
- Effective January 1, 2023, gift limit will be \$590 until December 31, 2024. (2 Cal. Code Regs. § 18940.2.)

Political Reform Act

Campaign Finance: Expansion of the Levine Act



- Levine Act prohibits an officer from accepting, soliciting or directing contribution of more than \$250 from any person or party with a matter pending before the agency involving a license, permit, or other entitlement for use.
- Until January 1, 2023, prohibition applied only to appointed officials.
- Under Senate Bill 1439, prohibition applies to elected officials, effective January 1, 2023.

Political Reform Act

Campaign Finance: Levine Act's Prohibitions



- Levine Act is more expansive than EBMUD's Campaign Finance Reform Ordinance:
 - Includes contracts, but also applies to “a license, permit, or other entitlement for use”.
 - Applies to “parties” or “participants” to entitlement – including persons who may oppose an entitlement or contract.
 - Restriction on donation ends one year after action on entitlement, regardless of whether or not entitlement granted.
 - If an officer knows they have accepted a donation from party or participant in the 12 months prior to consideration of entitlement, they must announce the donation and recuse themselves from participation.

Political Reform Act

Conflicts of Interest – Effects on Property Interests



- A reasonably foreseeable effect of a governmental decision on a parcel of real estate is considered material if:
 - It involves property less than 500 feet from the official's parcel, unless there is "clear and convincing" evidence the decision will not have a measurable impact on the parcel; or
 - It involves property located more than 500 feet but less than 1,000 feet from the property line of the official's parcel, and the decision would change the parcel's: (A) Development potential; (B) Income producing potential; (C) Highest and best use; (D) Character, by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or (E) Market value.

Political Reform Act

Conflicts of Interest – Effects on Property Interests



Ballinger Advice Letter, No. A-22-001 (March 8, 2022)

- **Background:** City Councilmember owned a residence 1,320 feet from City land that was to be leased to a golf club for the club's expansion. City Councilmember's residence was across the street from the golf club, but not the land to be leased.
- **Question:** Does the city councilmember have a disqualifying interest in participating in the decision to lease the land to the golf club?

Political Reform Act

Conflicts of Interest – Effects on Property Interests



Ballinger Advice Letter (continued)

- **Rule:**
 - If City Councilmember's property is 1,000 feet or more from the official's property line, financial effect is presumed not to be material.
 - This presumption may be rebutted with clear and convincing evidence the governmental decision would have a substantial effect on the official's property.
- **Determination:** Even though City Councilmember's residence was across the street from golf club, the property to be leased was over 1,000 feet away, out of view and separated by several roads, and there was no clear and convincing evidence that decision would have a substantial effect on his property.

Political Reform Act

Conflicts of Interest – Effects on Property Interests



Engberg Advice Letter, No. A-22-008 (March 7, 2022)

- **Background:** City Planning Commissioner owned a residence less than 500 feet from a proposed City storm drain replacement and repair project.
- **Questions:** May the Commissioner participate in decisions relating to approval of the repair project and submit comments on project biological documents to City staff and jurisdictional agencies?

Political Reform Act

Conflicts of Interest – Effects on Property Interests



Engberg Advice Letter (continued)

- **Rule:** Financial effect is considered material if it involves property less than 500 feet from the official's parcel, absent clear and convincing evidence the decision will not have a measurable impact on the parcel.
- **Exception:** The effect is not material if “the decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities.”
- **Determination:** The project is for the repair, replacement or maintenance of the storm drainage infrastructure. Accordingly, the Commissioner's proposed actions will not have a material financial effect on his interests in real property.

Government Code § 1090

Purpose



- Prohibits a public official or employee from making a contract in which the official or employee has a “financial interest.”
 - “Participating in making a contract” is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing plans and specifications, and solicitations for bids.
- Prohibits the entire governing body from approving a contract when one member has a financial interest.
- This prohibition applies even if the “interested” member of the governing body abstains from participation.

Government Code § 1090

Financial Interests in Contracts



Zutler Advice Letter, No. A-21-132 (March 3, 2022)

Facts:

- Healdsburg City Councilmember was CEO of nonprofit Corazon before being elected to City Council, and last received a salary from Corazon on October 23, 2020.
- Councilmember worked as a consultant for Corazon and last received payment on June 14, 2021.
- On October 4, 2021, City staff recommended to the City Council that the City negotiate a contract with Corazon to administer City's universal basic income program.

Government Code § 1090

Financial Interests in Contracts



Zutler Advice Letter (continued)

Question 1:

- Does Councilmember have a conflict of interest under Political Reform Act (PRA) regarding any contract between the City and Corazon?

Conclusion:

- Yes, Councilmember has an interest in Corazon as a source of income and it is reasonably foreseeable that any decision involving a contract with Corazon will have a material financial effect on this interest. Therefore, Councilmember may not take part in decisions related to contract and must recuse herself.

Government Code § 1090

Financial Interests in Contracts



Zutler Advice Letter (continued)

Analysis:

- PRA states that a “financial interest” includes “[a]ny source of income [except commercial loans] aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made” (Govt. Code § 87103(c).)
- Councilmember received income as a consultant to Corazon on June 14, 2021, so would have to recuse herself from any actions related to the contract on or before June 14, 2022.

Government Code § 1090

Financial Interests in Contracts



Zutler Advice Letter (continued)

Question 2:

- Does Councilmember have a conflict of interest under Section 1090 regarding any contracts entered into between the City and Corazon, such that City would be precluded from contracting with Corazon?

Conclusion:

- No. Because Councilmember terminated her business relationship with Corazon she has no conflict of interest under Section 1090 in the City's contract decisions involving Corazon, so Section 1090 does not prohibit the City from entering a contract.

Government Code § 1090

Financial Interests in Contracts



Zutler Advice Letter (continued)

Analysis:

- Under section 1090, an official does not have a financial interest in a contract if the official has terminated their business relationship with the contracting entity prior to making the contract. (Citing 86 Ops.Cal.Atty.Gen. 187 (2003).)
- Here, Councilmember has no current business relationship with Corazon.
- Though she may not participate in decisions under the PRA, City is not precluded from contracting with Corazon under Section 1090.

Government Code § 1090

Financial Interests in Contracts



Brady Advice Letter, No. A-22-027 (April 26, 2022)

Facts:

- South Gate City Councilmember owned a mobile home on leased land in a mobile home park.
- City received bids from three waste haulers on a waste hauling services franchise.
- One bidder, Universal Waste Systems (UWS), operates a composting facility 372 feet from mobile home park.
- UWS is not a current waste hauler for the City.

Government Code § 1090

Financial Interests in Contracts



Brady Advice Letter (continued)

Question 1:

- Does Councilmember have a prohibited financial interest in decision to award waste hauling contract?

Conclusion:

- Yes, Councilmember has a prohibited interest because an award of the contract to UWS may have a material financial impact on the value of his mobile home as personal property. Therefore, Councilmember may not take part in decisions related to award and must recuse himself.

Government Code § 1090

Financial Interests in Contracts



Brady Advice Letter (continued)

Analysis:

- If UWS is selected, there will be an increased activity at UWS composting facility, including increased truck activity, noise and dust potentially impacting mobile home park.
- Two potential financial interests giving rise to conflict of interest under PRA:
 - Real Property valued at \$2000 or more? No conflict of interest because although a leasehold is considered “real property” under the PRA, a month-to-month residential lease is excluded from the definition of “real property.”
 - Personal finances? Yes. A decision will have a reasonably foreseeable financial effect if it may result in the official receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision.
 - Here, it is foreseeable that increased activity at composting facility and resulting impacts may result in a loss of value of \$500 or more in Councilmember’s mobile home.

Government Code § 1090

Financial Interests in Contracts



Brady Advice Letter (continued)

Question 2:

- May the City consider a contract for waste hauling services under Section 1090 even though Councilmember would have a financial interest in the contract?

Conclusion:

- Yes, under the “rule of necessity” exception to Section 1090’s prohibitions, the City may consider the contract so long as Councilmember recuses himself from any involvement in the decision.

Government Code § 1090

Financial Interests in Contracts



Brady Advice Letter (continued)

Analysis:

- A “financial interest” under Section 1090 may be direct or indirect and may involve financial losses or gains. The term must be liberally construed.
- If Section 1090 is applicable to one member of a governing body, the entire body is precluded from approving a contract.
- Here, Councilmember is financially interested in the waste hauling contract.
- However, under the “rule of necessity,” a contract may be approved by the governing body even if it otherwise violates Section 1090 where:
 - The contract is for essential services and no other source triggering the conflict is available; and
 - The approving body is the only body authorized to act to approve it.
- Here, waste hauling services are essential to the City, and only the City Council is authorized to approve the franchise agreement.

Conclusion



- Ethics laws are many, multi-layered, and complex.
- Consult early with the Office of General Counsel and/or FPPC.

(1-866-ASK-FPPC)

Questions?



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Document 2

Policy 6.04

Ethics of the EBMUD Board of Directors



Policy 6.04

EFFECTIVE 12 JUL 22

SUPERSEDES 27 APR 21

ETHICS OF THE EBMUD BOARD OF DIRECTORS

IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT BOARD OF DIRECTORS TO:

Promote ethical behavior in the conduct of District business.

Purpose and Scope	<p>The proper operation of EBMUD requires that Board members remain objective and responsive to the needs of the public, make decisions within the proper channels of governmental structure, and not use public office for personal gain. To further these objectives, certain ethical principles govern the conduct of each member of the EBMUD Board of Directors.</p> <p>This policy promotes awareness of ethics, integrity and fidelity as critical elements in Board members' conduct and in achievement of the EBMUD mission. It references relevant policies, practices, and procedures that provide the legal framework and operational guidelines for addressing ethical issues.</p>
Responsibilities of Public Office	<p>EBMUD Board members are dedicated to the concepts of effective and democratic government by responsible elected officials. Board members:</p> <ul style="list-style-type: none">• Uphold the Constitution of the United States and the Constitution of the State of California, and carry out the laws of the nation, the state and local governmental agencies;• Comply with applicable laws regulating their conduct, including open government, conflict of interest, and financial disclosure laws;• Fulfill all applicable training requirements, including attending two (2) hours of ethics training (AB 1234) and two (2) hours of sexual harassment prevention training and education (AB 1661) every two (2) years; and• Work in full cooperation with other public officials, unless they are legally prohibited from doing so. <p><i>[California Government Code Section 1360; California Government Code 53235; California Government Code Section 87200; California Government Code Section 53237; Article 20, Section 3 of the California Constitution.]</i></p>
Fair and Open Processes Involving the Public	<p>EBMUD Board members promote fair and open public processes. Board members, and persons elected but who have not yet assumed office as members of the Board, fully comply with California's open meeting law for public agencies (the Brown Act).</p> <p>Disclosure of Communications</p> <ul style="list-style-type: none">• Board members shall publicly disclose any oral or written communications they have had with persons, including, but not limited to, employees, legislators, legislative staff, public officials, developers, vendors and consultants, that relate to matters at a Board meeting or Committee meeting in which the Board is performing an adjudicatory or quasi-judicial function.

- The disclosure may be made orally or in written form and may be made at the start of the meeting or may be made prior to consideration of the agenda item at the meeting.
- The Board shall make a good faith effort to comply with these Disclosure provisions of this Policy. A good faith failure to comply with these provisions shall not be construed to be a violation of this Policy.

[California Government Code Section 54950 and following; California Government Code Section 54952.1; California Government Code Section 54959.]

**Fair and Equal
Treatment**

EBMUD Board members promote diversity, equity, inclusion, and equality in personnel matters and in contracting, consistent with state and federal laws.

- Board members, in performance of their official duties and responsibilities, will not discriminate against or harass any person on the basis of race, color, religion, creed, sex, gender (including breastfeeding), gender identity (including transgender status), gender expression, marital or registered domestic partnership status, age for individuals forty or older, national origin, ancestry, disability (mental and physical), medical condition (cancer and genetic characteristics), genetic information, sexual orientation, military and veterans status, family or medical leave status, pregnancy (including childbirth or related medical condition), pregnancy disability leave status, or any other status protected by federal, state and/or local laws.
- Board members will not grant any special consideration, treatment, or advantage to any person or group beyond that available to every other person or group in similar circumstances.
- Board members will cooperate in achieving the equal opportunity objectives of EBMUD.

[See, e.g., Article 1, Section 31 of the California Constitution; Age Discrimination in Employment Act of 1967; Americans with Disabilities Act Amendments Act of 2008; Fair Employment and Housing Act; Rehabilitation Act of 1973; Title VII of the Civil Rights Act of 1964; California Labor Code Section 1102. See also EBMUD's Policy 6.06, Equal Employment Opportunity (EEO); Policy 6.08, Contract Equity Program; Policy 6.07, Prevention of Workplace Harassment; and Policy 2.02, Accommodation for Individuals with Disabilities in the Workplace.]

**Proper Use and
Safeguarding of
EBMUD Property
and Resources**

EBMUD Board members exercise responsible management of District property and resources in the conduct of District business.

- Board members will safeguard EBMUD property, equipment, moneys, and assets against unauthorized use or removal, as well as from loss including criminal acts or breach of trust.
- A Board member will not ask or require an EBMUD employee to perform services for the personal benefit or profit of a Board member or employee.
- Each Board member will protect and properly use any EBMUD asset within his or her control, including information recorded on paper or in electronic form.

- Board members will maintain written records, including expense accounts, in sufficient detail to reflect accurately and completely all transactions and expenditures made on EBMUD's behalf.
- Board members will adhere to District policies.

[Article 16, Section 6 of the California Constitution; Penal Code Section 424. See also EBMUD Policy 7.04, Access to District Property for Tours; Policy 7.06, Pardee Conference and Lodging Facility Use; Policy 7.11, Use of District Bay Area Facilities; Policy 4.14, Reimbursement of Director Expenses; Policy 4.20, Use of District Technology Resources]

**Use of Confidential
Information**

Board members will safeguard confidential information.

Board members will not disclose information that legally qualifies as confidential to unauthorized persons without approval of a quorum of the Board. This includes information that (1) has been received for, or during, a closed session Board meeting, (2) is protected from disclosure under the attorney/client or other evidentiary privilege, or (3) is not disclosable under the California Public Records Act.

A Board member may make a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury necessary to establish the alleged illegality of a District action. Prior to disclosing confidential information, however, a Board member will first bring the matter to the attention of either the President of the Board or the full Board, in a lawful and appropriate manner, to provide an opportunity to cure an alleged violation.

[California Government Code Section 54963; California Government Code Section 1098]

Conflict of Interest

Board members avoid both actual conflicts of interest and the appearance of conflicts of interest with the District.

- A Board member will not have a financial interest in a contract with the District, or be purchaser at a sale by the District or a vendor at a purchase made by the District, unless his or her participation is legally authorized.
- A Board member will not participate in the discussion, deliberation or vote on a matter before the Board, or in any way attempt to use his or her official position to influence a decision of the Board, if he or she has a prohibited interest with respect to the matter under California law.
- A Board member will not accept any honoraria.
- A Board member will not accept gifts that exceed the limitations specified in California law. Board members will report all gifts, campaign contributions, income and financial information as required under the District's Conflict of Interest Code and the provisions of the Fair Political Practices Act and Regulations.
- A Board member will not recommend the employment of a relative to the District or to any person known by the Board member to be bidding for or negotiating a contract with the District.

[California Government Code Section 87100 and following; California Government Code Section 1090 and following; California Government Code Section 81000 and following; California Government Code Section 87105; California Government Code Section 89502; Penal Code Sections 68 and 70, and EBMUD Conflict of Interest Code.]

**Soliciting Political
Contributions**

Board members will not solicit political funds or contributions of in-kind services at EBMUD facilities or use EBMUD equipment.

- A Board member will not solicit or direct a political contribution or in-kind services from District officers, employees, consultants or contractors, or from vendors or consultants that have a material financial interest in a contract or other matter while that matter is pending before EBMUD.
- A Board member will not use EBMUD's seal, trademark, stationary, or other indicia of EBMUD's identity or facsimile thereof in any solicitation for political contributions.

[California Government Code Section 3205 and EBMUD Campaign Finance Reform Ordinance.]

**Incompatible
Offices**

Except as expressly permitted by law, Board members appointed or elected to another public office, the duties of which may legally require action contradictory or inconsistent with the interests of the first entity, will resign from the first entity.

(See, generally, 73 Cal. Op.Atty.Gen. 357 (1990). See also California Government Code Section 53227, under which a special district employee may not be sworn into office as an elected or appointed member of the same special district unless he or she resigns as an employee.)

**Board Member-
General Manager
Relationship**

The Board sets District policy and the General Manager is responsible for execution of policy.

- The Board provides policy direction and instructions to the General Manager on matters within the authority of the Board by majority vote of the Board during duly convened Board and Board committee meetings.
- Members of the Board deal with matters within the authority of the General Manager through the General Manager, except when it pertains to the functions of the General Counsel.

[Municipal Utility District Act (MUD Act) Sections 11883, 11937 and 11939.]

**Exercise
Responsible
Financial
Management**

The Board ensures the District exercises responsible financial management.

- The Board ensures that EBMUD maintains a system of auditing and accounting that completely and at all times shows the financial condition of the District in accordance with generally accepted accounting principles and legal requirements.

- The Board retains an independent auditor who conducts an annual audit of the District's books, records and financial affairs. The auditor will meet with the Board's Finance/Administration Committee at the conclusion of the audit each year to review the audit results and recommendations.

[MUD Act Section 11889.]

**Improper Activities
and the Reporting
of Such Activities;
Protection of
Whistleblowers**

The Board ensures that EBMUD maintains a healthy and transparent work environment.

- The General Manager has primary responsibility for ensuring compliance with the District's personnel policies and procedures, and ensuring that District employees do not engage in improper activities, for investigating allegations of improper activities, and for taking appropriate corrective and disciplinary actions. The Board ensures that the General Manager is operating the District according to law and the policies approved by the Board.
- Board members will disclose to the General Manager, to the extent not expressly prohibited by law, improper activities within their knowledge. Board members will not interfere with the General Manager's responsibilities in identifying, investigating and correcting improper activities, unless the Board determines the General Manager is not properly carrying out these responsibilities.
- A Board member will not directly or indirectly use or attempt to use the authority or influence of his or her position to intimidate, threaten, coerce, command or influence any other person for the purpose of preventing such person from acting in good faith to bring to the attention of the General Manager or the Board any information that, if true, would constitute: a work-related violation by a Board member or District employee of any law or regulation, gross waste of District funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of a District official or employee, use of a District office or position or of District resources for personal gain, or a conflict of interest of a District Board member or District employee.

[Labor Code Section 1102.5 and following; California Government Code Section 53298 and 53298.5; and EBMUD Equal Employment Opportunity (EEO) Policy 6.06.]

**Directors'
Compensation and
Expense
Reimbursement**

EBMUD Board members receive a monthly stipend for their public service and the amount of that stipend is reviewed annually. EBMUD reimburses Board members for actual reasonable and necessary expenses incurred in the performance of duties authorized or requested by the Board.

- EBMUD Board members receive monthly compensation in an amount set at a public meeting of the Board of Directors. Board members must attend a minimum of 50% of their assigned meetings. Meetings include regular business meetings, standing committee meetings, special meetings, joint powers authority meetings, retirement board meetings, and closed session meetings. Salary shall not be paid to a Board member for any month in which he or she has not attended the minimum number of meetings unless the Board President excuses the absence(s) for good cause. Good cause includes, but is not limited to, a Board member's illness, family emergency, or schedule conflict directly related to the business and interests of the District.
- Any Board member arriving 15 or more minutes late for a Board or Committee meeting will be considered absent from that meeting. Such absences will be taken

into account when determining the minimum number of meetings attended for compensation during that period. Committee chairs or presiding officers may excuse late arrivals, at their discretion, due to unforeseen circumstances.

- Each Board member is encouraged to participate in outside activities and organizations that further the interests of the District. Board members do not receive compensation for attendance at non-District activities. Expenses incurred by Board members in connection with such activities are reimbursable, where authorized in advance or subsequently ratified by the Board President. No personal gain or loss to a Board member is intended. The following rules apply:
 - a) All expenses must be incurred in compliance with Policy 4.14, *Reimbursement of Director Expenses*. Any expense that is not specified in Policy 4.14 must be approved in a public meeting by the Board, before it is incurred.
 - b) All expenses must be reasonable and necessary and Board members will exercise prudence in all expenditures, including transportation, food, lodging, telephone, and technology-related charges.
 - c) Each Board member must use government and group rates offered by a transportation or lodging provider when available.
 - d) EBMUD does not provide credit cards to Board members. Upon incurring expenses, Board members will submit a reimbursement request, accompanied by evidence of payment of such expenses that will meet the District's requirements.
 - e) At the next Board meeting, each official shall briefly report on meetings attended at District expense. If multiple officials attended, a joint report may be made.

[MUD Act Sections 11908 and 11908.1; Resolution No. 35000-16, August 9, 2016; Policy 4.14, Reimbursement of Director Expenses; California Government Code Section 53232.2.]

**Candidate's
Statement**

A Board member will not include false or misleading information in a candidate's statement for a general District election filed pursuant to Section 13307 of the Elections Code.

[Elections Code Sections 13307 and 13313; EBMUD Campaign Finance Reform Ordinance.]

**Violation of Ethics
Policy**

A perceived violation of EBMUD's ethics policy by a Board member should be referred to the Board President for investigation and consideration of any appropriate action warranted. In the case of a perceived violation by the Board President, the matter should be referred to the Board Vice President. A violation of this policy may be addressed by remedies available by law, including but not limited to:

- Adopting a resolution expressing disapproval of the conduct of the Board member who has violated this policy,
- Injunctive relief, or
- Referral of the violation to the California Fair Political Practices Commission, District Attorney and/or the Grand Jury.

Authority

Resolution No. 33414-04, March 23, 2004.
As amended by Motion No. 041-05, March 8, 2005
As amended by Resolution No. 33577-07, January 9, 2007
As amended by Resolution No. 33883-12, June 26, 2012
As amended by Resolution No. 35008-16, October 25, 2016
As amended by Resolution No. 35132-19, February 26, 2019
As amended by Resolution No. 35221-21, April 27, 2021
As amended by Resolution No. 35302-22, July 12, 2022

References

See footnotes in above sections.
References are available for public review in the Office of the District Secretary.
Resolution No. 35000-16, August 9, 2016

Document 3

Government Code § 54953


(as amended by Assembly Bill 2449)

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Deering's California Codes are current through the 2022 Regular Session.

Deering's California Codes Annotated > GOVERNMENT CODE (§§ 1 — 500000–500049) > Title 5 Local Agencies (Divs. 1 — 5) > Division 2 Cities, Counties, and Other Agencies (Pts. 1 — 3) > Part 1 Powers and Duties Common to Cities, Counties, and Other Agencies (Chs. 1 — 14) > Chapter 9 Meetings (§§ 54950 — 54963)

Notice

 This section has more than one version with varying effective dates.

§ 54953. Requirement that meetings be open and public; Teleconferencing; Public report of action taken; Teleconference meetings by health authority; Exceptions to teleconference meeting requirements [Repealed effective January 1, 2024]

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b)

(1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:

(A) All votes taken during a teleconferenced meeting shall be by rollcall.

(B) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.

(C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to [Section 54954.3](#).

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. Each teleconference location shall be identified in the notice and agenda of

the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e).

(c)

- (1)** No legislative body shall take action by secret ballot, whether preliminary or final.
- (2)** The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.
- (3)** Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of [Section 3511.1](#), during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Division 10 (commencing with [Section 7920.000](#)) of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d)

- (1)** Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.
- (2)** Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.
- (3)** For purposes of this subdivision, a health authority means any entity created pursuant to Sections [14018.7](#), [14087.31](#), [14087.35](#), [14087.36](#), [14087.38](#), and [14087.9605 of the Welfare and Institutions Code](#), any joint powers authority created pursuant to Article 1 (commencing with [Section 6500](#)) of Chapter 5 of Division 7 for the purpose of contracting pursuant to [Section 14087.3 of the Welfare and Institutions Code](#), and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with [Section 1340](#)) of [Division 2 of the Health and Safety Code](#) if the advisory committee has 12 or more members.

(e)

- (1)** The legislative body of a local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:
 - (A)** The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
 - (B)** The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
 - (C)** The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

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(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.

(B) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to [Section 54960.1](#).

(C) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(D) Notwithstanding [Section 54953.3](#), an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(E)

(i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) This subdivision shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(f)

(1) The legislative body of a local agency may use teleconferencing without complying with paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:

(A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(B) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to [Section 54954.3](#) via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

(D) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to [Section 54960.1](#).

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(F) Notwithstanding [Section 54953.3](#), an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:

(A) One of the following circumstances applies:

(i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.

(ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under

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existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with [Section 56](#)) of [Part 2.6 of Division 1 of the Civil Code](#)). For the purposes of this clause, the following requirements apply:

- (I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.
- (II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of [Section 54954.2](#).
- (B) The member shall publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.
- (C) The member shall participate through both audio and visual technology.
- (3) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.
- (g) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 ([42 U.S.C. Sec. 12132](#)), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.
- (h) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.
- (i)
 - (1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.
 - (2) Nothing in this section shall prohibit a legislative body from providing members of the public with additional physical locations in which the public may observe and address the legislative body by electronic means.
- (j) For the purposes of this section, the following definitions shall apply:
 - (1) "Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person.
 - (2) "Just cause" means any of the following:
 - (A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. "Child," "parent," "grandparent," "grandchild," and "sibling" have the same meaning as those terms do in [Section 12945.2](#).
 - (B) A contagious illness that prevents a member from attending in person.
 - (C) A need related to a physical or mental disability as defined in [Sections 12926](#) and [12926.1](#) not otherwise accommodated by subdivision (g).
 - (D) Travel while on official business of the legislative body or another state or local agency.

(3) “Remote location” means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (f), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(4) “Remote participation” means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.

(5) “State of emergency” means a state of emergency proclaimed pursuant to [Section 8625](#) of the California Emergency Services Act (Article 1 (commencing with [Section 8550](#)) of Chapter 7 of Division 1 of Title 2).

(6) “Teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.

(7) “Two-way audiovisual platform” means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

(8) “Two-way telephonic service” means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.

(9) “Webcasting” means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

(k) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

History

Added Stats 1953 ch 1588 § 1. Amended [Stats 1988 ch 399 § 1](#), operative until January 1, 1994; [Stats 1993 ch 1136 § 4 \(AB 1426\)](#), operative April 1, 1994, ch 1137 § 4 (SB 36), operative April 1, 1994; [Stats 1994 ch 32 § 4 \(SB 752\)](#), effective March 30, 1994, operative April 1, 1994; [Stats 1997 ch 253 § 2 \(SB 138\)](#); [Stats 1998 ch 260 § 1 \(SB 139\)](#); [Stats 2005 ch 540 § 1 \(AB 1438\)](#), effective January 1, 2006; [Stats 2012 ch 209 § 1 \(SB 475\)](#), effective January 1, 2013; [Stats 2013 ch 257 § 1 \(SB 751\)](#), effective January 1, 2014; [Stats 2016 ch 175 § 1 \(SB 1436\)](#), effective January 1, 2017; [Stats 2017 ch 137 § 1 \(AB 428\)](#), effective January 1, 2018; [Stats 2021 ch 165 § 3 \(AB 361\)](#), effective September 16, 2021, repealed January 1, 2024; [Stats 2021 ch 615 § 204 \(AB 474\)](#), effective January 1, 2022 (ch 165 prevails); [Stats 2022 ch 285 § 1 \(AB 2449\)](#), effective September 13, 2022, repealed January 1, 2024; [Stats 2022 ch 28 § 73 \(SB 1380\)](#), effective September 13, 2022, repealed January 1, 2024 (ch 285 prevails).

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Document 4

Government Code § 54957.5


(as amended by Assembly Bill 2647)

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Deering's California Codes are current through the 2022 Regular Session.

Deering's California Codes Annotated > GOVERNMENT CODE (§§ 1 — 500000–500049) > Title 5 Local Agencies (Divs. 1 — 5) > Division 2 Cities, Counties, and Other Agencies (Pts. 1 — 3) > Part 1 Powers and Duties Common to Cities, Counties, and Other Agencies (Chs. 1 — 14) > Chapter 9 Meetings (§§ 54950 — 54963)

Notice

 This section has more than one version with varying effective dates.

§ 54957.5. Agendas and other writings as public records [Effective January 1, 2023]

(a) Agendas of public meetings are disclosable public records under the California Public Records Act (Division 10 (commencing with [Section 7920.000](#)) of Title 1), and shall be made available upon request without delay and in compliance with [Section 54954.2](#) or [Section 54956](#), as applicable. However, this section shall not apply to a writing, or portion thereof, that is exempt from public disclosure .

(b)

(1) If a writing is a public record related to an agenda item for an open session of a regular meeting of the legislative body of a local agency and is distributed to all, or a majority of all, of the members of a legislative body of a local agency by a person in connection with a matter subject to discussion or consideration at an open meeting of the body less than 72 hours before that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2)

(A) Except as provided in subparagraph (B), a local agency shall comply with both of the following requirements:

(i) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose.

(ii) A local agency shall list the address of the office or location designated pursuant to clause (i) on the agendas for all meetings of the legislative body of that agency.

(B) A local agency shall not be required to comply with the requirements of subparagraph (A) if all of the following requirements are met:

(i) An initial staff report or similar document containing an executive summary and the staff recommendation, if any, relating to that agenda item is made available for public inspection at the office or location designated pursuant to clause (i) of subparagraph (A) at least 72 hours before the meeting.

(ii) The local agency immediately posts any writing described in paragraph (1) on the local agency's internet website in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(iii) The local agency lists the web address of the local agency's internet website on the agendas for all meetings of the legislative body of that agency.

(iv)

(I) Subject to subclause (II), the local agency makes physical copies available for public inspection, beginning the next regular business hours for the local agency, at the office or location designated pursuant to clause (i) of subparagraph (A).

(II) This clause is satisfied only if the next regular business hours of the local agency commence at least 24 hours before that meeting.

(c) Writings that are public records described in subdivision (b) and distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by [Section 202](#) of the Americans with Disabilities Act of 1990 ([42 U.S.C. Sec. 12132](#)), and the federal rules and regulations adopted in implementation thereof.

(d) This chapter shall not be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to [Section 7922.530](#), except that a surcharge shall not be imposed on persons with disabilities in violation of [Section 202](#) of the Americans with Disabilities Act of 1990 ([42 U.S.C. Sec. 12132](#)), and the federal rules and regulations adopted in implementation thereof.

(e) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Division 10 (commencing with [Section 7920.000](#)) of Title 1), including, but not limited to, the ability of the public to inspect public records pursuant to [Section 7922.525](#) and obtain copies of public records pursuant to either subdivision (b) of [Section 7922.530](#) or [Section 7922.535](#). This chapter shall not be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

History

Added Stats 1980 ch 1284 § 24. Amended Stats 1981 ch 968 § 32; [Stats 1993 ch 1136 § 14 \(AB 1426\)](#), operative April 1, 1994, ch 1137 § 14 (SB 36), operative April 1, 1994; [Stats 1994 ch 32 § 16 \(SB 752\)](#), effective March 30, 1994, operative April 1, 1994; [Stats 1998 ch 260 § 4 \(SB 139\)](#); [Stats 1999 ch 769 § 3 \(AB 496\)](#); [Stats 2002 ch 300 § 8 \(AB 3035\)](#); [Stats 2007 ch 298 § 1 \(SB 343\)](#), effective January 1, 2008; [Stats 2013 ch 326 § 1 \(AB 382\)](#), effective January 1, 2014; [Stats 2021 ch 615 § 208 \(AB 474\)](#), effective January 1, 2022; [Stats 2022 ch 971 § 1 \(AB 2647\)](#), effective January 1, 2023.

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Document 5

Government Code § 54957.95

(added by Senate Bill 1100)

[Cal Gov Code § 54957.95](#)

Deering's California Codes are current through the 2022 Regular Session.

Deering's California Codes Annotated > GOVERNMENT CODE (§§ 1 — 500000–500049) > Title 5 Local Agencies (Divs. 1 — 5) > Division 2 Cities, Counties, and Other Agencies (Pts. 1 — 3) > Part 1 Powers and Duties Common to Cities, Counties, and Other Agencies (Chs. 1 — 14) > Chapter 9 Meetings (§§ 54950 — 54963)

§ 54957.95. Removal of individual for meeting disruption [Effective January 1, 2023]

(a)

(1) In addition to authority exercised pursuant to [Sections 54954.3](#) and [54957.9](#), the presiding member of the legislative body conducting a meeting or their designee may remove, or cause the removal of, an individual for disrupting the meeting.

(2) Prior to removing an individual, the presiding member or their designee shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior. This paragraph does not apply to any behavior described in subparagraph (B) of paragraph (1) of subdivision (b).

(b) As used in this section:

(1) “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:

(A) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to [Section 54954.3](#) or any other law.

(B) Engaging in behavior that constitutes use of force or a true threat of force.

(2) “True threat of force” means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

History

Added [Stats 2022 ch 171 § 2 \(SB 1100\)](#), effective January 1, 2023.

Document 6

The Hon. Christopher M. Ward

Attorney General Opinion No. 21-1102

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

ROB BONTA
Attorney General

	:	No. 21-1102
OPINION	:	
	:	May 26, 2022
of	:	
	:	
ROB BONTA	:	
Attorney General	:	
	:	
CATHERINE BIDART	:	
Deputy Attorney General	:	

The HONORABLE CHRISTOPHER M. WARD, ASSEMBLYMEMBER, has requested an opinion on questions relating to closed sessions held under the Ralph M. Brown Act.

QUESTIONS PRESENTED AND CONCLUSIONS

1. Under the Ralph M. Brown Act, may legislative support staff of individual city councilmembers attend a closed session to assist and advise their individual members in the performance of the members' duties?

No, as a general matter, legislative support staff of individual city councilmembers may not attend closed sessions. If a person on such staff has an official or essential role to play in a particular closed session, however, then that person may attend for that purpose.

2. If legislative support staff of individual city councilmembers are not permitted to attend a closed session as described in Question 1, may the members share information obtained in closed session with their individual support staff to assist the members in performing their legislative duties?

No. City councilmembers may not share with their individual support staff, who were not permitted to attend a closed session, information obtained in that closed session unless the city council has authorized the disclosure of such information.

3. Would it violate the Ralph M. Brown Act for a city council acting as the city's housing authority to meet jointly in closed session with a board of housing commissioners, which the housing authority oversees, provided that statutory authorization exists for both entities to go into closed session?

No. The Act does not prohibit a joint closed session of two local agencies, if each agency is authorized to meet in closed session based on the same exception and same set of facts. Such agencies may together meet in closed session under that exception.

BACKGROUND

The Ralph M. Brown Act is an open meeting law that applies to local government agencies in California.¹ With certain exceptions, the Act requires the “legislative body” of a local agency to deliberate and take action in meetings that are open to the public.² As the Act explains, public agencies exist to help conduct the people's business, and the people “insist on remaining informed so that they may retain control over the instruments they have created.”³

At the same time, however, the Act recognizes exceptional situations where the need for confidentiality outweighs the interest in openness.⁴ An agency may therefore at times meet in closed session, but only if the Act expressly authorizes it.⁵ The Act expressly authorizes a closed session in more than a dozen narrow circumstances.

For example, an agency may meet in closed session to confer with its attorney about “pending litigation” when open discussion would prejudice the agency, or to direct its negotiator of a property transaction on particular matters such as price.⁶ An agency

¹ Gov. Code, §§ 54950 et seq.

² *Id.*, §§ 54950, 54951 (defining “local agency”), 54952 (defining “legislative body”), 54952.2, subd. (a) (defining “meeting”), 54953, subd. (a).

³ *Id.*, § 54950.

⁴ See 75 Ops.Cal.Atty.Gen. 14, 20 (1992) (explaining that “despite the fact that the general thrust of the Act is for public agencies to hold their meetings, deliberate, and take action in public, the Act recognizes the need at times to both deliberate and act in private when necessary due to important policy considerations”).

⁵ *Ricasa v. Office of Admin. Hearings* (2018) 31 Cal.App.5th 262, 273 (“Closed sessions may only be conducted if authorized by statute,” citing Gov. Code, § 54962).

⁶ Gov. Code, §§ 54956.8 (real-estate exception), 54956.9 (pending-litigation exception).

may also meet in closed session to handle certain employee personnel matters.⁷ Other exceptions relate to labor negotiations, a license application by those with criminal records, a final draft audit report from the Bureau of State Audits, pension fund investments, a threat to the security of public facilities or essential public services, ongoing criminal investigations by a multijurisdictional law enforcement agency, and an application for early withdrawal of funds based on financial hardship.⁸

Before meeting in closed session, an agency must list and describe any closed-session items on the public meeting agenda and announce in open session the closed-session items to be discussed.⁹ In closed session, the agency may only discuss the specific items covered in its announcement.¹⁰ After the closed session, the agency must reconvene in open session and report certain actions taken in the closed session.¹¹

⁷ Gov. Code, § 54957, subd. (b) (authorizing closed session to hear specific complaints against an employee, and consider evaluation, appointment, discipline, or dismissal of employee).

⁸ See Gov. Code, §§ 54957.6 (labor negotiations), 54956.7 (license applications), 54956.75 (audit reports), 54956.81 (pension fund investments), 54957, subd. (a) (threats to public facilities or essential public services), 54957.8 (multijurisdictional criminal investigations), 54957.10 (early withdrawal of funds). Certain other exceptions only apply to specified agencies. For instance, a county board of supervisors may meet in closed session when acting as a specified health plan's governing board to discuss contracts, trade secrets, or other enumerated matters. (*Id.*, § 54956.87.) A joint powers agency formed for purposes of insurance pooling, and those joint powers agency's local agency members, may meet in closed session to discuss certain claims for payment. (*Id.*, § 54956.95.) And public banks, hospitals, school districts, and community college districts may hold closed session meetings to consider enumerated topics. (*Id.*, §§ 54956.97, 54962.)

⁹ Gov. Code, §§ 54954.2, subd. (a)(1) (agenda must include closed-session items), 54954.5 (specifying permissible closed-item agenda descriptions), 54957.7, subd. (a) (disclosure in open session of items to be discussed).

¹⁰ Gov. Code, § 54957.7, subd. (a).

¹¹ Gov. Code, §§ 54957.1, 54957.7, subd. (b).

ANALYSIS

1. Under the Ralph M. Brown Act, may legislative support staff of individual city councilmembers attend a closed session to assist and advise their individual members in the performance of the members' duties?

Neither the Legislature nor the courts appear to have examined this specific question. Neither have we, but our prior opinions recognize that only persons who have an “official or essential” role may attend a closed session.¹² The Legislature is presumed to be aware of our opinions, and thus, this test.¹³ Indeed, the legislative history of the Act references the test.¹⁴

In general, a person has an “official” role if they are authorized by statute to attend the closed session. This includes members of the legislative body conducting the closed session, as well as other individuals specifically identified in an applicable closed-session exception.¹⁵ Anyone else may attend a closed session only if their presence is “essential” to the agency’s ability to conduct its closed-session business.

Past opinions set forth the rationale for the “official or essential” test, explaining that including individuals without an official or essential role would convert the closed session into a semi-closed session, which the Act does not authorize.¹⁶ For example, in an early opinion construing the Act, we concluded that an agency could not invite

¹² 88 Ops.Cal.Atty.Gen. 16, 23 (2005) (stating that “[t]he general rule is that closed-session access is permitted only to people who have ‘an official or essential role to play’ in the closed meeting,” quoting 86 Ops.Cal.Atty.Gen. 210, 215 (2003), and citing prior opinions).

¹³ See *City of Woodlake v. Tulare County Grand Jury* (2011) 197 Cal.App.4th 1293, 1302, fn. 4 (providing that the Legislature is presumed to be aware of Attorney General opinions, and if they misconstrued legislative intent, “some corrective measure would have been adopted”); *People v. Union Oil Co.* (1968) 268 Cal.App.2d 566, 571 (stating that the lapse of time after an opinion “supports the inference that if it were contrary to legislative intent, some corrective measure would have been adopted”).

¹⁴ See, e.g., Sen. Governance & Finance Com., Rep. on Assem. Bill 246 (2013–2014 Reg. Sess.), hearing date May 15, 2013, as amended Feb. 6, 2013, pp. 1–2 (explaining that Brown Act only allows essential staff to attend closed session).

¹⁵ See, e.g., Gov. Code, § 54956.9 (pending-litigation exception identifying agency counsel).

¹⁶ 46 Ops.Cal.Atty.Gen. 34, 35 (1965).

members of the press to a closed session on personnel matters.¹⁷ We explained that “neither members of the press nor any other individuals who are not witnesses in the matter being investigated” could attend, because the “reasons for the legislative authorization” for the closed session—which we described as “[s]ecrecy, confidentiality, and absence of publicity”—would be “rendered nugatory.”¹⁸

More recently, we concluded that a local agency could allow an applicant for disability retirement, as well as the applicant’s representative, to attend a closed session convened under the personnel exception.¹⁹ We explained that the county retirement board could allow the applicant and representative to participate as an “interested party” or “advocate” if the board believed that they would have “an official or essential role to play in the closed session.”²⁰ We recognized that the board “may consider that the attendance of the applicant and his or her representative at the closed session would be essential for a determination on the merits of the disability retirement application,” and that because no “members of the public” would be present, the meeting would not become an impermissible “semi-closed” session.²¹

We have applied this “official or essential” test to the question of whether public officials who are not members of a legislative body may attend closed sessions. In an opinion raising a similar question to the one presented here, we determined that an alternate member of a legislative body could not attend a closed session, unless the alternate was serving as a member in place of an absent member.²² Even though we recognized that the alternate’s presence at all sessions would be beneficial by enhancing the discussion and fostering the efficient, seamless replacement of a member who was absent, the alternate’s presence in the closed session was unauthorized.²³ We explained: “Unless sitting in place of an absent or disqualified regular member, an alternate member may not attend a closed session without converting the session into an unauthorized ‘semi-closed meeting.’”²⁴

¹⁷ *Ibid.*

¹⁸ *Id.* at pp. 34–35.

¹⁹ 88 Ops.Cal.Atty.Gen., *supra*, at pp. 20, 23.

²⁰ *Id.* at p. 23.

²¹ *Id.* at p. 24.

²² 82 Ops.Cal.Atty.Gen. 29, at pp. 33–34 (1999).

²³ *Id.* at pp. 32–34.

²⁴ *Id.* at pp. 33–34.

And in a particularly relevant opinion concerning a public official, we determined that a mayor could not attend a redevelopment agency's closed session convened under the real-estate exception, which allows an agency to meet in closed session to instruct its negotiator on specified matters.²⁵ Because the mayor was not the agency's negotiator, the mayor had "no official role to play at the redevelopment agency's closed session under the express provisions" of the exception.²⁶ We disagreed that the mayor, by providing advice on the property transaction at the agency's request, had an essential role as "support staff" of the redevelopment agency.²⁷ We recognized that the mayor's involvement in the negotiating strategy might be beneficial, but determined that it was not essential.²⁸

The requestor here lists three ways in which the support staff of an individual city councilmember could have a role at a closed-session meeting: (1) to administer the meeting, (2) to take notes, and (3) to provide their councilmember with relevant information because such staff "may have unique knowledge or information about a particular matter that could assist Councilmembers to better serve their constituency."²⁹ No statute provides for individual support staff of members to play these roles at closed session, so these are not "official" roles for such staff. Nor do we see how any of these constitute an "essential" role, as we explain below.

As an initial matter, we are informed that most city councils in California do not have individual legislative staffers attend closed sessions.³⁰ This state of affairs suggests that councilmembers are generally fully capable of performing their official legislative duties without the presence of individual staff in closed meetings, and that such staff are generally not needed in closed session to perform any of the three roles listed above.

As to "administering" the meeting, it is not entirely clear what this would entail. We were not provided any details about how councilmembers' individual staff might

²⁵ 83 Ops.Cal.Atty.Gen. 221 (2000); see Gov. Code, § 54956.8 (real-estate exception).

²⁶ 83 Ops.Cal.Atty.Gen., *supra*, at p. 224.

²⁷ *Ibid.*

²⁸ *Id.* at p. 225.

²⁹ Assemblymember Christopher M. Ward, letter to Senior Assistant Attorney General Mollie Lee, Nov. 2, 2021, p. 1, on file.

³⁰ League of California Cities, letter to Deputy Attorney General Catherine Bidart, Mar. 3, 2022, p. 3, fn. 11, on file; see also Assemblymember Christopher M. Ward, letter to Senior Assistant Attorney General Mollie Lee, Nov. 2, 2021, p. 1, on file (providing factual background regarding the City of San Diego and noting that currently staff working for individual councilmembers do not attend closed sessions).

administer a meeting, and we are mindful that it is the legislative bodies themselves who conduct meetings, including closed sessions. In the absence of further details, and given our understanding that most city councils operate in closed sessions without individual councilmembers' support staff, we cannot say the presence of such staff is a necessity.

As to taking notes, the Act expressly authorizes an agency to designate a clerk or other officer or employee of the agency to take notes at and to record closed sessions.³¹ This indicates that the Legislature did not intend for anyone else to perform this role. It therefore cannot be "essential" for a member's individual staff to play that role. If an agency would like to have a note-taker at closed sessions, then the agency, as a whole, may designate a single employee to attend each closed session for note-taking and recordings. But individual councilmembers may not designate their own individual note-takers to attend closed sessions.

As to the attendance of individual members' support staff because they "may have" information that would "assist Councilmembers to better serve their constituency," this also falls short of an "essential" role in conducting the business of a closed session. We recognize that there may be members who believe that their individual staff provide essential assistance in any setting. But closed sessions exceptions must be interpreted narrowly.³² A person's presence may be beneficial to an agency's closed session deliberations but still be unauthorized because the person has no "essential" role to play—as with the mayor and the alternate councilmember in our prior opinions. Here, informational assistance from an individual member's staff must confer more than a mere potential benefit; instead, it must be essential to the particular business of the legislative body as a whole that provides the basis for the closed session.

We therefore conclude as a general matter that staff of individual councilmembers do not have a role that would authorize them to attend closed sessions.³³ We emphasize, however, that who may attend any given closed session will always depend on the particular context. Accordingly, there may be instances in which an individual member's support staff has a qualifying role to play in a particular closed session. For example, they could be an essential witness with personal knowledge relevant to a particular closed

³¹ See Gov. Code, § 54957.2.

³² Cal. Const. art. I, § 3(b)(2) (mandating that a statute be "broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access"); *Shapiro v. Board of Directors* (2005) 134 Cal.App.4th 170, 174.

³³ We note that we are not presented with a situation where an individual member has a disability who requires assistance in order to participate in a closed session, which would be a separate inquiry and entail a different analysis.

session matter.³⁴ Like anyone else, however, without a qualifying role in the meeting, their presence would undermine the Act's rationale for the closed session and transform the meeting into an unlawful semi-closed session.

2. If legislative support staff of individual city councilmembers are not permitted to attend a closed session as described in Question 1, may the members share information obtained in closed session with their individual support staff to assist the members in performing their legislative duties?

As a threshold matter, we assume that the legislative body has not already disclosed the information asked about here. After a legislative body's closed session, it must make certain disclosures.³⁵ In addition, the body may authorize, by a vote of the body, certain other disclosures.³⁶ Absent such authorization, and for the reasons explained below, we conclude that the Act prohibits a councilmember from disclosing closed-session information to the member's own support staff.

This conclusion flows from our conclusion in Question 1 that individual support staff generally may not attend closed sessions. If someone is not authorized to attend a closed session, it follows that they are likewise not authorized to obtain information from that closed session. A contrary conclusion would undermine the confidentiality of the closed-session proceedings. Each one of the Act's closed-session exceptions reflects a legislative determination that confidentiality outweighs the ideal of open government in that circumstance.³⁷ That confidentiality would evaporate if closed-session information could be shared with individuals excluded from the closed session.

Our conclusion is also compelled by two specific sections of the Act that reflect a general intent for closed-session information to be kept confidential. The first provision,

³⁴ See 88 Ops.Cal.Atty.Gen., *supra*, at pp. 23–24 (observing that “witnesses may attend closed sessions to present factual information to the legislative body; they would not be present ‘as members of the public’ but rather as percipient witnesses,” quoting 80 Ops.Cal.Atty.Gen. 308, 311, fn. 5 (1997)); 46 Ops.Cal.Atty.Gen., *supra*, at p. 34.

³⁵ Gov. Code, §§ 54957.1, 54957.7.

³⁶ See Gov. Code, § 54963, subd. (a) (“A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information”).

³⁷ 63 Ops.Cal.Atty.Gen. 153, 154 (1980) (explaining with reference to exceptions that Act recognizes “certain situations where this basic policy of ‘government in the sunshine’ is outweighed by the necessity for confidentiality”).

Government Code section 54963, protects the confidentiality of information from certain closed sessions by prohibiting disclosure to those who are “not entitled to receive it.”³⁸ And individual support staff are not “entitled to receive” confidential information from those closed sessions. Thus, section 54963 prohibits a member from disclosing confidential information from those closed sessions to their individual staff. Indeed, the section contains provisions prescribing punishment to members for willful unauthorized disclosures.³⁹

We recognize that section 54963, in the context of prescribing punishment for unauthorized disclosures, contemplates that such disclosures may occur *by* employees (as well as by members).⁴⁰ This contemplates that there may be circumstances when an employee will receive closed-session information. But that does not mean that all employees have a blanket authorization to receive closed-session information. We believe that it instead simply accounts for situations when an employee receives closed-session information, whether authorized (such as in the case of an authorized closed-session attendee) or not, and the employee improperly discloses it. We see nothing indicating that staff who are not authorized to attend the closed session in the first place may nevertheless receive confidential information from the closed session.⁴¹

The second relevant provision, Government Code section 54957.2, provides that the minutes of closed sessions “shall be kept confidential” and are “available only to members of the legislative body.”⁴² This provision evinces a clear intent to keep closed

³⁸ Gov. Code, § 54963, subd. (a) (“A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information”).

³⁹ Gov. Code, § 54963, subd. (c) (providing that violation of section “may be addressed by the use of such remedies as are currently available by law, including, but not limited to” injunctive relief and referral of legislative member to grand jury).

⁴⁰ Gov. Code, § 54963, subd. (d) (stating that prerequisite to employee discipline is notice of section’s requirements or training on them).

⁴¹ We note that the section does not apply to certain disclosures, such as confidential inquiries to prosecutors concerning a perceived violation and disclosures made of a perceived illegal action in closed session, but as these have no apparent connection to members’ staff, they do not affect our analysis. (Gov. Code, § 54963, subs. (e) & (f).)

⁴² Gov. Code, § 54957.2. If a violation of the Act at the closed session is alleged, then the recording is also available to a court. (*Ibid.*)

sessions confidential. It would be undermined if staff could gain information from the closed session from their member after the session concludes.

A Court of Appeal decision, which predated section 54963, held that section 54957.2's protection of closed-session minutes and recordings precludes discovery requests of member recollections of a closed session.⁴³ The court found nothing in the Act providing for that type of disclosure.⁴⁴ The court observed that, even though the Act did not at that time expressly provide for the confidentiality of closed-session proceedings, a confidentiality requirement "may be strongly inferred from the various provisions of the Act pertaining to the recording of closed sessions."⁴⁵ The court explained:

In particular, the Act provides that a legislative body has the option of keeping a minute book for closed sessions, in which the "topics discussed and decisions made" may be recorded. (§ 54957.2 [legislative body "may" keep a minute book].) The minute book is expressly made confidential: "The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act ... and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies." (§ 54957.2, subd. (a); see also *Register Division of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 907, 205 Cal.Rptr. 92.)^[46]

⁴³ *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 326–327; see Stats. 2002, ch. 1119, § 1 (enacting section 54963), Stats. 1981, ch. 968, § 31 (enacting current version of section 54957.2).

⁴⁴ *Kleitman v. Superior Court, supra*, 74 Cal.App.4th at pp. 326–327 ("[T]he Act provides only for the in camera review of minute books and the disclosure of the tape recordings of a closed session under certain specific circumstances. Accordingly, we find that the trial court cannot compel disclosure of the personal recollections of city council members with respect to a closed session, without improperly reading into the Act a discovery procedure which would violate the confidentiality of closed sessions which is inherent in the Act").

⁴⁵ *Id.* at p. 332.

⁴⁶ *Ibid.*

The court then agreed with prior opinions of ours concluding that disclosure of closed-session proceedings would destroy the confidentiality inherent in the Act.⁴⁷ First, because “the recording of a closed session discussion must be kept in confidence, it follows that oral communications of such information may not be made to the public.”⁴⁸ And further, “the statutes authorizing closed sessions and making records thereof ‘confidential’ would be rendered meaningless if an individual member could publicly disclose the information . . . received in confidence.”⁴⁹

The reasoning in these prior opinions remains true.⁵⁰ And applying that reasoning here supports the conclusion that councilmembers may not disclose closed-session information to their staff who were not authorized to attend the closed session.

3. Would it violate the Ralph M. Brown Act for a city council acting as the city’s housing authority to meet jointly in closed session with a board of housing commissioners, which the housing authority oversees, provided that statutory authorization exists for both entities to go into closed session?

We are given no context for this question other than that it pertains to the City of San Diego’s Housing Authority, which oversees a Board of Housing Commissioners.⁵¹ Publicly available information indicates that the latter advises the former on items including “proposed changes to housing policy, property acquisitions, other financial

⁴⁷ *Id.* at p. 334.

⁴⁸ *Ibid.*, quoting 76 Ops.Cal.Atty.Gen. 289, 291 (1993).

⁴⁹ *Id.* at p. 334, quoting 76 Ops.Cal.Atty.Gen., *supra*, at p. 290 and citing 80 Ops.Cal.Atty.Gen. 231, 239 (1997).

⁵⁰ Cf. *County of Los Angeles v. Superior Court* (2005) 130 Cal.App.4th 1099, 1105–1107 (rejecting discovery of closed-session minutes because Legislature made them exempt from disclosure); 86 Ops.Cal.Atty.Gen., *supra*, at p. 214 (concluding that, under similar state open meetings law, legislative body’s appointee to board could not disclose board’s closed-session information to appointing body or its counsel) & *id.* at p. 215 (stating that under similar state open meetings law, “Without the right to be present at a closed session of the Board, the other state department employees and department counsel would not qualify to receive closed-session information”).

⁵¹ These entities are subject to the Brown Act. (See Gov. Code, §§ 54951 [“local agency” includes general and charter cities], 54952, subd. (a) [“legislative body” includes “governing body of a local agency”]; *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545, 547 [Brown Act applies to housing authority].)

commitments, and agency operations, including allocation of resources, revisions to personnel policies and annual administrative and operating budgets.”⁵²

The question assumes that statutory authorization exists for each body to go into closed session. As explained below, we see nothing in the Brown Act to prohibit two bodies from jointly meeting in closed session, as long as each body qualifies under the same set of facts for the same express exception authorizing a closed session. Each one of the Act’s closed-session exceptions reflects a circumstance where the need for confidentiality outweighs the ideal of open meetings. If legislative bodies could not meet together in closed session when they jointly satisfy an exception, it would thwart the Act’s intent to allow closed sessions under that exception.

One commenter asserts that the Act precludes joint closed sessions because the Act does not expressly provide for them. This view is based on section 54962, which states “[e]xcept as expressly authorized . . . no closed session may be held by any legislative body of any local agency.”⁵³ In the commenter’s view, the absence of an express reference to joint closed sessions means they are never authorized. We disagree.

The Legislature added this “expressly authorized” language at the same time that it amended the pending-litigation exception to make that exception the sole basis for a closed session to protect the attorney-client privilege.⁵⁴ As we have explained in our Brown Act manual:

Under the Brown Act, closed sessions must be expressly authorized by explicit statutory provisions. Prior to the enactment of section 54962, the courts and this office had recognized impliedly authorized justifications for

⁵² According to its website, the San Diego Housing Commission Board of Commissioners reviews and advises on those items for the Housing Authority of the City of San Diego, which is composed of the City’s nine-member City Council. (<https://www.sdhc.org/governance-legislative-affairs/sdhc-board-of-commissioners/> [as of May 13, 2022]).

⁵³ The section in full provides:

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

Gov. Code, § 54962.

⁵⁴ Stats. 1987, ch. 1320, §§ 5 & 6.

closed sessions. . . . However, that legislation made it clear that closed sessions cannot be conducted unless they are expressly authorized by statute. Although confidential communication privileges continue to exist in other statutes such as the Public Records Act and Evidence Code section 1040, these provisions no longer can impliedly authorize a closed session.^[55]

In our view, the amendment prohibiting closed sessions “except as expressly authorized,” made in tandem with the attorney-client privilege amendments, merely reflects an intent to prohibit implied exceptions based on confidentiality protections.⁵⁶ In light of that apparent purpose, we do not believe that exceptions expressly authorizing closed sessions must be disregarded when they are met jointly by two legislative bodies rather than one.

Finally, we acknowledge that the various exceptions in the Act authorize “a legislative body” to meet in closed session, which could be read to suggest that no more than a single legislative body may meet in closed session.⁵⁷ But we believe that these references to “legislative body” in the singular merely reflect a legislative drafting technique that uses the singular, rather than reflect an intent to preclude two legislative bodies from meeting under an exception.⁵⁸ “[U]nder the general rules of statutory construction, the use of a word in the singular form is interchangeable with the use of the word in the plural form.”⁵⁹ And the Government Code expressly instructs at the outset that the singular includes the plural.⁶⁰

⁵⁵ California Attorney General’s Office, *The Brown Act: Open Meetings for Local Legislative Bodies* (2003), p. 30, internal citations omitted.

⁵⁶ See, e.g., 88 Ops.Cal.Atty.Gen., *supra*, at p. 18 (“The Legislature’s addition of section 54962 has effectively eliminated the possibility of finding an *implied* authorization for a closed session”); California Attorney General’s Office, *The Brown Act: Open Meetings for Local Legislative Bodies* (2003), p. 37.

⁵⁷ See, e.g., Gov. Code, §§ 54956.7 (authorizing “a legislative body” to meet in closed session), 54956.8 (same), 54956.81 (same).

⁵⁸ See Martineau, *Drafting Legislation and Rules in Plain English* (3d. reprint, 1998) p. 67 (“A traditional principle of drafting legislation or a rule is to make the subject of a sentence singular rather than plural”).

⁵⁹ *Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 907.

⁶⁰ Gov. Code, § 13 (“The singular number includes the plural, and the plural the singular”).

Determining whether two legislative bodies together satisfy a closed-session exception in any particular situation would, of course, be a fact-specific inquiry. But we offer by way of illustration the pending-litigation exception, which could be jointly invoked by two agencies that share an attorney and are on the same side of litigation.⁶¹ Indeed, a published case illustrates that the two agencies identified in this question were both plaintiffs together in the same case and represented by the same attorneys.⁶² We believe that in that particular circumstance, or other circumstances where two bodies together meet the requirements of a closed-session exception, they may jointly meet in closed session for the limited purposes of the exception.

⁶¹ See Gov. Code, § 54956.9. As prior opinions indicate, two agencies would not satisfy the pending-litigation exception if, for instance, they were not on the same side, (62 Ops.Cal.Atty.Gen. 150 (1979)), or one of them was not a party to the litigation (see *Shapiro v. Board of Directors* (2005) 35 Cal.Rptr.3d 826; see also Gov. Code, § 54956.9, subds. (d) (defining pending litigation) & (h) (defining when local agency is a “party”)).

⁶² *San Diego Housing Com’n et al v. Industrial Indem. Co.* (1998) 68 Cal.App.4th 526, 530 (stating that case is brought “by plaintiffs and respondents San Diego Housing Commission and San Diego Housing Authority”); see <https://www.sdhc.org/governance-legislative-affairs/sdhc-board-of-commissioners/> [as of May 13, 2022] (referring to “The San Diego Housing Commission (SDHC) Board of Commissioners (Board)”).

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Document 7

Government Code § 84303


(as amended by Senate Bill 1439)

[Cal Gov Code § 84308](#)

Deering's California Codes are current through the 2022 Regular Session.

Deering's California Codes Annotated > GOVERNMENT CODE (§§ 1 — 500000–500049) > Title 9 Political Reform (Chs. 1 — 12) > Chapter 4 Campaign Disclosure (Arts. 1 — 5) > Article 3 Prohibitions (§§ 84300 — 84310)

Notice

 This section has more than one version with varying effective dates.

§ 84308. Contributions to officers of agencies; Required disclosure; Curing of violation [Effective January 1, 2023]

(a) The definitions set forth in this subdivision shall govern the interpretation of this section.

- (1) “Party” means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
- (2) “Participant” means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with [Section 87100](#)) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if that person lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.
- (3) “Agency” means an agency as defined in [Section 82003](#) except that it does not include the courts or any agency in the judicial branch of government, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.
- (4) “Officer” means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.
- (5) “License, permit, or other entitlement for use” means all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.
- (6) “Contribution” includes contributions to candidates and committees in federal, state, or local elections.

(b) While a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with [Section 87100](#)) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution on the officer's own behalf, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. An officer of an agency shall not make, participate in making, or in any way attempt to use the officer's official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with [Section 87100](#)) of Chapter 7.

(d)

(1) If an officer receives a contribution which would otherwise require disqualification under this section, and returns the contribution within 30 days from the time the officer knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, the officer shall be permitted to participate in the proceeding.

(2)

(A) Subject to subparagraph (B), if an officer accepts, solicits, or directs a contribution of more than two hundred fifty dollars (\$250) during the 12 months after the date a final decision is rendered in the proceeding in violation of subdivision (b), the officer may cure the violation by returning the contribution, or the portion of the contribution in excess of two hundred fifty dollars (\$250), within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest.

(B) An officer may cure a violation as specified in subparagraph (A) only if the officer did not knowingly and willfully accept, solicit, or direct the prohibited contribution.

(C) An officer's controlled committee, or the officer if no controlled committee exists, shall maintain records of curing any violation pursuant to this paragraph.

(e)

(1) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party or the party's agent.

(2) A party, or agent to a party, to a proceeding involving a license, permit, or other entitlement for use pending before any agency or a participant, or agent to a participant, in the proceeding shall not make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for 12 months following the date a final decision is rendered by the agency in the proceeding.

(3) When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in this section.

(f) This section shall not be construed to imply that any contribution subject to being reported under this title shall not be so reported.

History

Added Stats 1982 ch 1049 § 1. Amended Stats 1984 ch 1681 § 2, effective September 30, 1984; [Stats 1989 ch 764 § 2](#); [Stats 2021 ch 50 § 170 \(AB 378\)](#), effective January 1, 2022; [Stats 2022 ch 848 § 1 \(SB 1439\)](#), effective January 1, 2023.

End of Document

Document 8

Ballinger Advice Letter

No. A-22-001



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

March 08, 2022

Jeffrey Ballinger
Best Best & Krieger LLP
655 West Broadway, 15th Floor
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-22-001

Dear Mr. Ballinger:

This letter responds to your request for advice on behalf of San Juan Capistrano City Councilmember Howard Hart regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Does Councilmember Hart have a disqualifying conflict of interest as to potential decisions before the Council regarding a proposed ground lease that would include the lease of a City-owned parcel and the construction of a park on a portion of the leased property, where the proposed parcel to be leased and the proposed park sites are both located more than 1,000 feet from the Councilmember’s residence?

CONCLUSION

Under the standard applicable where the official has an interest in property more than 1,000 feet from the parcel subject to the decision, Councilmember Hart may participate because there is no clear and convincing evidence that the decisions would have a substantial effect on his property.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS AS PRESENTED BY REQUESTER

The City owns certain property located on the northwest corner of San Juan Creek Road and La Novia Avenue in the City (the “City Property”). The owner of the nearby San Juan Hills Golf Club (“Golf Club”) owns property to the West of the City Property and desires to incorporate a portion of the City Property into its Golf Club property.

The City Council will be considering decisions related to a proposed ground lease (the “Ground Lease”), pursuant to which the City would lease a portion of the City Property to the Golf Club. A portion of the leased property would be incorporated into the Golf Club development, to the West. The remainder of the City Property (to the East, and immediately adjacent to the corner San Juan Creek Rd. and La Novia Ave.) would be developed and maintained as a passive, public park. It is proposed that the Golf Club would pay the costs of ongoing maintenance of the proposed public La Novia Park site. In a follow-up email, you stated that the parcel subject to the proposed lease is 3.2 acres, and that the proposed public La Novia Park site is 3.64 acres.

Councilmember Hart owns his residence located south of San Juan Creek Road, more than 1,000 feet from the Ground Lease parcel and the proposed La Novia Park. Specifically, the Councilmember’s residence is located 1,320 feet from the Ground Lease parcel at the closest point. His residence is separated from the proposed Ground Lease parcel and the La Novia Park site by San Juan Creek Road and several homes, and he cannot see the proposed Ground Lease parcel or the La Novia Park site from his residence.

On his side of San Juan Creek Road, Councilmember Hart’s residence is less than 100 feet from the golf course (i.e. the closest fairway). However, the golf course on that side of San Juan Creek Road would not be impacted by the Council’s potential decisions regarding the Ground Lease, which would only facilitate the expansion of the Golf Club property across San Juan Creek Road. The Councilmember has no financial interest in the Golf Club, nor any other type of financial interest in decisions related to the Ground Lease.

ANALYSIS

Under Section 87100 of the Act, “[a] public official at any level of state or local government shall not make, participate in making or in any way attempt to use the public official’s official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official’s immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests are “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).) Councilmembers Hart has an economic interest in his real property.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. A financial interest is the subject of a proceeding if the decision involves the

issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).” Councilmember Hart’s real property interest is not explicitly involved in the governmental decisions relating to the proposed Ground Lease.

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

Decisions related to the proposed Ground Lease will involve property more than 1,000 feet from Councilmember Hart’s residence and are thus presumed not to have a material financial effect on his real property interest. (Regulation 18702.2(b).) This presumption may be rebutted if clear and convincing evidence indicates the decision would have a substantial effect on the Councilmember’s property. Here, the Councilmember’s residence is located 1,320 feet from the 3.2-acre Ground Lease parcel at the closest point. As his residence is separated from the Ground Lease parcel and the La Novia Park site by San Juan Creek Road and several homes, and he cannot see the Ground Lease parcel or the La Novia Park site from his residence, there are no facts indicating the decisions would have a substantial effect on his property, and thus he does not have a financial interest in the decisions concerning the proposed Ground Lease.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:dkv

Document 9

Engberg Advice Letter

No. A-22-008



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

March 07, 2022

Catherine C. Engberg
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

Re: Your Request for Advice
Our File No. A-22-008

Dear Ms. Engberg,

This letter responds to your request for advice on behalf of Half Moon Bay Planning Commissioner James Benjamin, regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

1. Does the exception for repairs, replacement or maintenance of existing infrastructure apply to permit Commissioner Benjamin to participate in decisions relating to the approval of repairs to the Pilarcitos Avenue Outfall Repair Project at Kehoe Watercourse (the “Project”)?

2. May Commissioner Benjamin submit written comments to City staff on the Biological Resource Evaluation (“BRE”), and other documents circulated for public comment?

3. May Commissioner Benjamin contact other agencies, (including members of the City Council and City Manager) as a private citizen to comment on aspects of the BRE and subsequent documents which may inform those agencies’ review and comment on the Project?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSION

1-3. Based on the facts provided, the exception to the materiality rules found in Regulation 18702.2(d)(1) for decisions that “solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities” applies and Commissioner Benjamin does not have a conflict of interest, and may make, as well as comment on, decisions related to the Project.

FACTS AS PRESENTED BY REQUESTER

The City is proposing the Project, which involves removing and replacing a portion of the 24-inch concrete storm drain that needs repair at the terminus of the Pilarcitos Avenue in Kehoe Watercourse, and other unspecified maintenance activities. The Kehoe Watercourse is a vegetated riparian corridor identified as an Environmentally Sensitive Habitat Area (“ESHA”) in the City’s Certified LCP. The Kehoe Watercourse receives water from the surrounding areas and run-off from both an adjacent neighborhood and the east side of Highway 1 that travels beneath the road via culverts and an open channel. The Kehoe Watercourse and adjacent riparian area contains or supports special status species and is not a “Public Works” facility as defined by the Coastal Act, Public Resources Code Section 30114. The riparian corridor extends westerly onto State Parks lands (beyond the northern side of the Sewer Authority Mid-Coastside treatment plant) located approximately 250 feet southwest of the Project site, where it meets the Pilarcitos Creek. The Project area contains potential wetlands.

In December 2020, Commissioner Benjamin notified the City that there appeared to be an issue with the storm water outfall near his home and that bank erosion into and near the outfall and watercourse was occurring. The City’s Public Works Department assessed the outfall and existing conditions and determined that repair/replacement was necessary. The City determined that the existing conditions did not warrant an emergency repair. The City Council approved creation and funding of the Project. The Project is subject to Coastal Act requirements including the issuance of a Coastal Development Permit (“CDP”) by the Planning Commission.

The Project involves removing and replacing a portion of the 24-inch concrete storm drain that needs repair at the terminus of Pilarcitos Avenue in Kehoe Watercourse. Approximately 3 feet of the culvert outlet has detached with its southern end lying in the water flow of the watercourse. The main goal of the Project is to conduct necessary repairs and facilitate long term maintenance. Anticipated work includes the replacement of fallen culvert pieces with a new concrete or polyvinyl chloride culvert extension of the same size with a concrete splash pad and rock dissipator at the new terminus.

Vegetation clearance and removal of fallen/broken tree limbs within the Project work area are required for construction equipment staging and for crew to safely access the site, perform culvert replacement activities, and establish a pathway for future maintenance access. The Project work area in the drainage will be accessed on foot and culvert replacement work will be performed by hand. Work will occur within the drainage beneath the culvert.

Thinning of vegetation is expected to include the use of chainsaws, pruners, loppers, pull saws, and other equipment necessary to thin and remove vegetation. Vegetation will be removed from the area for offsite disposal. The Project also includes removing an existing chain-link fence

that extends along the southern extent of Pilarcitos Avenue and replacing the fence after Project completion to include a gate for future maintenance access. No ground disturbance will occur within the staging area. The Project will take approximately two months to complete.

The Project is located at the southern terminus of Pilarcitos Avenue and approximately 1,500 feet west of Highway 1 and 1,200 feet east of the Pacific Ocean in the western portion of the City. The Public Works Department intends to seek a Coastal Development Permit to replace the failed culvert and outfall and the Planning Commission will consider whether to issue the project a Coastal Development Permit. Moreover, the City retained an environmental consultant to provide environmental support services, including conducting a biological resource survey and preparing a BRE in support of the Project. The purpose of the BRE is to document the biological resources within the Project biological study area, identify significant direct or cumulative impacts to ESHA and/or its special status species, or to on- or off-site ecosystem functionality, and to recommend feasible mitigation measures if impacts may occur.

The City's Planning Commission is charged with evaluating whether proposed development is consistent with the City's General Plan (including its Local Coastal Land Use Plan), Municipal Code (including the Local Coastal Program Implementation Plan), and consideration of related California Environmental Quality Act documents. The Planning Commission will consider whether to issue a coastal development permit for the Project. Prior to issuance of a CDP, a BRE report must be prepared and circulated for public and jurisdictional regulatory agency review and comment. Additional environmental and permitting documents will also be circulated for public and jurisdictional regulatory agency review prior to consideration of the CDP by the Planning Commission.

Your request states that Commissioner Benjamin wants to submit comments on the BRE report and other environmental documents to the City and other jurisdictional regulatory agencies.² In a subsequent email, you confirmed that "other jurisdictional regulatory agencies" refers to the California Department of Fish and Wildlife, the Regional Water Quality Control Board, the US Army Corps of Engineers, the US Fish and Wildlife Service, and/or the National Marine Fisheries Service. In addition, it refers to the Half Moon Bay City Council and the California Coastal Commission.

Commissioner Benjamin's Property

Commissioner Benjamin has an ownership interest in a parcel of real property located at the southwest corner of Half Moon Bay's Casa del Mar neighborhood (the "Property") that the Commissioner uses as his residence. The Property is located within 500 feet of the Project.

ANALYSIS

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Section 87100 prohibits a public

² We note that your request also includes draft language of the comments that Commissioner Benjamin intends to submit in concerning the BRE report.

official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 provides that a public official has a “financial interest” in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s interests that is distinguishable from the decision’s effect on the public generally.

Section 87103 also describes the interests from which a conflict of interest may arise under the Act. As pertinent to the facts presented and the decision at issue, an official has a potentially disqualifying conflict if the decision will have a reasonably foreseeable and material effect on any interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) Accordingly, we must analyze the potential effect of the decisions at issue on Commissioner Benjamin’s interest in his residential property.

Where the financial interest is not explicitly involved in a decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).) Commissioner Benjamin owns real property within 500 feet of the Project, and his real property is not the subject of the Precise Plan decisions. Under Regulation 18701(b), he will have a financial interest in the Precise Plan decisions if it is a realistic possibility the decisions will have a material financial effect on his real property interest.

Regulation 18702.2 provides the materiality standards for decisions affecting real property. Specifically, Regulation 18702.2(d)(1) establishes an exception to the general materiality standards. This regulation states that “[t]he financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is not material if. . . [t]he decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities.”

In the *Edwards* Advice Letter, No. A-18-011, we advised that the materiality exception applies for decisions regarding repairs, replacement, or maintenance of the streets, sidewalks, and sewer laterals for damage caused by the trees, including the removal of trees to prevent further damage. In this matter, the Project involves removing and replacing a portion of a 24-inch concrete storm drain. The project will include the removal of vegetation necessary to access the site, as well as the removal and replacement of an existing chain-link fence.

Under the facts provided, the decisions concerning the replacement of the damaged section of storm drain culvert, including the necessary thinning and removal of vegetation as well as the replacement of a chain link fence with a similar fence and gate to facilitate regular maintenance, constitutes repair, replacement or maintenance of the storm drainage infrastructure. Accordingly, the decisions you have described meet the terms of the exception and thus do not have a material financial effect on Commissioner Benjamin’s interests in real property.³

³ We note that our conclusion is based on facts provided, Commissioner Benjamin should seek additional advice to the extent that the project will include additional work not yet identified including, but not limited to, additional aesthetic work or improvements to the fencing exceeding a gate to facilitate regular maintenance.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

ZWN:dkv

Document 10

Zutler Advice Letter

No. A-21-132



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

March 03, 2022

Samantha W. Zutler
City of Healdsburg
1 California Street - Suite 3050
San Francisco, California 94111-5432

Re: Your Request for Advice
Our File No. A-21-132

Dear Ms. Zutler:

This letter is in response to your request for advice on behalf of City of Healdsburg (the City) City Councilmember Ariel Kelley regarding the conflict-of-interest provisions of the Political Reform Act (the Act)¹ and Section 1090. Please note that we provide advice under the Act and Section 1090 only, not under any other body of law. We are not a finder of fact when rendering advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Our advice is based solely on the facts provided. Thus, our advice is as complete and accurate as the facts provided by the requester. If the facts relevant to your request for advice change, then you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the Sonoma County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTIONS

1. Does Councilmember Kelley have a conflict of interest under the Act regarding any contracts entered into between the City and Corazon Healdsburg (Corazon), a local non-profit community, from which she last received compensation on June 14, 2021?
2. Does Councilmember Kelley have a conflict of interest under Section 1090 regarding any contracts entered into between the City and Corazon?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSION

1. Yes. Under the Act, Councilmember Kelley has an interest in Corazon as a source of income and it is reasonably foreseeable that any decision involving a contract with Corazon will have a material financial effect on this interest. Accordingly, Councilmember Kelley may not take part in these decisions and she must recuse herself under the Act.²

2. No. Councilmember Kelley has terminated her business relationship with Corazon and thus has no conflict of interest under Section 1090 in the City's contract decisions involving Corazon. Accordingly, Section 1090 does not prohibit the City from entering the contract.

FACTS AS PRESENTED BY REQUESTER

Councilmember Kelley has authorized you, the City Attorney for the City of Healdsburg, to request formal advice about whether she may participate in upcoming City Council decisions regarding the City's universal basic income (UBI) program. This program is being administered by Corazon Healdsburg (Corazon), from which Councilmember Kelley has received income in the previous twelve months.

Corazon is a local non-profit community organization. Councilmember Kelley was the CEO of Corazon before she was elected to the City Council. She last received salary from Corazon on October 23, 2020. After her employment as the Corazon CEO, she served as a consultant for Corazon. She last received consultant fees from Corazon on June 14, 2021.

On September 7, 2021, the City Council allocated funds to support a UBI program in the City, with the understanding that the City would engage an outside consultant to administer the program. The City did not solicit bids for a consultant to administer the UBI program. The City Council directed staff to negotiate a contract with Corazon without soliciting bids after staff was unable to identify other firms with the required expertise. The City Council made a governmental decision regarding whether to solicit bids for a consultant to administer the UBI program and decided not to solicit bids. Councilmember Kelley did not participate in this decision.

Without soliciting bids, the City received a proposal from Corazon to administer the program. On October 4, 2021, staff recommended to the City Council that the City negotiate directly with Corazon to administer the program. Due to councilmember Kelley's financial interest in a contract with Corazon, she recused herself from the October 4th item.

The consultant that administers the UBI program will manage outreach, eligibility screening, and enrollment and will work with program participants to complete the full intake process that includes making a holistic assessment that centers the full range of family needs in

² You note that Councilmember Kelley last received income from Corazon on June 14, 2021, and that some decisions may occur after June 14, 2022. Under the Act, an official has a potentially disqualifying interest in any source of income in the 12 months prior to the decision. Accordingly, Councilmember Kelley will not have an economic interest in Corazon as a source of income after June 14, 2022. However, we caution that all future decisions must be analyzed on a case-by-case basis to determine the potential financial effect on any other interest Councilmember Kelley may have, including the councilmember's interest in her prior consulting work for Corazon. To the extent a decision may implicate the likelihood of additional work for Councilmember Kelley as a consultant, the councilmember should seek additional advice identifying the specific decision before the City.

order to match them with the services through both direct and indirect referrals. City staff will work with community partners to ensure and track that referrals are effectively executed and implemented with partners such as Alliance Medical Center and Reach for Home.

As part of the intake process, the consultant will issue the guaranteed income payments, regularly monitor and report on expenses and participate in evaluation. Income payment will be issued on a monthly basis to program participants through a 12-month pilot period. The evaluation team will work with the consultant during the design and implementation process to ensure proper evaluation measures are integrated into the programming so that data collection during and analysis after program completion can be achieved effectively. The purpose of the evaluation will be to contribute to the growing body of knowledge about guaranteed income programs that are taking root across the country.

The City Council will likely need to make several additional decisions regarding the UBI program, which could include whether to award the contract to Corazon; whether to allocate additional funds to the UBI program; what the specific details of the program will be; how long the program will continue; and whether to solicit funding from other external sources for the program. These discussions could continue well past June 14, 2022.

City staff has met with Corazon regarding program details and is presently awaiting a revised scope of work that will form the basis of a contract for services. That contract will require the City Council's approval.

ANALYSIS

A. The Act.

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).)

As a City Councilmember, Ms. Kelley is a "public official" subject to the Act's conflict of interest provisions. (Sections 87100; Regulation 18700(c)(1).) She would also be making, participating in making, or influencing governmental decisions under the Act when taking part in the City's decisions regarding a contract with Corazon. (See Regulations 18702.1-18702.3.)

Section 87103 sets forth the interests from which a conflict of interest may arise under the Act. The circumstances here involve the following economic interests:

- Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more. (Section 87103(a).)
- Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section

87103(c).) Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Section 82030(a).)

According to the facts provided, Councilmember Kelley left employment with Corazon in 2020 but was subsequently hired as a consultant and received income as a consultant until June 14, 2021. Based on these facts, and assuming income of \$500 or more in the 12 months prior to the decision, Councilmember Kelley has financial interest in her consulting business as a business entity and source of income. In addition, as a consultant, she has an interest in sources of income to her business entity, which include a source of income interest in Corazon.

1. Foreseeability and Materiality.

Foreseeability standards vary depending on whether an interest is explicitly involved in a governmental decision. An official's financial interest is explicitly involved in a decision, and is presumed to be reasonably foreseeable, if the interest is a named party in, or the subject of, a decision before the official or the official's agency. (Regulation 18701(a).) For a financial interest that is not explicitly involved in the decision at issue, the financial effect of the decision on an official's interest is reasonably foreseeable if it can be recognized as a realistic possibility and more than hypothetical or theoretical. (Regulation 18701(b).)

The reasonably foreseeable financial effect of a governmental decision on an official's financial interest in a source of income is also material if the source is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party. (Regulation 18702.3(a)(1).)

2. Financial Interest in Corazon.

Here, the governmental decisions include decisions regarding Corazon's contract with the City and the program that will be implemented by Corazon under the contract. At this time, the facts provided indicate that the City is negotiating exclusively with Corazon which is thus explicitly involved in the decisions at issue because it is the named party in, or subject of, the decisions. Under the applicable regulations cited above, it is reasonably foreseeable that these decisions will have a material effect on Corazon. Thus, Councilmember Kelley is prohibited under the Act from taking part in decisions involving Corazon and must recuse herself from decisions under the recusal requirements set forth in Regulation 18707, which require a public identification of the interest and leaving the room for the duration of the decisions and discussions by the City Council.

In light of the conclusion that Councilmember Kelley is disqualified from the decisions due to the financial effect on her interest in Corazon, we do not further analyze the potential effect on her consulting work for Corazon. However, we note that all decisions must be analyzed on a case-by-case basis. Even to the extent the councilmember does not receive income from Corazon in the 12 months prior to the decision, Councilmember Kelley must consider the potential financial effect on all interests she may have prior to taking part in the decisions, including her interests in her consulting work for Corazon. To the extent decisions regarding Corazon occur after June 14, 2022, and may implicate the likelihood of additional work for Councilmember Kelley as a consultant, the councilmember should seek additional advice prior to taking part in decisions involving Corazon and identifying the specific decision at issue before the City.

B. Section 1090.

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) Section 1090 concerns financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) “[A]n official has a financial interest in a contract if he might profit from it.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, Councilmember Kelley is required to complete her business relationship with Corazon before participating in the making of a contract between the City and Corazon. (See Ops.Cal.Atty.Gen. 187 (2003) (finding there would be no financial interest under Section 1090 “if the board member first terminates his business relationship with the firm”).) Because Councilmember Kelley does not currently have a business relationship with Corazon, she has no interest in Corazon’s contract with the City for purposes of Section 1090. Accordingly, while she may not take part in the decision under the Act, Section 1090 does not prohibit the City from entering the contract.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

JMF:dkv

Document 11

Brady Advice Letter

No. A-22-027



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

April 26, 2022

Celeste Stahl Brady
Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660

Re: Your Request for Advice
Our File No. A-22-027

Dear Ms. Brady:

This letter responds to your request for advice on behalf of South Gate City Councilmember Gil Hurtado regarding the conflict of interest provisions of the Political Reform Act (the “Act”) and Government Code Section 1090, et seq.¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and Section 1090, and we are not providing advice under other general conflict of interest prohibitions such as common law conflict of interest. Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General’s Office and the Los Angeles County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

QUESTION

Under the Act or Section 1090, does City of South Gate (“City”) Councilmember Hurtado have a prohibited financial interest in the decision to award a contract for the City’s waste hauling services, where he resides in a mobile home and has a month-to-month lease on a lot space located less than 500 feet from a composting facility operated by one of the bidders that will potentially receive increased waste as a result of the contract?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSION

Yes. While his month-to-month lot space lease does not meet the definition of a real property financial interest under the Act, Councilmember Hurtado has a financial interest in his personal finances related to his ownership of his mobile home. Pursuant to Regulation 18702.5(a), it is reasonably foreseeable that the decision may have a material financial impact on the value of his mobile home. Under the Act, he may not participate in the decision. Additionally, to the extent he has a prohibitive financial interest under Section 1090, the rule of necessity permits the City Council to consider and enter the City's waste hauling services contract so long Councilmember Hurtado recuses himself from the decisions.

FACTS AS PRESENTED BY REQUESTER

Councilmember Hurtado is a retired postal worker who owns a mobile home as his personal property and leases the mobile home's lot space from the mobile home park owner. His current lease is a month-to-month tenancy.

The City recently issued a request for bids to obtain city-wide waste hauling services. This includes residential trash pick-up. The City received three bids. Universal Waste Systems ("UWS") is one of the three bidders. It's affiliate entity, Green Wise Soil, operates a composting facility, the Green Waste Recycling Center on property owned by the City. This facility is located approximately 372 feet from the boundary of the mobile home park lot space where Councilmember Hurtado's mobile home is located. The Green Waste facility currently handles green waste delivered to the facility for composting for its customers located both within and outside the City boundaries. UWS is not the current citywide waste hauler under contract with the City.

In response to our request for additional information, the City states that if UWS is selected as the City's new trash hauler, one could presume that there will be increased activity at its Green Waste site as it is the only site UWS operates within the City. An increase in activity would likely result in additional truck traffic, potential additional noise from increased operation and the risk of additional particulates floating over the nearby/adjacent Los Angeles River into Councilmember Hurtado's outside yard area and the park's common areas. The City does not believe that truck traffic would increase directly in front of the mobile home park but would increase nearby. Also, it's not clear whether UWS has existing infrastructure to service the contract, if selected, or whether additional capital investment would need to be made at the facility.

In response to our request for additional information regarding possible impacts on the Councilmember's mobile home's value, the City states that the additional activities have the potential to impact the quiet enjoyment and beneficial use of the lot space at the mobile home park. It is your experience in dealing with mobile home park closures that while the value is largely determined by the type, size, quality, and condition of the mobile home, the logistics and expense of a move is a factor in determining a mobile home's resale value.

ANALYSIS

The Act

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a “financial interest” in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official’s interests. (Section 87103; Regulation 18700(a).)

Relevant to these facts, Section 87103 of the Act lists several types of financial interests that can give rise to a conflict of interest, including:

- An economic interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18702.2.)
- An economic interest in the official’s personal finances, including those of the official’s immediate family. (Section 87103; Regulation 18702.5.)

The first issue we address is whether the Councilmember has a real property financial interest under the Act, and if not, whether he has a personal financial interest.

Section 82003 defines an “interest in real property” to include a leasehold if the market value is \$2,000 or more. However, Regulation 18233 excludes the interest of a tenant in a month-to-month lease from the definition of an “interest in real property” and that of a “leasehold interest.” Therefore, Councilmember Hurtado does not have a “real property” interest under Section 87103. However, he does have an interest in his personal finances in regard to his mobile home owned as his personal property. We next examine whether there will be a reasonably foreseeable and material financial effect on his mobile home interest as a result of the decision.

Foreseeability and Materiality

Regulation 18700(c)(5) states that a “financial effect” means “an effect that provides a benefit of monetary value or provides, prevents, or avoids a detriment of monetary value.” A financial effect is presumed reasonably foreseeable where the official’s financial interest is explicitly involved as a named party in, or subject of, the decision. (Regulation 18701(a).)² Where, as the facts indicate here, the financial interest is neither a party to nor the subject of the decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (18701(b).)

Regulation 18702.5(a) states that a governmental decision’s reasonably foreseeable financial effect on a public official’s financial interest in personal finances is material “if the decision may result in the official receiving a financial benefit or loss of \$500 or more in any 12-month period

² A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract, with the financial interest, including any decision affecting a property interest as described in Regulation 18702.2(a)(1)-(6). (Regulation 18701(a).)

due to the decision.” Due to the close proximity of the mobile home to the Green Waste facility and the prospect that the facility may experience an increase in activity, causing an increase in noise, traffic, and airborne particulate matter in the nearby area where the mobile home is located, it is reasonably foreseeable that the contract decision may result in a financial loss of \$500 or more in regard to the value of Councilmember Hurtado’s mobile home. Therefore, he has a prohibitive financial interest in the decision and may not participate.

Section 1090

This matter involves the making of a contract between the City and a selected waste hauling contractor. Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void, regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.) Significantly, when Section 1090 is applicable to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain; the entire governing body is precluded from entering into the contract. (*Id.* at pp. 647-649.)

Although Section 1090 does not specifically define the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*Thomson v. Call*, supra, at pp. 645, 651-652; see also *People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn. 5; 85 Ops.Cal.Atty.Gen. 34, 36-38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).) Furthermore, case law and statutory exceptions to Section 1090 make clear that the term “financially interested” must be liberally interpreted. It cannot be interpreted in a restricted and technical manner. (*People v. Gnass* (2002) 101 Cal.App.4th 1271, 1298.)

Rule of Necessity

In limited cases, the “rule of necessity” exception has been applied to allow the making of a contract that Section 1090 would otherwise prohibit. (*Eldridge v. Sierra View Hospital Dist.* (1990) 224 Cal.App.3d 311, 322.) The rule has been applied where public policy concerns authorize the contract and “ensures that essential government functions are performed even where a conflict of interest exists.” (*Ibid.*, See also 69 Ops.Cal.Atty.Gen. 102, 109 (1986); 88 Ops.Cal.Atty.Gen. 106, 110 (2005).) “The rule of necessity permits a government body to act to carry out its essential functions if no other entity is competent to do so ...” (*Lexin v. Super. Ct.* (2010) 47 Cal.4th 1050, 1097.)

Under this rule, contract can be executed even though it would otherwise violate the terms of Section 1090. The “rule of necessity” has been applied in at least two specific types of situations: where the contract is for essential services and no source other than the one that triggers the conflict is available; and where the official or board is the only one authorized to act. (69 Ops.Cal.Atty.Gen. 102,109 (1986).)

Here, the City must be permitted to consider the bidders and enter into contract for the City's waste hauling services in order that it may properly carry out its essential function, to secure a waste hauling service for the City. The City, as one party to the contract, is the only body authorized to act. Accordingly, we find that the rule of necessity applies and permits the City to enter into the eventual waste hauling services contract.

When the rule of necessity applies to a member of a multi-member board, the Attorney General's Office has determined that the interested board member must abstain from any participation in the decision. (See 89 Ops.Cal.Atty.Gen. 217 (2006).) In addition, note that participation in the making of a contract is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237.)

Under the facts presented it is unnecessary to further consider whether Councilmember Hurtado has an interest in the contract for purposes of Section 1090. Even to the extent that he does, he is prohibited from taking part in the decision under the Political Reform Act and the rule of necessity would permit the remaining councilmembers to consider and enter the City's waste hauling services contract so long as Councilmember Hurtado recuses himself from the decisions. We note that because Councilmember Hurtado has a conflict of interest under the Act, he must additionally comply with the recusal requirements in Section 87105, including publicly identifying the financial interest, recusing himself from the proceeding and leaving the room until after the discussion, vote, or any other disposition of the matter is concluded.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

LKH:aja

MINUTES

Tuesday, December 13, 2022
East Bay Municipal Utility District
Board of Directors
****Virtual****

Regular Closed Session Meeting

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:05 a.m. and announced in accordance with Government Code section 54953(e), this meeting was being conducted by webinar and teleconference only. A physical location was not provided for this meeting.

ROLL CALL

Directors John A. Coleman, Andy Katz, Lesa R. McIntosh, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Attorney Felicity Grisham (Items 1a and 2, first matter), Manager of Risk Management Vladimir Bessarabov (Items 1b and 2, first matter), Director of Water and Natural Resources Michael T. Tognolini (Item 2, first matter), Attorney Ruby Acevedo (Item 2, second matter), Director of Operations and Maintenance David A. Briggs (Item 2, second matter), Director of Finance Sophia D. Skoda (Item 3), Chief Information Officer Orlando W. Leon (Item 3), Information Systems Division Manager William L. Johnson (Item 3), and Internal Auditor Supervisor Barry N. Gardin (Item 3).

General Counsel Derek T. McDonald was not present for Item 1a.

PUBLIC COMMENT

- Addressing the Board was Ivette Rivera who commented on her request to have a confidential discussion with the Legislative/Human Resources Committee regarding the qualifications of a staff member in the District's Office of Diversity and Inclusion; documents provided to the Legislative/Human Resources Committee; and read excerpts from a document entitled Exhibit 108, filed 11292022_Case 3.21-CV-04325-AGT.

General Counsel Derek T. McDonald provided clarification in response to an inquiry on whether a member of the public could provide a confidential document to the Office of General Counsel for transmittal to the Board of Directors or have a confidential discussion with the Legislative/Human Resources Committee.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Linney announced the closed session agenda and the Board convened to the Administration Building Training Resource Center for discussion.

Regular Business Meeting

President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:17 p.m. and announced in accordance with Government Code section 54953(e), this meeting was being conducted by webinar and teleconference only. A physical location was not provided for this meeting.

ROLL CALL

Directors John A. Coleman, Andy Katz, Lesa R. McIntosh, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President Linney led the Pledge of Allegiance.

California State Assemblymember Rebecca Bauer-Kahan's recognition of Director Mellon's years of service

Shawn Kumagai, District Director for the Assemblymember presented Director Mellon with an Assembly Certificate of Recognition for his many years of distinctive service to the community as a Board member of the East Bay Municipal Utility District.

Presentation of EBMUD's ceremonial resolution recognizing Director Mellon's years of service

On behalf of the Board of Directors, President Linney presented Director Mellon with a commemorative plaque of the resolution adopted by the Board on November 8, 2022, which acknowledged Director Mellon's years of dedicated public service to the District.

Director Mellon thanked Shawn Kumagai and the Board for the recognition.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

EMERGENCY ITEM

General Counsel Derek T. McDonald announced staff is requesting to add an item to the Board meeting agenda under Determination and Discussion to ratify the General Manager's declaration of an emergency resulting from the discovery of significant deterioration of a portion of the District's North Interceptor in Berkeley on December 12, 2022. Mr. McDonald reviewed the Brown Act provisions that authorize the Board to discuss an item that has not been previously placed on the Board meeting agenda at a regular meeting when the Board determines that 1) there is a need for immediate action or discussion that cannot reasonably wait for the next regularly scheduled meeting; and 2) the need for immediate action or discussion has come to the attention of the District after the agenda for the regular meeting has been posted.

- Motion by Director Katz, seconded by Director Patterson to confirm that the Board of Directors determined the need for immediate action to add an item to the December 13, 2022 Board meeting agenda to provide direction to staff on the General Manager's declaration of an emergency resulting from the discovery of significant deterioration of a portion of the District's North Interceptor in Berkeley on December 12, 2022, which came to the attention of the District after the agenda for the December 13, 2022 Board meeting was posted, carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 219-22 - Determined the need for immediate action to add an item to the December 13, 2022 Board meeting agenda to provide direction to staff on the General Manager's declaration of an emergency resulting from the discovery of significant deterioration of a portion of the District's North Interceptor in Berkeley on December 12, 2022, which came to the attention of the District after the agenda for the December 13, 2022 Board meeting was posted.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Kelly A. commented on the District's business analysis of its Advanced Metering Infrastructure system; and 2) Ivette Rivera commented on documents provided to the Legislative/Human Resources Committee earlier in the day which she also provided to the remaining Board members; a tort complaint she filed with the District; and the *Shaunte Scott v. East Bay Municipal Utility District* case.

CONSENT CALENDAR

- Items 10 and 12 were pulled from the Consent Calendar for separate discussion.
 - Motion by Director Coleman, seconded by Director Young to approve the recommended actions for Items 1-9 and 11 on the Consent Calendar carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 220-22** – Approved the Regular Meeting minutes of November 22, 2022.
 2. The following correspondence was filed with the Board: **1)** Presentation entitled, "Coronavirus Disease 2019 (COVID-19) Conclusion of District Emergency," dated December 13, 2022; **2)** Presentation entitled, "EBMUD 100th Anniversary Update," dated December 13, 2022; **3)** Speakers' Bureau and CY 2023 Record dated December 12, 2022; **4)** Board Action entitled, "Response to Declaration of Emergency for the Repair of the North Interceptor," dated December 13, 2022; **5)** Presentation entitled, "Emergency Declaration for the Repair of the North Interceptor," dated December 13, 2022; **6)** Document entitled, "Exhibit 108" regarding Case 3:21-cv-04325-AGT Document 83-7 Filed 11/29/22; **7)** Cover page and pages 13-17 from EBMUD Affirmative Action and Equal Employment Opportunity FY03 Program Report FY04 Affirmative Action Plan, October 2003; **8)** EBMUD FY05 Strategic Plan; **9)** Memo dated June 1, 2004 to All Employees from Dennis M. Diemer, General Manager regarding FY05 Strategic Plan; **10)** Memo dated June 15, 2004 to WOM Department Staff from Richard G. Sykes, Manager of Water System regarding FY05 Strategic Plan; **11)** Booklet entitled, "Building EBMUD's Future," dated January 2004; and **12)** Performance Appraisal for Gardener Foreman Ivette Rivera dated October 19, 2022.

3. **Motion No. 221-22** – Awarded a contract to the lowest responsive/responsible bidder, Polydyne, Inc., for supplying thickening polymeric flocculants for the Main Wastewater Treatment Plant for two years, beginning on or after February 1, 2023, with three options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$1,703,875 under Request for Quotation No. 2202.
4. **Motion No. 222-22** – Awarded a contract to the lowest responsive/responsible bidder, Granite Financial Solutions, Inc., for supplying 375 Dell laptop computers, 175 docking stations, and 200 monitors, beginning on or after December 13, 2022, for a total cost, after the addition of taxes, not to exceed \$737,000 under Request for Quotation No. 2303.
5. **Motion No. 223-22** – Awarded a sole source contract to American Industrial Equipment LLC, for supplying four 1-million gallon per day trailer-mounted, diesel-powered, centrifugal pumps within acoustic enclosures for a total cost, after the addition of taxes and freight, not to exceed \$994,283.01.
6. **Motion No. 224-22** – Authorized an agreement beginning on or after December 18, 2022 with Hilmar Cheese Company (Hilmar) for five years under which Hilmar will pay the District and commit to deliver cheese products wastewater resulting from the dissolved air flotation process at a discount to the published rate of 0.25 cents per gallon for all loads received and an additional 0.50 cents per gallon for weekend deliveries if target weekend volumes are met.
7. **Motion No. 225-22** – Authorized an amendment to the agreement previously authorized under Board Motion No. 164-21 with ConvergeOne, Inc. to increase the agreement amount by \$550,000 to a total amount not to exceed \$2,297,000 and to extend the agreement term to March 11, 2025 and add language in the agreement regarding the agreed upon go-live date for providing Contact Center telephony services.
8. **Motion No. 226-22** – Authorized an amendment to the agreement previously authorized under Board Motion No. 170-19 with Safety Holdings, Inc. to increase the agreement amount by \$144,000 to a total amount not to exceed \$264,000 and to extend the agreement term for one year with two options to renew for additional one-year periods for an online driver record monitoring service.
9. **Motion No. 227-22** – Authorized an amendment to the agreement previously authorized under Board Motion No. 038-20, with WSP USA, Inc. to increase the agreement amount by \$1,127,161 to a total amount not to exceed \$4,551,461 for additional planning and design services for the Mokelumne Aqueducts Delta Tunnel, which is now referred to as the Mokelumne Aqueducts Resiliency Project.
10. **Authorize an amendment to the agreement previously authorized under Board Motion No. 160-21 with seven other water agencies to increase the agreement amount by \$1,094,000 to a total amount not to exceed \$3,358,910 and extend the agreement term to June 30, 2023 to fund planning and other pre-construction activities for the Los Vaqueros Reservoir Expansion Project.**

Director Young requested clarification on the District's obligations under the amended agreement; the total amount of funds the District has spent to date; staff's estimate of additional funding that may be requested in 2023; and the timing for the District's first opportunity to withdraw from the project. Director Young commented she would either abstain or vote no on this item. Director of Water and Natural Resources Michael T. Tognolini and General Manager Clifford C. Chan provided information on the scope of work to be performed under the amended agreement; the pre-planning

and pre-construction work required for the project; agreements that are still being developed; project planning issues that are scheduled to be studied; and the timing for the next funding request for the project. The Board asked staff to provide information on a work plan including scope of work and project issues that have been or still need to be resolved during the February 2023 Long-Term Water Supply Board Workshop.

- Motion by Director Coleman, seconded by Director Mellon to approve the recommended actions for Item 10 carried (6-1) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, and Linney); NOES (None); ABSTAIN (Young); ABSENT (None).

Motion No. 228-22 – Authorized an amendment to the agreement previously authorized under Board Motion No. 160-21 with seven other water agencies to increase the agreement amount by \$1,094,000 to a total amount not to exceed \$3,358,910 and extend the agreement term to June 30, 2023 to fund planning and other pre-construction activities for the Los Vaqueros Reservoir Expansion Project.

11. **Resolution No. 35328-22** – Authorizing And Approving East Bay Municipal Utility District's Application To Modify The Contractor's Service Area Described In Its Central Valley Project Repayment Contract With The United States Bureau Of Reclamation To Include The Annexation Of The 285 Lark Lane Parcel Approved By The Contra Costa County Local Agency Formation Commission.
12. **Adopt a resolution declaring the results of the election held on November 8, 2022 for the Directors in Wards 3 and 7 and reaffirming the appointment of Directors in Wards 2 and 4 of the East Bay Municipal Utility District.**

Director Mellon congratulated Directors Coleman and Katz on being reappointed for another term to represent Wards 2 and 4, respectively; Director Young for being re-elected for another term to represent Ward 3; and Director-elect April Chan for being elected to represent Ward 7. Director Mellon noted Director-elect Chan is the first Asian American woman to serve on the Board.

- Motion by Director Mellon, seconded by Director Patterson to approve the recommended actions for Item 12 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35329-22 – Declaring Results Of Election Held On November 8, 2022 For The Election Of Directors Of The East Bay Municipal Utility District.

- Addressing the Board was Kelly A. who commented on Agenda Item 10.

DETERMINATION AND DISCUSSION

Emergency Item

Ratify the General Manager's December 12, 2022 declaration of a District emergency in accordance with Policy 7.03 – Emergency Preparedness/Business Continuity because of a dangerous condition of a portion of the District's North Interceptor; and authorize expenditure of sums as needed in response to such emergency.

Senior Civil Engineer Matthew R. Hoeft outlined the need to declare a District emergency to address the dangerous portion of the District's North Interceptor. On December 12, 2022, a District construction inspector entered the North Interceptor at maintenance hole N20 to inspect the pipe and observed complete loss of concrete mortar in two locations in the pipe wall at the spring line of the pipe. The North Interceptor is 66 inches in diameter at this location. There was no indication of wastewater spilling out of the pipe, but groundwater was flowing into the pipe in the two locations. Mr. Hoeft reviewed the incident location, photos of the pipe's condition in various locations, and repair options. On December 12, 2022, to expedite repair of the damaged interceptor and prevent a sinkhole, the General Manager, in consultation with the Board President, declared a District emergency in accordance with Policy 7.03. Repair costs are estimated to be more than \$500,000 and immediate repairs will ensure no further deterioration of the pipe. District staff is engaging contractors with the expertise and resources to clean the debris (sediment, rags, and other material) out of the pipe and repair the segment of affected pipe. Mr. Hoeft and General Manager Clifford C. Chan responded to Board questions regarding total projected repair costs; the repair costs' potential impact to Wastewater System rates; the condition of other areas of the pipe; plans to inspect the rest of the pipe; process for monitoring the site and notifying neighboring entities regarding a potential sinkhole; and outreach to the City of Berkeley, neighbors and other potentially impacted local jurisdictions. The Board asked staff to reach out to the appropriate City of Berkeley staff regarding the work planned for the North Interceptor and potential impacts to neighboring assets.

- Motion by Director Mellon, seconded by Director McIntosh to approve the recommended actions for the Emergency Item carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35330-22 – Ratifying General Manager's Declaration Of The Existence Of A District Emergency And Authorizing Expenditure Of Sums As Needed In Response To Such Emergency.

13. **Declare an end to the District emergency initiated to respond to the pandemic created by the coronavirus (COVID-19) on March 17, 2020 and ratified on March 24, 2020 under Board Resolution No. 35171-20.**

Director of Operations and Maintenance David A. Briggs provided the presentation. The Board is being asked to consider rescinding the District emergency declaration initiated in response to the COVID-19 pandemic. He reviewed the District's timeline of events from early 2020 to date; the proposed COVID-19 transition plan; and conditions that would be considered for suspending the transition plan. He highlighted COVID-19 positive cases in Alameda and Contra Costa counties, the number of employee positive COVID-19 cases to date (1,115), and COVID-19 concentration levels in the District's and Central Contra Costa Sanitary District's wastewater. From March 2020 to present, the District has spent approximately \$32.5 million on COVID-19 related costs that include employee leave; administration and emergency operations; contact tracing and case management; employee testing; and personal protective equipment, sanitizer, and employee workspace modifications. If the Board rescinds the District emergency declaration, staff will no longer recommend the Board adopt resolutions to conduct upcoming meetings in accordance with Government Code section 54953(e) (Assembly Bill 361). Additionally, in January 2023, District facilities will begin re-opening to the public; qualifying staff will begin transitioning from emergency to long-term telework schedules; and the indoor masking requirement will be rescinded. Mr. Briggs responded to Board questions on triggers that could potentially cause the District to pause its transition plans and confirmed the District still plans to provide the public with virtual access to public Board meetings.

- Director Patterson left the meeting at 2:15 p.m. and returned at 2:19 p.m.

- Motion by Director Young, seconded by Director Patterson to approve the recommended actions for Item 13 carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35331-22 – Resolution Terminating The Existence Of An East Bay Municipal Utility District Emergency.

14. **Adopt a resolution to support exoneration of the Port Chicago 50 and to recognize their importance to the U.S. Civil Rights Movement.**

Director William B. Patterson highlighted the history of the explosion at the Port Chicago Naval Magazine near Martinez, California in 1944, during which 320 African American men lost their lives. After the explosion, the U.S. military ordered the surviving sailors to resume their duties at the Mare Island Ammunition Depot in Vallejo without an explanation for what had happened at Port Chicago, additional training, or safety protocols. After being threatened with harsh disciplinary action, many sailors returned to duty; however, fifty African American sailors refused the order and were charged with mutiny. The U.S. military tried and convicted these sailors, known as the Port Chicago 50, and each received a 15-year prison sentence. These convictions still stand today, despite efforts to overturn them. The Navy eventually released the men, but damage was done to their reputations and livelihoods and they carried the stigma of mutiny for the rest of their lives. The Board is being asked to adopt a resolution calling for the public exoneration of the Port Chicago 50 and to recognize them as heroes of the Civil Rights movement.

- Motion by Director Patterson, seconded by Director McIntosh to approve the recommended actions for Item 14 carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35332-22 – Resolution Recognizing The Port Chicago 50's Importance To The Civil Rights Movement.

15. **General Manager's Report.**

EBMUD's Centennial Planning Update.

Public Information Representative Tracie D. Morales presented the update. Over 100 employees from across the District have been working on planning activities including activities leading up to the District's 100th Anniversary in May 2023. Ms. Morales reviewed the foundational messages which center around dedication, protection, and investments in employees, infrastructure, and community; and discussed the logo and tagline developed to celebrate the centennial. The logo and tagline will be used on District gear, the website, social media, signage, and sustainable giveaways, as well as in publications and at events. A 100th anniversary microsite on ebmud.com will launch in December 2022 to highlight the District's history, events, partnerships, historical films, and new content. Centennial events include a community fair in May 2023; walks in the local watersheds, at infrastructure sites, and other locations between January-October 2023; and an employee/retiree gathering in July 2023. Centennial partnerships are planned with local entities that align with the District's mission to support the community and sustainability initiatives. Ten percent of the proceeds from these partnerships will be donated to the District's Water Lifeline program. Updated, lighted

panels have been installed on the 2nd floor of the Administration Building and new photos have been mounted in the Boardroom. Staff is working with a consultant to install displays on the 1st floor of the Administration Building that explore EBMUD's water and wastewater systems and highlight themes such as EBMUD's essential workforce, conservation, and environmental stewardship. The project is in the design phase and scheduled for completion in summer 2023. Staff will begin promoting internal and external events as dates and locations are confirmed and is seeking external event planning support to assist with the 100th anniversary community fair. Ms. Morales responded to Board questions regarding the planning and potential locations for the community fair; the centennial logo and how it will be used; additional partnership options; and the foundational messaging. The Board asked staff to consider updating the centennial logo to include people; pairing the centennial logo and the EBMUD logo in centennial materials; including the District's work on diversity, equity, and inclusion, climate change, water conservation, and natural resources protection in the foundational messaging; reviewing the San Francisco Public Utilities Commission's PBS video as part of the development of the District's centennial video; including upcountry groups in centennial activities; and ensure there is sufficient time to plan the 100th anniversary community fair.

General Manager's Monthly Report

General Manager Clifford C. Chan announced he was available to respond to questions regarding the November 2022 Monthly Report. Director Coleman asked for confirmation of the water storage data in the report. General Manager Chan said staff would review the data and respond.

REPORTS AND DIRECTOR COMMENTS

16. Committee Reports.

- Filed with the Board were the Minutes for the November 22, 2022 Finance/Administration Committee.
- Planning Committee chair Marguerite Young reported the Committee met earlier in the day and received updates on the Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Project; Upper San Leandro Water Treatment Plant Maintenance and Reliability and Upper San Leandro and Sobrante Water Treatment Plants Chemical Systems Safety Improvements Project; the Oursan Ridge Conservation Bank; and the Advanced Metering Infrastructure Business Case Evaluation.
- Legislative/Human Resources Committee chair Lesa R. McIntosh reported the Committee met earlier in the day and received an update on the Diversity, Equity, and Inclusion Strategic Plan.

17. Other Items for Future Consideration.

None.

18. Director Comments.

Director Coleman reported participating in the ACWA Fall Conference in Indian Wells November 29 through December 1; meeting with Contra Costa Water District staff in Indian Wells on December 1; District briefing on Lafayette Reservoir (remote) on December 2; and a meeting with Assemblymember Rebecca Bauer-Kahan (remote) on December 7. He reported on plans to participate in the Los Vaqueros Reservoir JPA Board meeting (remote) on December 14; EBMUD

Developer Forum (remote) on December 15; a meeting with representatives from Tassajara Valley in Oakland on December 19; the Los Vaqueros Reservoir JPA Finance Committee meeting (remote) on December 22; the FRWA Board meeting (remote) on January 12, 2023; the DERWA Board meeting in Dublin on January 23; and the Los Vaqueros Reservoir JPA Finance Committee meeting (remote) on January 26.

- Director Patterson reported on the life and career of Paul Silas, professional basketball player and head coach in the National Basketball Association. Mr. Silas passed away on December 10.
- President Linney acknowledged that this was the last Board meeting for Director Mellon and thanked Director Mellon again for his years of service.
- Directors Katz, McIntosh, Mellon, and Young had no reports.

ADJOURNMENT

President Linney adjourned the meeting at 3:13 p.m.

SUBMITTED BY:

Rischa S. Cole, Secretary of the District

APPROVED: January 10, 2023

Doug A. Linney, President of the Board

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BOARD ACTION

Agenda Number:	3	Meeting Date:	January 10, 2023
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TITLE	CAMANCHE DAM AND PARDEE DAM SEISMIC STUDY
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ACTION	<input checked="" type="checkbox"/> Motion:	<input type="checkbox"/> Resolution:	<input type="checkbox"/> Ordinance:
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RECOMMENDED ACTION	Authorize an agreement beginning on or after January 10, 2023 with AECOM Technical Services, Inc. (AECOM) in an amount not to exceed \$891,276 for engineering services to support the Camanche Dam and Pardee Dam Seismic Study.
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SUMMARY	This agreement will provide engineering services to perform advanced three-dimensional numerical analysis of the performance of Camanche and Pardee dams. This study, which builds on previous seismic evaluations, will ensure safety of appurtenant structures at both dams as required by the Division of Safety of Dams (DSOD) and the Federal Energy Regulatory Commission (FERC).
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DISCUSSION	<p>The study is required to support of the District's Dam Safety Program, which includes proactive inspections, upgrades and improvement to its dams, reservoir outlet towers, and spillways. This study includes seismic evaluation of Pardee and Camanche Dams and appurtenant structures including Pardee Dam and its foundation, the Pardee South Spillway crest, Camanche Spillway crest and walls, and the outlet works at Camanche (see attached map). Previously completed studies at Camanche Reservoir include a comprehensive safety review of the dam and dikes; the current project is for evaluations of the spillway and outlet works system. At Pardee Reservoir, the current project will update the 1993 to 1997 stability analyses of Pardee Dam and will evaluate the stability of the South Spillway modifications constructed between 1996 and 2002. The details about both dams were discussed at dam safety workshops held by the District, as required by FERC and overseen by an independent consultant (IC). The resulting IC Report recommended the District perform these studies, and this project is a FERC regulatory requirement. The scope also includes optional services for additional geotechnical investigations and structural stability studies, if needed, to support the required analyses.</p> <p>The results of this study are needed to ensure operational reliability and will be presented to the regulatory agencies for their review. These studies are a specific requirement of FERC regulations under Part 12 D of the Code of Federal Regulations.</p> <p>This work supports the District's Long-Term Infrastructure Investment Strategic Plan goal.</p>
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Originating Department: Engineering and Construction	Department Director or Manager: Olujimi O. Yoloje	CEP Forms? Yes	Board Action Type: Professional Services
Funds Available: FY22/23, CIP #000861; Page 6	Budget Coding: 11-562-0000-2012872-52310	Approved: 	
Attachment(s): Location Map; P-035; P-061			

Title:	Camanche Dam and Pardee Dam Seismic Study	Meeting Date:	January 10, 2023
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**CONSULTANT
SELECTION**

Request for proposals were sent to seven firms on the Professional Services Roster with expertise in complex numerical analysis methods in geotechnical and structural engineering. Three firms submitted proposals. AECOM was selected based on their project understanding, proposed approach, qualifications, and their demonstrated ability to provide the necessary specialized expertise in dam and spillway seismic evaluations. In addition, they demonstrated significant relevant experience with FERC- and DSOD-regulated studies.

SUSTAINABILITY**Economic**

Funding for this agreement is available in the FY2023 adopted capital budget for the Dam Seismic Upgrades Project.

Social

Locals 2019 and 21 were notified of this agreement on April 5, 2022 and did not raise any specific issues related to this agreement.

Environmental

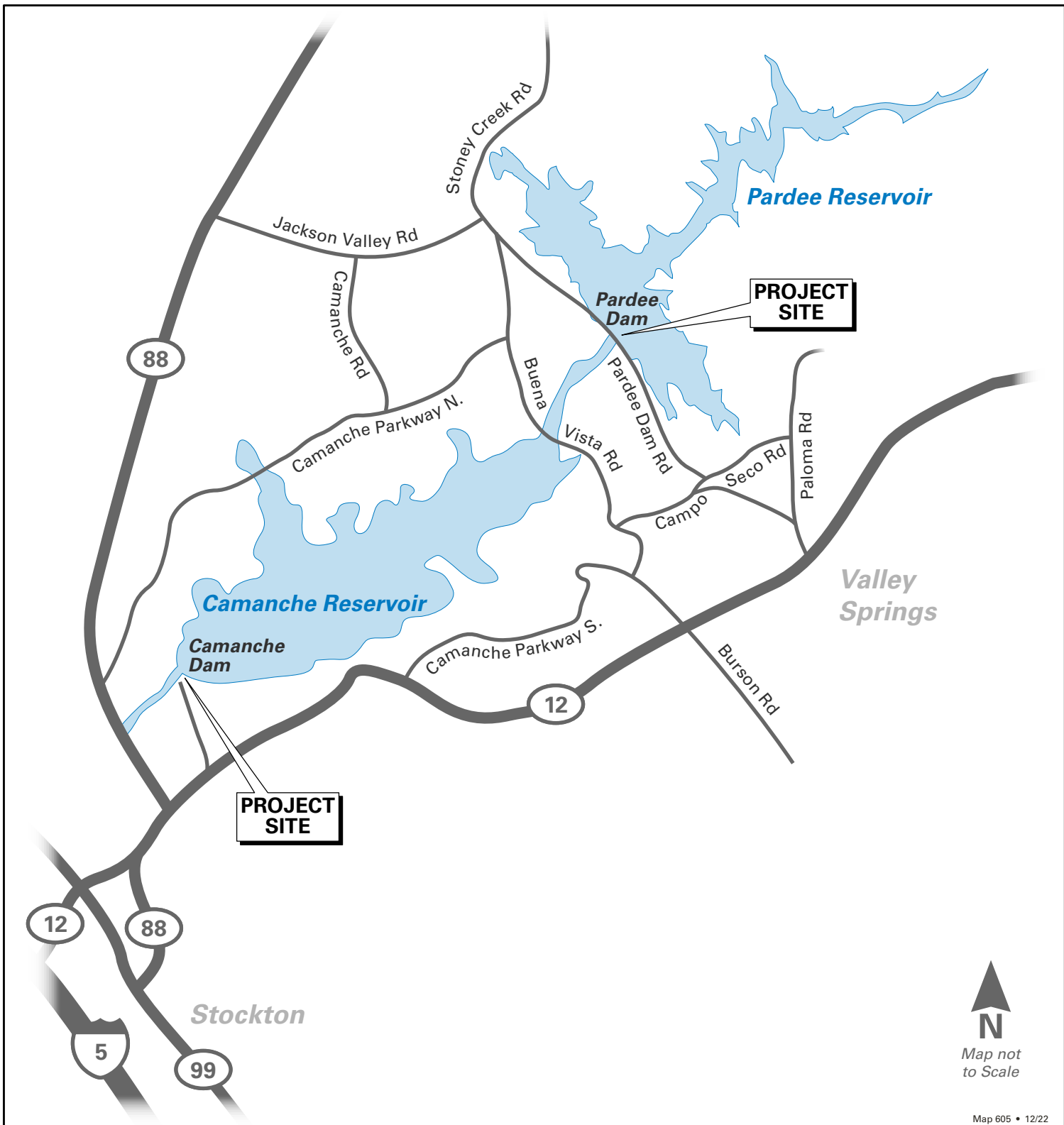
The project is exempt from the requirements of the California Environmental Quality Act (CEQA) because it is a desktop study and, therefore, does not cause a physical change in the environment. If supplemental geotechnical investigations are required, the appropriate CEQA documents will be filed. These investigations will comply with the District's California Department of Fish and Wildlife Routine Maintenance Agreement and applicable FERC environmental procedures.

ALTERNATIVES

Select another consultant to perform the work. This alternative is not recommended because AECOM has demonstrated the best qualifications, expertise, understanding, and approach to complete this study.

Perform the work with District forces. This alternative is not recommended because District staff does not have the necessary technical expertise required to complete this study.

Do not perform the work. This alternative is not recommended because this study is required for the District to ensure dam safety and it is a regulatory requirement.



PROJECT SITE LOCATION MAP

NOT TO SCALE

EAST BAY MUNICIPAL UTILITY DISTRICT

**CAMANCHE DAM AND PARDEE DAM
SEISMIC STUDY**



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

TITLE Professional Services Agreement - Professional Services Consultant Roster Camanche Dam and Pardee Dam Seismic Study					DATE: December 20, 2022					
CONTRACTOR: AECOM Technical Services, Inc. Local Business Oakland, CA 94612					PERCENTAGE OF CONTRACT DOLLARS					
BID/PROPOSER'S PRICE: \$891,276 *		FIRM'S OWNERSHIP		White Men	25%	84.4%				
		Ethnicity	Gender	White Women	6%	6.9%				
		White	Men	Ethnic Minorities	25%	8.7%				
CONTRACT EQUITY PARTICIPATION										
COMPANY NAME	ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION					
			M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit
PRIME: AECOM Technical Services, Inc.	\$655,416	White	X		73.5%					
SUBS: A3GEO, Inc.	\$61,710	White		X		6.9%				
Geosyntec Consultants, Inc.	\$42,025	White	X		4.7%					
Lettis Consultants International, Inc.	\$54,858	White	X		6.2%					
MGE Engineering, Inc.	\$41,046	Asian	X				4.6%			
YEI Engineers, Inc.	\$36,221	Asian	X				4.1%			
TOTAL	\$891,276				84.4%	6.9%	8.7%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)										
	White Men	White Women	Ethnic Minorities	Total Employees						
No. of Employees:	117	73	104	294						
Percent of Total Employees:	39.8%	24.8%	35.4%							
MSA Labor Market %:	32.3%	27.8%	39.9%							
MSA Labor Market Location:	9 Bay Area Counties									
COMMENTS										
Contract Equity Participation: 84.4% White Men, 6.9% White Women, and 8.7% Ethnic Minority participation. Contract Duration: NA *Total not to exceed: \$891,276										
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended		
NA				NA						



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

Title: Camanche Dam and Pardee Dam Seismic Study		Ethnic Minority Percentages From U.S. Census Data						
			B	H	A/PI	AI/AN	TOTAL	
		National	10.5	10.7	3.7	0.7	27.3	
Professional Services Agreement - Professional Services Consultant Roster		DATE: 12/20/2022	9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9
			Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees						
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT
								MSA %
RP	WM: LBE	Company Wide	5	17	72	0	94	32.0%
AECOM Technical Services, Inc. Virginia Napoli 300 Lakeside Drive, Suite 400 Oakland, CA 94612 (Local office) 609-617-5640		Manager/Prof	4	15	70	0	89	31.3%
		Technical/Sales	1	1	2	0	4	66.7%
		Clerical/Skilled	0	1	0	0	1	25.0%
		Semi/Unskilled	0	0	0	0	0	0.0%
		Bay Area	5	17	72	0	94	32.0%
		AA Plan on File:	NA		Date of last contract with District:		9/13/2019	
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		294 Bay Area: 294	
S	WW: L/SBE	Company Wide	6	0	1	0	7	58.3%
A3GEO, Inc. Dona Mann 821 Bancroft Way Berkeley, CA 94710 415-425-0247		Manager/Prof	5	0	1	0	6	60.0%
		Technical/Sales	0	0	0	0	0	0.0%
		Clerical/Skilled	1	0	0	0	1	100.0%
		Semi/Unskilled	0	0	0	0	0	0.0%
		Bay Area	0	0	1	0	1	8.3%
		Co. Wide MSA:	Alameda		# Employees-Co. Wide:		12 Bay Area: 12	
S	WM: LBE	Company Wide	2	5	18	0	25	30.1%
Geosyntec Consultants, Inc. Jennifer Brown 1111 Broadway, Floor 6 Oakland, CA 94607 562-922-1048		Manager/Prof	1	5	15	0	21	29.6%
		Technical/Sales	0	0	1	0	0	0.0%
		Clerical/Skilled	1	0	2	0	3	33.3%
		Semi/Unskilled	0	0	0	0	0	0.0%
		Bay Area	2	5	18	0	25	30.1%
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		83 Bay Area: 83	
S	WM: L/SBE	Company Wide	0	4	6	0	10	22.7%
Lettis Consultants International, Inc. Thea Carrillo 1000 Burnett Avenue, Suite 350 Concord, CA 94520 925-482-0360		Manager/Prof	0	3	6	0	9	24.3%
		Technical/Sales	0	0	0	0	0	0.0%
		Clerical/Skilled	0	1	0	0	1	14.3%
		Semi/Unskilled	0	0	0	0	0	0.0%
		Bay Area	0	3	4	0	7	25.9%
		Co. Wide MSA:	California		# Employees-Co. Wide:		44 Bay Area: 27	
S	EMM: A/PI - L/SBE	Company Wide	1	1	11	0	13	41.9%
MGE Engineering, Inc. H. Fred Huang 7415 Greenhaven Drive, Suite 100 Sacramento, CA 95831 916-421-1000		Manager/Prof	1	0	8	0	9	37.5%
		Technical/Sales	0	1	1	0	0	0.0%
		Clerical/Skilled	0	0	2	0	2	50.0%
		Semi/Unskilled	0	0	0	0	0	0.0%
		Bay Area	1	1	11	0	13	1300.0%
		Co. Wide MSA:	Sacramento		# Employees-Co. Wide:		31 Bay Area: 1	
S	EMM: A/PI - L/SBE	Company Wide	1	1	14	0	16	50.0%
YEI Engineers, Inc. Patrick Mallillin 7677 Oakport Street Oakland, CA 94521 510-383-1050		Manager/Prof	0	0	12	0	12	85.7%
		Technical/Sales	0	0	1	0	0	0.0%
		Clerical/Skilled	1	1	1	0	3	75.0%
		Semi/Unskilled	0	0	0	0	0	0.0%
		Bay Area	1	1	14	0	16	76.2%
		Co. Wide MSA:	Alameda		# Employees-Co. Wide:		32 Bay Area: 21	

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

Title: Camanche Dam and Pardee Dam Seismic Study		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
		National	10.5	10.7	3.7	0.7	27.3		
Professional Services Contract		DATE: 12/20/2022	9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9	
			Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2	
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
P	WM: LBE	Company Wide	65	109	211	0	385	22.3%	48.4%
Mott Macdonald Group, Inc. Melanie Graham 12647 Alcosta Blvd, Suite 275 San Ramon, ca 94583		Manager/Prof	40	63	160	2	265	22.1%	
		Technical/Sales	24	40	50	0	0	0.0%	
		Clerical/Skilled	1	5	1	0	7	18.4%	
		Semi/Unskilled	0	1	0	0	1	50.0%	
		Bay Area	7	8	47	0	62	45.6%	39.9%
925-469-5372		Co. Wide MSA:	California		# Employees-Co. Wide:		1,730	Bay Area:	136
P	WM	Company Wide	4	6	47	0	57	49.6%	39.9%
WSP USA Inc. Martha Alongi 425 Market Street, 17th Floor San Francisco, CA 94105		Manager/Prof	4	6	43	0	53	50.0%	
		Technical/Sales	0	0	4	0	4	80.0%	
		Clerical/Skilled	0	0	0	0	0	0.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	4	6	47	0	57	49.6%	39.9%
717-859-7884		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		115	Bay Area:	115

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: **B**=Black, **H**=Hispanic, **A/PI**=Asian/Pacific Islander, and **AI/AN**=American Indian/Alaskan Native)



BOARD ACTION

Agenda Number:	4	Meeting Date:	January 10, 2023
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TITLE	OLD RIVER CROSSING RESTORATION CONCEPTUAL ENGINEERING SERVICES
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ACTION	<input checked="" type="checkbox"/> Motion:	<input type="checkbox"/> Resolution:	<input type="checkbox"/> Ordinance:
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RECOMMENDED ACTION	Authorize an agreement beginning on or after January 10, 2023 with AECOM Technical Services, Inc. (AECOM) in an amount not to exceed \$172,260 for the conceptual design of a solution to restore the eroded soil cover that protects Mokelumne Aqueducts No. 1 and No. 2 under the riverbed of Old River in the California Delta.
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SUMMARY	Mokelumne Aqueducts No. 1 and No. 2 are currently exposed at the Old River channel bottom, making them vulnerable to damage and failure. This project will determine the cause of the erosion, develop conceptual design solutions to address the exposed pipelines, and conduct hydraulic modeling at the project site to identify the preferred alternative. AECOM will provide engineering support, as necessary, during the California Environmental Quality Act (CEQA) environmental review process.
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DISCUSSION	<p>The Mokelumne Aqueducts cross Old River, Middle River, and San Joaquin River as they travel across the Bay Delta. When Mokelumne Aqueducts No. 1, No. 2 and No. 3 were originally constructed, they were buried below the river channel bottoms to protect the aqueducts from scour and potential third-party damage. Mokelumne Aqueducts No. 1 and No. 2 were buried under a minimum of five to six feet of soil cover and Mokelumne Aqueduct No. 3 was buried under a minimum 10 feet of soil cover. A dive inspection in January 2021 of all three river crossings revealed that Mokelumne Aqueducts No. 1 and No. 2 are exposed under Old River on the east bank, while Mokelumne Aqueduct No. 3 remains covered. The exposed aqueducts are vulnerable to damage, posing a significant risk to the District's raw water supply.</p> <p>This work supports the Districts Long-Term Infrastructure Investment Strategic Plan goal.</p> <p>The services contracted for in the agreement cannot be satisfactorily performed under District civil service and therefore contracting out is proper.</p>
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CONSULTANT SELECTION	A request for proposal was sent to 53 firms on the Professional Services Consultant Roster with expertise in water infrastructure and geotechnical engineering. One firm submitted a proposal. AECOM was selected based on their demonstrated ability to provide the necessary specialized expertise.
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Originating Department: Engineering and Construction	Department Director or Manager: Olujimi O. Yolo	CEP Forms? Yes	Board Action Type: Professional Services
Funds Available: FY23, CIP# 1000810, page 28	Budget Coding: 11-534-0000-2014456-52310	Approved: 	
Attachments: Location Map; P-035; P-061			

Title:	Old River Crossing Restoration Conceptual Engineering Services	Meeting Date:	January 10, 2023
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SUSTAINABILITY**Economic**

Funding for this project is available in the FY 2023 adopted capital budget for Raw Water Infrastructure.

Social

Locals 2019 and 21 were notified of this agreement on April 22, 2021 and did not raise any specific issues related to this agreement.

This project will increase the operational reliability of the raw water system through the Bay Delta.

Environmental

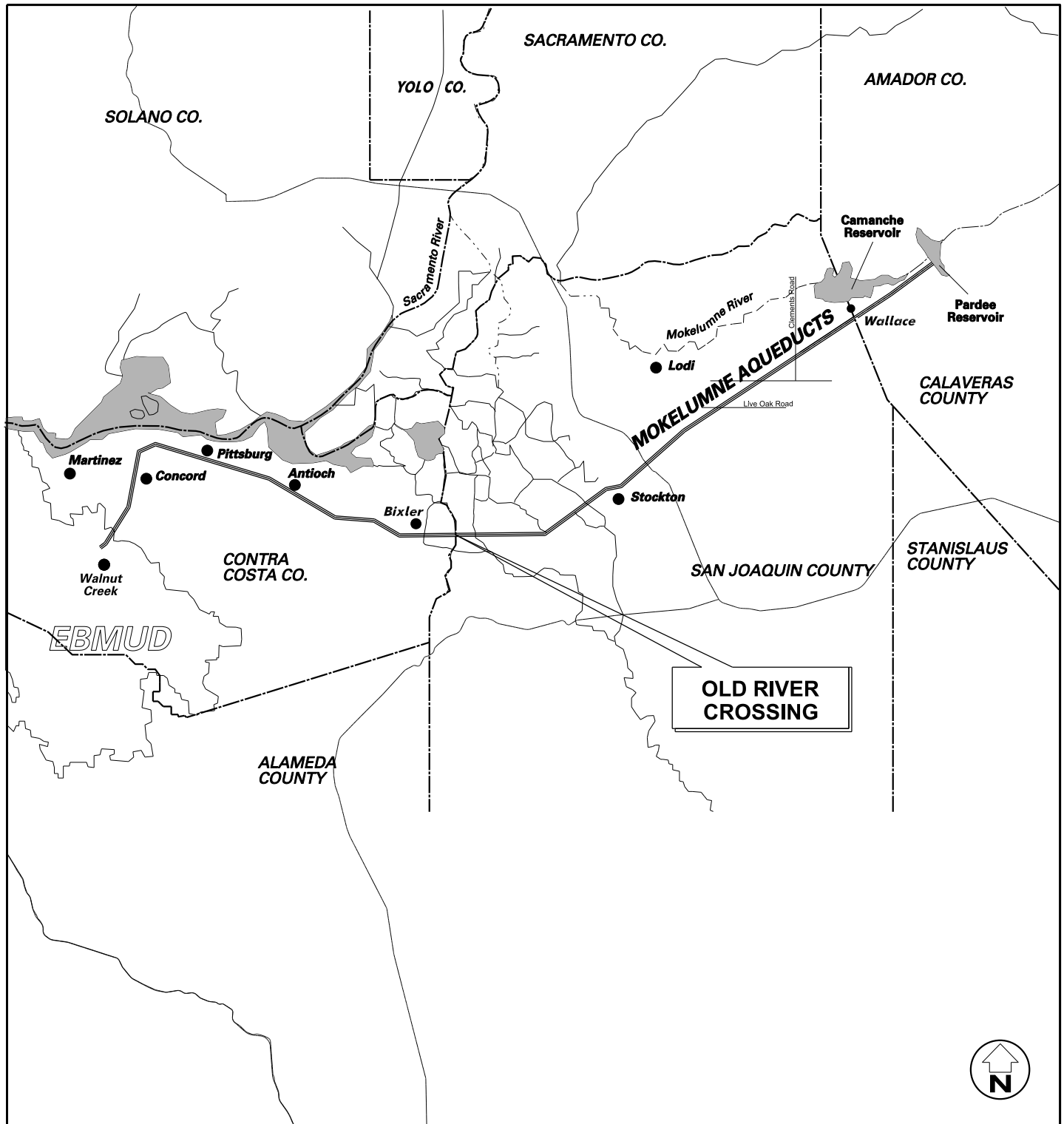
This agreement will provide documents to facilitate the CEQA/Environmental Compliance process for the project.

ALTERNATIVES

Perform the work with District forces. This alternative is not recommended because District staff does not have the technical expertise to perform the work.

Do not perform the work. This alternative is not recommended because Mokelumne Aqueducts No. 1 and No. 2 are exposed and vulnerable to damage and failure at the Old River crossing.

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PROJECT SITE LOCATION MAP

NOT TO SCALE

EAST BAY MUNICIPAL UTILITY DISTRICT

**OLD RIVER CROSSING
RESTORATION CONCEPTUAL
ENGINEERING SERVICES**

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CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

TITLE						DATE:							
Professional Services Agreement - Professional Services Consultant Roster Old River Crossing Restoration Conceptual Engineering Services Agreement						November 21, 2022							
CONTRACTOR:				PERCENTAGE OF CONTRACT DOLLARS									
AECOM Technical Services, Inc. Oakland, CA 94612				Local Business / Sole Proposer				Availability Group		Contracting Objectives		Participation	
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%		100.0%					
		Ethnicity	Gender	White Women		6%		0.0%					
		White	Men	Ethnic Minorities		25%		0.0%					
CONTRACT EQUITY PARTICIPATION													
COMPANY NAME	ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION								
			M	W	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign		
PRIME: AECOM Technical Services, Inc.		\$172,260	White	X		100.0%							
SUBS:													
TOTAL		\$172,260				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)													
		White Men		White Women		Ethnic Minorities		Total Employees					
No. of Employees:		117		73		104		294					
Percent of Total Employees:		39.8%		24.8%		35.4%							
MSA Labor Market %:		39.0%		33.7%		27.3%							
MSA Labor Market Location:		9 Bay Area Counties											
COMMENTS													
Contract Equity Participation: 100% White Men participation. Contract Duration: NA *Total not to exceed: \$172,260													
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended					
NA				NA									



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

Title: Old River Crossing Restoration Conceptual Engineering Services Agreement		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
		National	10.5	10.7	3.7	0.7	27.3		
Professional Services Agreement - Professional Services Consultant Roster		DATE: 11/21/2022	9 Bay Area Counties		5.5	16.2	14.2	0.4	39.9
		Alameda/CC Counties		10.7	15.6	15.4	0.5	46.2	
R=Recmmnd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM: LBE	Company Wide	5	17	72	0	94	32.0%	39.9%
AECOM Technical Services, Inc. Virginia Napoli 300 Lakeside Drive, Suite 400 Oakland, CA 94612 (Local office) 609-617-5640		Manager/Prof	4	15	70	0	89	31.3%	
		Technical/Sales	1	1	2	0	4	66.7%	
		Clerical/Skilled	0	1	0	0	1	25.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	5	17	72	0	94	32.0%	39.9%
		AA Plan on File:	NA		Date of last contract with District:		9/13/2019		
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		294		Bay Area: 294

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)



BOARD ACTION

Agenda Number:	5	Meeting Date:	January 10, 2023
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TITLE	AMEND THE FULL LOAD SERVICE CONTRACT TO PURCHASE FEDERAL POWER FOR SELECT DISTRICT FACILITIES
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ACTION	<input checked="" type="checkbox"/> Motion:	<input type="checkbox"/> Resolution:	<input type="checkbox"/> Ordinance:
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RECOMMENDED ACTION	Authorize an amendment to the contract previously awarded under Board Motion No. 182-16, with Western Area Power Administration (WAPA) to extend the contract termination date from December 31, 2024 to December 31, 2029 for electricity purchases at select District facilities.
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SUMMARY	In 2016, the District executed a Full Load Service (FLS) contract with WAPA through 2024. The District purchases approximately 20,000 megawatt-hours annually from WAPA for the Main Wastewater Treatment Plant and six water facilities. Approximately 15 percent of the District's total electrical energy is provided by WAPA at an estimated annual savings of \$1 million. The extension of this contract was requested by WAPA and is necessary to receive WAPA power beyond December 31, 2024.
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DISCUSSION	<p>Since 1982, the District has received an allocation of low-cost federal electrical power through various contracts with WAPA, one of four power marketers within the U.S. Department of Energy. Approximately 30 percent of the total WAPA purchases are for long-term energy under the FLS contract. Other WAPA expenses are administered through three additional WAPA contracts: federal hydropower purchases under the Base Resource contract, short-term market purchases under the Scheduling Coordinator Services contract, and transmission and distribution service under the Back-to-Back Contract. Historically, WAPA electricity has been provided to the District at approximately 75 percent of PG&E rates.</p> <p>This contract supports the District's Long-Term Financial Stability Strategic Plan goal.</p>
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SUSTAINABILITY	<p>Economic</p> <p>Funding for the purchases will be considered as part of the next budget development process. Total purchases under the FLS contract over the extended term is estimated at \$6 million. WAPA-provided electricity will lower the District's operating costs by approximately \$1 million annually.</p> <p>Social</p> <p>Lower operating costs associated with the use of WAPA electricity will benefit District customers.</p>
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Originating Department: Operations and Maintenance	Department Director or Manager: David A. Briggs	CEP Forms? N/A	Board Action Type: General Services
Funds Available: FY2023	Budget Coding: Various-Variou-Variou-Variou-53740	Approved: 	
Attachment(s): N/A			

Title:	Amend the Full Load Service Contract to Purchase Federal Power for Select District Facilities	Meeting Date:	January 10, 2023
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Environmental

WAPA power has a published emission factor of 513.6 pounds (lb)/MWh and includes federal hydropower. Comparatively, electrical power recently purchased from PG&E, Marin Clean Energy, and East Bay Clean Energy have emissions factors of 170 lb/MWh, 77 lb/MWh and 591 lb/MWh respectively.

ALTERNATIVE

Do not amend the WAPA Full Load Service Contract. This alternative is not recommended because delivery of lower cost WAPA power beyond 2024 requires this amendment.

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BOARD ACTION

Agenda Number:	6	Meeting Date:	January 10, 2023
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TITLE	AMEND AND ASSIGN CAMANCHE RECREATION CONCESSION CONTRACT
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ACTION	<input checked="" type="checkbox"/> Motion:	<input type="checkbox"/> Resolution:	<input type="checkbox"/> Ordinance:
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RECOMMENDED ACTION	Authorize the amendment and approve the assignment of the Camanche Reservoir Recreation Contract (Contract) with Urban Park Concessionaires (UPC) to Vista Recreation (Vista).
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SUMMARY	Camanche recreation facility is currently operated by UPC pursuant to the Contract. UPC wishes to amend the Contract and to assign the Contract to Vista.
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DISCUSSION	<p>On October 8, 1996, the District entered into the Contract with UPC. The Contract has been amended four times. The current term for the Contract expires on December 31, 2031.</p> <p>Pursuant to the Contract, UPC seeks to amend the Contract and to assign the Contract to Vista. The amendments will modify an insurance requirement and will add an annual payment. Upon assignment, UPC will assign its rights, interests, and obligations effective January 10, 2023, under the Contract to Vista, and Vista will assume the same. The Contract shall remain in full force and effect for the remainder of the term under the terms and conditions set forth in the Contract, including its amendments.</p>
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SUSTAINABILITY	<p>Economic</p> <p>The proposed action of assignment has no fiscal impact to the District or the customers of Camanche Recreation Area.</p> <p>Social</p> <p>The proposed action has no social impact to the District, its employees, concession employees, or customers of the Camanche Recreation Area.</p> <p>Environmental</p> <p>The proposed action does not change or alter environmental conditions at the Camanche Recreation Area.</p>
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ALTERNATIVE	Do not approve assignment of the concession contract. This alternative is not recommended because it could result in the disruption or cessation of recreation services required by the Federal Energy Regulatory Commission, recreation area/facility closures, and elimination of recreation-related revenues for EBMUD and surrounding communities.
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Originating Department: Water and Natural Resources	Department Director or Manager: Michael T. Tognolini	CEP Forms? No	Board Action Type: Administrative
Funds Available: N/A	Budget Coding: N/A		
Attachment(s): N/A			

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BOARD ACTION

Agenda Number:	7	Meeting Date:	January 10, 2023
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TITLE	APPOINTMENT OF MANAGER OF EMPLOYEE RELATIONS
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ACTION	<input type="checkbox"/> Motion:	<input checked="" type="checkbox"/> Resolution:	<input type="checkbox"/> Ordinance:
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RECOMMENDED ACTION	Appoint Marc A. Smyer as the Manager of Employee Relations effective January 16, 2023.
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SUMMARY	Following a comprehensive recruitment process, Marc A. Smyer is recommended for appointment as the Manager of Employee Relations. The position is exempt from the civil service provisions of the Municipal Utility District Act in accordance with Section 12055(e).
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DISCUSSION	<p>Mr. Smyer joined EBMUD six years ago as a Senior Human Resources Analyst in the Employee Relations Division in the Human Resources Department. He is experienced in both Employee Relations and Labor Relations matters including providing consultation to managers and supervisors, guiding the employee corrective action/disciplinary process, and responding to grievances. Mr. Smyer has developed strong working relationships with managers, Union leaders, and colleagues over the past six years, and exhibits the District's values in all of his interactions.</p>
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Before joining the District, Mr. Smyer worked as a practicing attorney for 25 years, including 21 years working within the California Judicial Court system. Most recently, he was the General Counsel for the Alameda County Superior Court of California where he managed a staff of 40 and a budget of \$3.1 million. He provided legal counsel to the Presiding Judge, the Court Executive Officer, and other court administrators. He developed and refined court policies and procedures regarding background checks, sick leave, bereavement leave, family medical leave, disability accommodation, telework and progressive discipline. He negotiated and drafted settlement agreements, met and conferred with union leadership to resolve disputes, and responded to and resolved formal grievances. Mr. Smyer was a part of the court's management negotiation bargaining team and helped negotiate memoranda of understanding with three labor unions.

Mr. Smyer has a Bachelor of Arts degree in Political Science and a Doctorate of Law.

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Originating Department: Human Resources	Department Director or Manager: Cindy R. Charan	CEP Forms? N/A	Board Action Type: Personnel
Funds Available: N/A	Budget Coding: N/A		Approved: 
Attachment(s): Class Description; Resolution			



Manager of Employee Relations

Class Code:
4621

Bargaining Unit: Managers

EAST BAY MUNICIPAL UTILITY DISTRICT
Established Date: Jul 1, 1985
Revision Date: Sep 5, 2016

SALARY RANGE

\$12,315.00 - \$17,790.00 Monthly

DEFINITION/DISTINGUISHING CHARACTERISTICS:

DEFINITION

Under general direction, plans, organizes and directs the East Bay Municipal Utility District's (EBMUD's) employer-employee relations program; provides expert consult to policy makers, managers and supervisors and employees and union representatives regarding employee relations matters; liaisons directly with union representatives; directs the employee corrective action/disciplinary process; ensures EBMUD's grievance procedures are consistently applied; and manages Human Resources regulatory compliance matters.

DISTINGUISHING CHARACTERISTICS

The individual in this class establishes and maintains an orderly employer-employee relations program and develops and administers EBMUD's labor relations policy, subject to top management guidance and approval. The individual also represents management in labor relations, including the negotiation, interpretation, and administration of collective bargaining agreements and provides consult and advice to non-represented employees. The Manager of Employee Relations class is distinguished from the Manager of Human Resources class in that the latter has ultimate responsibility for all Human Resources programs of EBMUD.

EXAMPLES OF DUTIES (ILLUSTRATIVE ONLY):

1. Provides strategic direction and manages ongoing operations of the Employee Relations Division.
2. Provides expert consultation to policy makers, management and supervisors regarding employee relations matters.
3. Directs, assigns, trains, develops and evaluates the work of the Employee Relations and Human Resources Regulatory Compliance staff.
4. Leads the negotiation of collective bargaining agreements with labor unions, including preparation of strategies, proposals and proposal costing, and insures proper documentation of the negotiations and implementation of the agreements.
5. Consults or directs consultation with unions regarding operational or organizational changes and to negotiate significant impacts related to wages, hours or terms and conditions of employment.

6. Directs the employee corrective action/disciplinary processes by consulting with managers and supervisors.
7. Administers grievance procedures and acts as management representative, as necessary.
8. Consults with all levels of employees and union representatives to identify and resolve union and employee concerns and issues in an effective, orderly and timely manner.
9. Develops and directs the implementation of training programs for managers, supervisors, employees, and employee representatives in employer-employee matters.
10. Interprets memoranda of understanding and other union/management agreements and advises managers and supervisors on courses of action.
11. Assists in reviewing, tracking and resolving employee medical disability issues by coordinating case review meetings and directing necessary employee relations actions regarding these cases.
12. Assembles and analyzes data and information on trends in labor relations, and prepares or directs the preparation of management studies on various subjects such as absenteeism, group benefits and labor costs, employee demographics, and others.
13. Assists the Legal Department in preparation and presentation of arbitrations, lawsuits, PERB complaints and other administrative processes including gathering evidence, testifying as a witness, and implementing decisions and judgments.
14. Assists and participates in developing, implementing and integrating EBMUD's Human Resources and related policies which affect both represented and non-represented EBMUD employees.
15. Directs and participates in preparing resolutions, reports, and other communications relating to employee relations activities that require action by the Board of Directors.
16. Directs the maintenance of records including electronic imaging and prepares reports on negotiations, union activities, employee discipline and grievances.
17. Ensures that EBMUD's employee relations program stays abreast of new developments, current legal trends and new or changed state and federal laws and regulations.
18. Oversees and manages the work of the Human Resources Regulatory Coordinator including but not limited to reasonable accommodations, modified work assignments, DOT program, Employee Assistance Program, and Disability Review Committee.
19. Performs other related duties and responsibilities as required.

CLASSIFICATION REQUIREMENTS:

Knowledge, Skills, and Abilities

Knowledge of: The principles, practices and techniques involved in the administration of a comprehensive employee relations program; and statutes relating to public sector employer-employee relations including, but not limited to, the Meyer Milius Brown Act; public administration and governmental organization; management analysis techniques and statistical research methods; principles and practices of effective supervision and progressive discipline; State and Federal laws related to equal employment opportunity, employee working conditions, disability and leave, including but not limited to: Title VII of the Civil Rights Act of 1964; California Fair Employment and Housing Act; Age Discrimination Act; California Rehabilitation Act; Americans with Disability Act Amendment Act; Equal Pay Act; Fair Labor Standards Act; California Labor Code; Family Medical Leave Act; California Family Rights Act; principles and practices related to the administration of a civil service system; and the principles, practices and application of electronic data processing to Human Resources work.

Skills: Visual acuity to see items such as written materials and computer monitors; hearing sufficient to communicate orally; manual dexterity to write and type on a keyboard.

Ability to: Plan, assign, organize, coordinate, direct and evaluate the work of subordinates; apply the art of persuasion and negotiation on an individual and group basis; coordinate multiple negotiations and meet critical deadlines; be creative and keep an open mind in order to resolve difficult and sensitive matters; develop and maintain effective working relationships

with personnel at all organizational levels; use good judgment and discretion in dealing with sensitive and difficult matters; acquire a working knowledge of EBMUD employer-employee relations policies and procedures and the goals, functions, activities and program objectives of EBMUD; negotiate labor agreements; write and speak effectively and prepare correspondence, policies, procedures and reports; evaluate alternatives and use sound judgment; develop, implement and interpreting labor contracts, organizational policies and ordinances; analyze complex employee relations problems and make recommendations and apply excellent interpersonal skills to deal with difficult issues effectively and in mediating disputes.

Education and Experience:

1. A bachelor's degree in human resources, employee or labor law, business, public administration, or a related field; and,
2. Four (4) years of progressively responsible experience in employee or labor relations, three (3) years of which must have been in public sector employer-employee relations that includes significant experience negotiating collective bargaining agreements with labor unions, and two (2) years of supervisory experience of professional level staff.

OTHER REQUIREMENTS:

Must possess physical characteristics to perform the critical and important duties of the job.

LICENSE, CERTIFICATES & CREDENTIALS:

Must possess a valid California driver's license and have a satisfactory driving record.

RESOLUTION NO. _____

APPOINTING MARC ADAM SMYER AS MANAGER OF EMPLOYEE RELATIONS

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, the Board of Directors has established the position of Manager of Employee Relations in the Human Resources Department and such position has been assigned the salary range under the Management Salary Plan heretofore established for District officers, assistant officers, civil service exempt and certain civil service classes; and

WHEREAS, the Manager of Employee Relations position is exempt from the District civil service pursuant to State of California Public Utility Code section 12055; and

WHEREAS, the General Manager has recommended that Marc Adam Smyer be appointed to serve as the Manager of Employee Relations of the District;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that it hereby appoints Marc Adam Smyer to serve as Manager of Employee Relations effective January 16, 2023.

Adopted this 10th day of January, 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

President

Secretary

APPROVED AS TO FORM AND PROCEDURE:


General Counsel

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 5, 2023

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager 

FROM: Kathy Viatella, Manager of Legislative Affairs

SUBJECT: State Legislative Initiatives for 2023 Legislative Year

The following issues are being referred to the Legislative/Human Resources Committee for review and recommendation to the Board of Directors for action, as appropriate, on January 10, 2023.

BACKGROUND

Each year the Office of Intergovernmental Affairs, in consultation with the Senior Management Team, develops specific legislative initiatives for the coming year. The initiatives represent priority focus areas for EBMUD that are likely to be before the legislature as well as any proposals for EBMUD-sponsored legislation. In addition to advancing these specific initiatives before the legislature, staff will continue to assess all legislation throughout the year for a nexus to EBMUD operations and policy objectives and route relevant bills to designated staff for feedback.

NEXT STEPS

For 2023, the Office of Intergovernmental Affairs is proposing the five legislative initiatives listed in alphabetical order below and in the summary table. Detailed evaluations of each of the legislative initiatives are set forth in the attachment.

1. Climate Change – Advance EBMUD’s interests related to climate change, including wildfire and forest resilience in the context of providing reliable water and wastewater service.
2. Customer Assistance – Seek constructive ways to advance EBMUD’s interests as the administration and the legislature consider ways to provide assistance to water and wastewater customers.
3. Diversity, Equity, and Inclusion (DEI) – Advance EBMUD’s DEI interests as the legislature and administration continue to consider DEI issues in the context of policy development.

4. Water Quality – Advance EBMUD’s interests in legislative and policy discussions on water quality issues.
5. Water Supply Reliability and Resiliency – Protect and advance EBMUD’s interests in the context of water supply reliability and resiliency, including the use of recycled water, water rights, and the Mokelumne River fishery.

LEGISLATIVE PROPOSAL	2023 RECOMMENDATIONS
1. Climate Change	<p><u>Proceed</u> – Advance EBMUD’s interests related to climate change, including wildfire and forest resilience in the context of providing reliable water and wastewater service.</p> <ol style="list-style-type: none"> 1. Continue to monitor discussions and evaluate legislation with particular attention on those areas that have a direct nexus to EBMUD operations and EBMUD’s Climate Action Plan and bring specific legislative proposals to the Board for discussion and consideration, as appropriate. 2. Continue to actively engage with the legislature on wildfire and forest resilience and bring specific legislative proposals to the Board for discussion and consideration, as appropriate, including potential opportunities for EBMUD to engage in tree mortality issues including those in EBMUD’s service area, as well as opportunities for EBMUD to engage through its role in the Upper Mokelumne River Watershed Authority.
2. Customer Assistance	<p><u>Proceed</u> – Seek constructive ways to advance EBMUD’s interests as the administration and the legislature consider ways to provide assistance to water and wastewater customers. The administration and legislature are expected to resume discussions on establishing a permanent ratepayer assistance program for low-income water and wastewater customers, as well as how to provide greater protection to customers facing water shutoffs due to non-payment through expansion of the Water Shutoff Protection Act (SB 998, Dodd, 2018). EBMUD will continue to identify ways to support customers through legislative efforts and protect EBMUD’s Customer Assistance Program (CAP).</p> <ol style="list-style-type: none"> 1. As discussions on ratepayer assistance and shutoff protections occur at the legislative and administration levels, continue to engage and share information on EBMUD’s CAP and alternatives to shutoffs policy to help shape future programs. Promote and protect EBMUD’s local efforts to ensure customers have access to a range of financial assistance programs in meeting their needs, as appropriate. 2. Bring relevant legislative proposals to the Board for discussion and consideration, as appropriate.

3. Diversity, Equity, and Inclusion (DEI)	<p><u>Proceed</u> – Advance EBMUD’s DEI interests as the legislature and administration continue to consider DEI issues in the context of policy development. In 2023, the legislature is likely to broadly discuss ways to address DEI through policy changes as well as by providing limited funding opportunities in areas that may be aligned with EBMUD’s DEI Strategic Plan, such as promoting workforce development and workforce diversity.</p> <ol style="list-style-type: none">1. Seek opportunities to advance District interests in policy and funding discussions that support the objectives of the DEI Strategic Plan and bring relevant legislative proposals to the Board for discussion and consideration, as appropriate.
4. Water Quality	<p><u>Proceed</u> – Advance EBMUD’s interests in legislative and policy discussions on water quality issues. Water quality issues from both a drinking water and wastewater discharge to receiving waters standpoint are expected to be discussed in the legislature in 2023.</p> <ol style="list-style-type: none">1. Actively engage with the legislature and stakeholders on water quality issues, including in relevant funding discussions, as appropriate.2. Continue to evaluate legislation and bring specific legislative proposals to the Board for discussion and consideration, as appropriate.
5. Water Supply Reliability and Resiliency	<p><u>Proceed</u> – Protect and advance EBMUD’s interests in the context of its water supply reliability and resiliency, including the use of recycled water, water rights and the Mokelumne River fishery.</p> <ol style="list-style-type: none">1. Continue to actively seek opportunities to engage with the administration and legislature to provide EBMUD’s perspective on potential legislation that could impact EBMUD’s water supply reliability and resiliency, including the use of recycled water, and water rights and the Mokelumne River fishery and bring specific legislative proposals to the Board for discussion and consideration, as appropriate.

CCC:KV:DM/JW

Attachment

STATE LEGISLATIVE INITIATIVES – 2023

INITIATIVE # 1 – CLIMATE CHANGE: ADVANCE EBMUD’S INTERESTS RELATED TO CLIMATE CHANGE, INCLUDING WILDFIRE AND FOREST RESILIENCE IN THE CONTEXT OF PROVIDING RELIABLE WATER AND WASTEWATER SERVICE

The state’s response to climate change continues to be a key focus in policy and fiscal discussions in the legislature and administration that will continue in 2023. Consistent with the current approach by the legislature and administration, the issues of forest health and wildfire prevention and response are now included under the broad topic of climate change in this initiative.

BACKGROUND

In 2022, Governor Newsom signed into law numerous climate change-related bills that, among other things, codify the state’s commitment to reach net-zero greenhouse gas emissions (GHG) by 2045 and create clean energy targets. Additionally, the California Air Resources Board (CARB) approved a rule in August 2022 requiring 100 percent of new car sales in California to be zero-emissions vehicles (ZEVs) by 2035. Wildfire-related actions in 2022 were focused on providing additional programmatic funding for wildfire resilience in the state budget to bolster relevant state departments and existing grant programs.

These actions are relevant to EBMUD’s climate-change related efforts. EBMUD continues to pursue greening its vehicle fleet, as well as increase the use of renewable energy through the District’s own generation of electricity from hydropower, solar, and biogas. EBMUD’s Energy Policy 7.07, Climate Action Policy 7.15, and 2021 Climate Action Plan detail EBMUD’s commitment to make the District’s water operations carbon neutral by 2030 and to eliminate indirect GHG emissions and reduce direct emissions by 50 percent for the wastewater system by 2040.

Consistent with EBMUD’s comprehensive vegetation management program, EBMUD undertakes annual fuels reduction and wildfire mitigation efforts in its service area. EBMUD also engages through its role in the Upper Mokelumne River Watershed Authority (UMRWA) on issues related to forest health and wildfire resilience.

Climate change discussions are expected to continue in 2023 and will likely include the areas covered above as well as other issues of interest to EBMUD such as water/energy nexus, workforce transition, renewable energy, grid reliability, electrification, carbon neutrality, greening of vehicle fleets and expansion of charging infrastructure, improving habitat and access for salmon, and responding to sea level rise.

NEXT STEPS

Staff will continue to advance EBMUD's climate change related interests as detailed below.

1. Continue to monitor discussions and evaluate legislation with particular attention on those areas that have a direct nexus to EBMUD operations and EBMUD's Climate Action Plan and bring specific legislative proposals to the Board for discussion and consideration, as appropriate.
2. Continue to actively engage with the legislature on wildfire and forest resilience and bring specific legislative proposals to the Board for discussion and consideration, as appropriate, including potential opportunities for EBMUD to engage in tree mortality discussions, as well as opportunities for EBMUD to engage through its role in the Upper Mokelumne River Watershed Authority.

INITIATIVE #2 – CUSTOMER ASSISTANCE: SEEK CONSTRUCTIVE WAYS TO ADVANCE EBMUD'S INTERESTS AS THE ADMINISTRATION AND THE LEGISLATURE CONSIDER WAYS TO PROVIDE ASSISTANCE TO WATER AND WASTEWATER CUSTOMERS

The administration and legislature are expected to resume discussions on establishing a permanent ratepayer assistance program for low-income water and wastewater customers, as well as how to provide greater protections to customers facing water shutoffs due to non-payment by expanding the scope of the Water Shutoff Protection Act (SB 998, Dodd, 2018).

BACKGROUND

Numerous state budget actions in 2021 came in the form of providing pandemic relief – financial assistance to those who were struggling to pay bills due to the impacts of COVID-19 – and such efforts continued in 2022. The legislature and administration considered the creation of a permanent ratepayer assistance program for low-income water and wastewater customers through SB 222 (Dodd), which was vetoed due to lack of identified ongoing funding source. The legislature and administration are expected to continue discussing low-income ratepayer assistance, as well as the expansion of protections for customers facing water shutoffs due to non-payment.

State Budget Actions

To address ongoing water and wastewater arrearages that customers accrued during the COVID-19 pandemic, the state budget included \$200 million for the Low-Income Household Water Assistance Program (LIHWAP). Combined with \$116 million provided by the federal government, total LIHWAP funding is \$316 million. The California Department of Community Services and Development launched LIHWAP in June of 2022. To date, EBMUD has received approximately \$310,000 on behalf of customers that have applied for one-time financial assistance through LIHWAP.

Legislative Actions

SB 222 (Dodd) would have required the State Water Resources Control Board (SWRCB) to develop and administer the Water Rate Assistance Program (Program) to provide water rate assistance for both drinking water and wastewater services to low-income residential ratepayers. After numerous rounds of amendments by the author, EBMUD's final position on the measure, adopted in July 2022, was "Support if Amended" to seek clarity in three areas: 1) clarify state and water system roles and obligations; 2) address Proposition 218 and 26 limitations for water systems and require full state funding; and 3) ensure equitable access to the Program for any low-income customer that meets the required eligibility in the bill.

Governor Newsom vetoed the bill, noting that it would have created a permanent program with no sustainable, ongoing funding source identified, and would have required all community water systems and wastewater systems to participate which would have resulted in significant General Fund pressures. Discussions about a permanent rate-payer assistance program for water and wastewater customers are expected to continue in 2023.

SB 998 (Dodd, 2018) established the Water Shutoff Protection Act to require all public water systems with more than 200 connections to have a written policy on discontinuation of residential water service, provide that policy in multiple languages, prohibit shutoffs for certain customers, prohibit the shutoff of water service until a bill has been delinquent for 60 days, and capped the reconnection fees for restoring water service. Efforts to expand the scope of the Act through SB 223 (Dodd, 2021) stalled in the legislature, but are expected to resume in 2023.

NEXT STEPS

In 2023, EBMUD will continue to identify ways to support customers through legislative efforts and protect the District's Customer Assistance Program (CAP).

1. As discussions on ratepayer assistance and shutoff protections occur at the legislative and administration levels, continue to engage and share information on EBMUD's CAP and alternative to shutoffs policy to help shape future programs. Promote and protect EBMUD's local efforts to ensure customers have access to a range of financial assistance programs in meeting their needs, as appropriate.
2. Bring relevant legislative proposals to the Board for discussion and consideration, as appropriate.

INITIATIVE # 3 – DIVERSITY, EQUITY, AND INCLUSION: ADVANCE EBMUD’S DEI INTERESTS AS THE LEGISLATURE AND ADMINISTRATION CONTINUE TO CONSIDER DEI ISSUES IN THE CONTEXT OF POLICY DEVELOPMENT

Diversity, equity, and inclusion (DEI) will continue to be a focus area for the administration and the legislature in 2023, as well as for the District.

BACKGROUND

In 2022, the legislature considered DEI in several areas, including workforce diversity and workforce development programs, and ways to leverage state funding to enhance diversity and equity goals. Legislative efforts created oversight at the state level of California’s workforce transition to a sustainable and equitable carbon neutral economy, including the goal to upskill workers for clean energy jobs and jobs in related fields, and expanded the scope of the state’s Community Economic Resilience Fund to include career pathways for individuals with less than a two-year degree.

In February 2022, the EBMUD Board approved the Diversity, Equity, and Inclusion Strategic Plan, a five-year plan which is centered around five strategic pillars including leadership commitment, workforce diversity, inclusive culture, supplier diversity, and social responsibility.

NEXT STEPS

In 2023, the legislature is likely to broadly discuss ways to address diversity, equity, and inclusion through policy changes as well as by providing limited funding opportunities in areas that may be aligned with the District’s DEI Strategic Plan, such as promoting workforce development and workforce diversity.

1. Seek opportunities to advance District interests in policy and funding discussions that support the objectives of the DEI Strategic Plan and bring relevant legislative proposals to the Board for discussion and consideration, as appropriate.

INITIATIVE #4 – WATER QUALITY: ADVANCE EBMUD’S INTERESTS IN LEGISLATIVE AND POLICY DISCUSSIONS ON WATER QUALITY ISSUES

The issue of water quality from both a drinking water and wastewater discharge receiving water standpoint will likely be a topic of discussion in the administration and legislature in 2023.

BACKGROUND

Administrative and legislative discussions on water quality issues have been ongoing and are expected to continue in 2023. Discussions and policy proposals will likely include perfluoroalkyl or polyfluoroalkyl substances (PFAS), nutrients, and other contaminants of emerging concern.

In recent years, the administration and legislature have largely focused on perfluoroalkyl or polyfluoroalkyl substances (PFAS). The State Water Resources Control Board has established monitoring requirements to better understand where and how much PFAS are present in drinking water supplies and wastewater discharges throughout the state. Legislative efforts have focused on taking a pollution prevention approach to PFAS. Successful legislative measures have narrowly sought to reduce or eliminate the use of PFAS in specific products while a more comprehensive approach to address PFAS remains elusive.

In addition to PFAS, the administration and the legislature will likely discuss the issue of nutrients, especially in the context of wastewater discharges to receiving waters. During the summer of 2022, a harmful algal bloom (HAB) or “red tide” and extensive fish die off occurred in the San Francisco Bay. Though the specific conditions that caused this HAB are unknown, the issue of nutrients in the San Francisco Bay has been highlighted as a contributing factor. Administrative and legislative discussions will likely focus on nutrient discharge limits or caps that would affect wastewater agencies.

Administrative and legislative discussions regarding PFAS, nutrients, and other water quality issues have the potential to affect EBMUD’s water and wastewater operations.

NEXT STEPS

While it is unclear at this time what the universe of water quality-related legislation in 2023 will include, it is likely that water quality from both a drinking water and wastewater discharge receiving water perspective will be a topic of discussion in the administration and the legislature.

1. Actively engage with the legislature and stakeholders on water quality issues, including in relevant funding discussions, as appropriate.
2. Continue to evaluate legislation and bring specific legislative proposals to the Board for discussion and consideration, as appropriate.

INITIATIVE #5 - WATER SUPPLY RELIABILITY AND RESILIENCY: PROTECT AND ADVANCE EBMUD'S INTERESTS IN THE CONTEXT OF ITS WATER SUPPLY RELIABILITY AND RESILIENCY, INCLUDING THE USE OF RECYCLED WATER, WATER RIGHTS, AND THE MOKELUMNE RIVER FISHERY

Water supply reliability and resiliency, as well as related topics such as water rights and Bay-Delta issues, will likely be key focus areas for the administration and legislature in 2023.

BACKGROUND

Water supply related policy discussions in 2023 are likely to focus on water supply, water use efficiency, and water rights, among other topics. Discussions are expected to be informed by three main factors – the current drought, the administration's efforts to update the Bay-Delta Water Quality Control Plan, and the governor's August 2022 "California Water Supply Strategy."

California is possibly entering the fourth year of extreme drought. According to the Department of Water Resources, California experienced its driest January through April on record in 2022 with only 25 percent of the average statewide precipitation based on records dating back to 1895. The National Oceanic and Atmospheric Administration expects drier than average conditions in California to extend into 2023. EBMUD is currently in a Stage Two Significant Drought. In addition to requiring customers to reduce water use, EBMUD has procured additional water supplies and is planning to procure further supplemental water supplies if 2023 remains dry. As the drought continues in California and the West, the legislature and the administration will likely consider water supply-related measures including, but not limited to, water use efficiency, water recycling, and water rights.

The State Water Resources Control Board's update of the Bay-Delta Water Quality Control Plan (Bay-Delta Plan) has the potential to impact EBMUD's water supply reliability and the Mokelumne River fishery. EBMUD continues to engage in discussions with the administration on the update to the Bay-Delta Plan. In 2023, legislative discussions pertaining to the Bay-Delta Plan could occur. Any legislation in this area has the potential to affect access to water supplies, the Mokelumne River fishery, and may have implications for water rights.

In August 2022, Governor Newsom's administration released a new report titled California's Water Supply Strategy (Strategy) which outlines priority actions to increase water supply in response to more extreme weather patterns caused by climate change. The Strategy identifies four categories for action: 1) develop new water supplies through recycling and desalination; 2) capture and save more stormwater, above and below ground; 3) reduce use of water in cities and on farms; and 4) improve all water management actions with better data, forecasting, conveyance, and improved administration of water rights. Issues of specific interest in the Strategy to EBMUD include increasing recycling of wastewater otherwise discharged to oceans and modernizing the administration of water rights. It is likely that legislative and administrative discussions will focus on how to accelerate implementation of the report's recommendations.

NEXT STEPS


Water supply and reliability will likely continue to be a topic of discussion for the legislature and administration in 2023, especially if the state experiences another dry year. Staff will continue to work to protect and advance EBMUD's interests, particularly in the context of EBMUD's water supply reliability and resiliency, including the use of recycled water, water rights, and the Mokelumne River fishery.

1. Continue to actively seek opportunities to engage with the administration and legislature to provide EBMUD's perspective on potential legislation that could impact EBMUD's water supply reliability and resiliency, including the use of recycled water, water rights, and the Mokelumne River fishery and bring specific legislative proposals to the Board for discussion and consideration, as appropriate.

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 5, 2023

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager 

FROM: Kathy Viatella, Manager of Legislative Affairs

SUBJECT: Federal Initiatives for 2023

The following issues are being referred to the Legislative/Human Resources Committee for review and recommendation to the Board of Directors for action, as appropriate, on January 10, 2023.

BACKGROUND

Each year the Office of Intergovernmental Affairs develops specific initiatives for the coming year. The initiatives represent important focus areas for EBMUD that are likely to come before Congress. In addition to these specific initiatives, staff will assess federal actions throughout the year for a nexus to EBMUD operations and policy objectives and will bring relevant items to the Board for consideration as appropriate. An overview of the current federal climate and a summary of the four initiatives are included below. The attachment provides greater detail about each initiative.

OVERVIEW

The 118th Congress convened on January 3, 2023, with a closely divided House and Senate, which will likely complicate the policymaking process. With respect to matters of interest to EBMUD, the 118th Congress is likely to focus on climate resilience, water quality, infrastructure spending oversight, and water supply reliability and natural resources protection.

The Biden administration will continue implementing its climate agenda, including distributing project funding. On the regulatory front, the Biden administration is expected to continue to advance environmental justice, protect natural resources, reduce drought impacts, and focus on assistance to economically disadvantaged communities. Within these broad priorities, Congress is expected to consider several issues relevant to EBMUD's operations and policy objectives including climate change resiliency, perfluoroalkyl or polyfluoroalkyl substances (PFAS), infrastructure funding for drought-related projects, and implementation of the Build America Buy America mandates.

EBMUD's 2023 federal initiatives have been developed based on known congressional priorities at this time and are consistent with EBMUD's mission to provide reliable, high-quality water and

wastewater services, and to preserve and protect the environment for future generations. The federal initiatives are focused on addressing areas of opportunity, need, and risk for EBMUD in the context of the Biden administration's and expected congressional priorities.

NEXT STEPS

For 2023, the Office of Intergovernmental Affairs is proposing four federal initiatives listed in alphabetical order below and in the summary table. Detailed evaluations of each initiative are included in the attachment.

1. Climate Change Resiliency – Actively assess and seek opportunities to engage in climate change policies and potential funding opportunities that promote EBMUD priorities to ensure safe, reliable, and resilient water and wastewater services.
2. Infrastructure and Other Funding Assistance – Advance EBMUD's funding needs through relevant programmatic funding opportunities and congressionally directed spending, as appropriate.
3. Water Quality – Monitor the development of relevant water quality-related legislation and policies at the federal level and work to ensure EBMUD's interests are effectively communicated, including through appropriate national associations.
4. Water Supply Reliability and Natural Resources Protection – Advance EBMUD's interests in water supply reliability and supporting the Mokelumne River fishery.

In addition to the issues discussed above, staff will continue to monitor the development of any cybersecurity-related legislation and policies at the federal level for the water and wastewater sectors, and work to ensure EBMUD's interests are effectively communicated.

Federal Initiative	2023 RECOMMENDATIONS
1. Climate Change Resiliency	<p><u>Proceed</u> - Actively assess and seek opportunities to engage in climate change policies and potential funding opportunities that promote EBMUD priorities to ensure safe, reliable, and resilient water and wastewater services.</p> <ol style="list-style-type: none"> 1. Seek programmatic funding opportunities consistent with EBMUD's Climate Action Plan to mitigate and adapt to climate change. 2. Pursue opportunities to advance EBMUD's interests in efforts to address forest and watershed health and wildfire prevention and response, and identify potential opportunities for EBMUD to engage, particularly on federal lands and through its role in the Upper Mokelumne River Watershed Authority (UMRWA). 3. Support expanded federal grants assistance to encourage water and wastewater sector workforce development and transition.
2. Infrastructure and Other Funding Assistance	<p><u>Proceed</u> - Advance EBMUD's funding needs through relevant programmatic funding opportunities and congressionally directed spending, as appropriate.</p> <ol style="list-style-type: none"> 1. Continue to advance EBMUD's comprehensive water and wastewater infrastructure funding needs via federal funding opportunities, including programmatic funding. 2. Pursue additional opportunities for congressionally directed spending and/or seek funding off existing authorizations for EBMUD projects, as appropriate. 3. Actively monitor ratepayer assistance discussions and bring relevant legislative proposals to the Board for discussion and consideration, as appropriate.
3. Water Quality	<p><u>Proceed</u> - Monitor the development of relevant water quality-related legislation and policies at the federal level and work to ensure EBMUD's interests are effectively communicated, including through appropriate national associations.</p> <ol style="list-style-type: none"> 1. Continue to work through relevant water and wastewater industry associations to ensure appropriate standards are established under the Safe Drinking Water Act; Clean Water Act; and Superfund Act and to support efforts to eliminate the use of PFAS, establish producer responsibility, and seek expanded federal assistance for PFAS treatment in the water and wastewater sectors, as appropriate. 2. Pursue opportunities to advance EBMUD's interests in potential nutrient-related discussions, including in relevant funding discussions, as appropriate.

4. Water Supply Reliability and Natural Resources Protection	Proceed - Advance EBMUD's interests in water supply reliability and supporting the Mokelumne River fishery. <ol style="list-style-type: none">1. Protect EBMUD's Mokelumne River water supplies and seek to preserve EBMUD's access to water transfers and its Central Valley Project (CVP) contract supplies.2. Protect the Mokelumne River fishery, including working to ensure that any policy or program revision, or project or project-related activity that is likely to affect the Mokelumne River fishery includes mitigation for the impacts by the responsible parties.3. Work with other Municipal and Industrial (M&I) CVP contractors to safeguard CVP policies that support M&I contractors, including access to adequate water supplies.4. Protect EBMUD's regional water supply programs and projects, including the Freeport Regional Water Project.
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Attachment

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FEDERAL INITIATIVES – 2023

INITIATIVE #1: CLIMATE CHANGE RESILIENCY

Congress and the Biden administration will continue to focus on climate change in 2023, although no meaningful climate bills are expected to pass in the next two years given the divided Congress. Implementation of the Inflation Reduction Act (IRA), signed into law in August 2022, is ongoing and directs several billion dollars to support states' climate efforts, including funds for building electrification, energy efficiency initiatives, and heavy-duty zero emission vehicles and charging infrastructure. Although the breadth and scope of climate change and resiliency discussions are not yet clear at the congressional level, topics relevant to EBMUD such as water supply reliability, fisheries, infrastructure, forest and watershed health, wildfire prevention and response, renewable energy, and workforce transition and development viewed through the lens of climate change are likely.

EBMUD's Climate Action Plan adopted in 2021 and relevant policies seek to mitigate and adapt to climate change impacts. EBMUD is committed to making water operations carbon neutral by 2030 and eliminating indirect greenhouse gas emissions and reducing direct emissions by 50 percent for the wastewater system by 2040. Mitigation strategies include continuing to conserve water, to pursue greening EBMUD's vehicle fleet, and to increase the use of renewable energy through the District's own generation of electricity from hydropower, solar and biogas. EBMUD's adaptation strategies include diversification of water supplies, enhanced water quality and ecosystem protection, and investment in resilient infrastructure to augment responses to sea level rise, floods, changes in water quality, and drought conditions. There may be programmatic funding opportunities for EBMUD's mitigation and adaptation strategies.

To address wildfire prevention and response, the U.S. Forest Service (Forest Service) released a plan in January 2022 entitled "Confronting the Wildfire Crisis: A 10-Year Implementation Plan" that seeks to reduce wildfire risk to people, communities, and natural resources through fuels and forest health treatments over the next ten years. Numerous high-risk areas in California were identified in the plan, including the Mokelumne River watershed. Although the Forest Service selected ten initial landscape investments in eight states for Bipartisan Infrastructure Law (BIL) funding in 2022 not including the Mokelumne, there may be opportunities for funding fuels and forest health treatment projects in future rounds of BIL investments.

EBMUD continues to work through the Upper Mokelumne River Watershed Authority (UMRWA) on forest health in the Mokelumne River watershed. UMRWA will continue to pursue grant funding and, when grants are secured, administer and implement those grant projects. There may be federal funding opportunities for these types of projects as well as those in EBMUD's service area, including tree mortality and wildland urban interface projects.

As part of climate change discussions, Congress is expected to continue to consider ways to expand workforce development and workforce transition programs to support the zero- or low-level carbon emissions technologies and industries of importance to the water sector.

NEXT STEPS

Work with EBMUD's congressional delegation, the administration, relevant congressional committees, and other stakeholders, as appropriate, to:

1. Seek programmatic funding opportunities consistent with EBMUD's Climate Action Plan to mitigate and adapt to climate change.
2. Pursue opportunities to advance EBMUD's interests in efforts to address forest and watershed health and wildfire prevention and response; and identify potential opportunities for EBMUD to engage, particularly on federal lands and through its role in UMRWA.
3. Support expanded federal grants assistance to encourage water and wastewater sector workforce development and transition.

INITIATIVE #2: INFRASTRUCTURE AND OTHER FUNDING ASSISTANCE

The 117th Congressional session was marked by historic levels of multi-year funding, including through the American Rescue Plan Act (ARPA), the Bipartisan Infrastructure Law (BIL), and the Inflation Reduction Act (IRA). In the 118th session, the divided Congress is unlikely to agree on additional large infrastructure funding packages.

ARPA, signed into law in March of 2021, was a \$1.9 trillion coronavirus aid package that included \$43 billion for California with \$27 billion to the state and the remainder for cities and counties to use for COVID-19 budgetary expenses in addition to necessary water and sewer projects.

BIL, signed into law in November 2021, was a \$1.2 trillion measure that funded all types of infrastructure projects including water and wastewater and contained \$550 billion in additional funding for the U.S. Environmental Protection Agency (U.S. EPA), U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers to be administered through existing programs over the next five years. IRA, signed into law in August 2022, directed several billion dollars to support states' climate and clean energy efforts. Opportunities may arise to apply for programmatic grant funding through BIL and IRA for the advancement of EBMUD's comprehensive water and wastewater funding needs and climate-related activities.

The 117th Congress saw a return to congressionally directed spending, otherwise known as earmarks, after a long absence. EBMUD advanced its Upper San Leandro Drinking Water Treatment Improvements project, which was included as part of the FY 2022 spending bill package at a \$3.5 million funding level. EBMUD also pursued an appropriation as part of the 2023 spending bill for the East Bayshore Emeryville-Albany recycled water pipeline project, through an existing \$25 million authorization in the 2007 Water Resources Development Act for recycled water treatment facilities within the EBMUD service area. Representative Barbara Lee

sponsored the request, which was included in the FY 2023 Omnibus spending bill package and signed into law by President Biden on December 29, 2022.

Congressionally directed spending is likely to continue in the 118th Congress although the process between the two houses and funding levels are currently unclear.

Congressional interest in providing rate assistance for low-income water and wastewater customers was high during the 117th Congress. ARPA and H.R. 133 (December 2020) contained \$500 million and \$638 million nationwide, respectively, for establishment of the Low-Income Household Water Assistance Program (LIHWAP). LIHWAP was rolled out in California in June 2022 to reduce arrearages and rates to low-income households. BIL established a Rural and Low-Income Customer Assistance Pilot Program, to provide 40 grants per year to utilities to assist low-income ratepayers but did not include corresponding funding for the U.S. EPA to implement the pilot. EBMUD will continue to actively monitor these efforts in the context of a federally funded permanent rate assistance program for drinking water and wastewater services.

NEXT STEPS

Staff will continue to communicate to EBMUD's congressional delegation the importance of EBMUD projects and how those projects and the local communities would benefit from funding.

1. Continue to advance EBMUD's comprehensive water and wastewater infrastructure funding needs via federal funding opportunities, including programmatic funding.
2. Pursue additional opportunities for congressionally directed spending and/or seek funding from existing authorizations for EBMUD projects, as appropriate.
3. Actively monitor ratepayer assistance discussions and bring relevant legislative proposals to the Board for discussion and consideration, as appropriate.

INITIATIVE #3: WATER QUALITY

Water quality issues are expected to be a topic of discussion for the 118th Congress and the Biden administration. Discussions may include topics such as perfluoroalkyl or polyfluoroalkyl substances (PFAS) in drinking water supplies, wastewater discharges and biosolids; nutrient loadings; and contaminants of emerging concern. The U.S. Environmental Protection Agency (U.S. EPA) continues to implement its 2021 PFAS Strategic Roadmap (Roadmap) with the issuance of PFAS health advisories for drinking water and a proposal to designate PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (known as Superfund). The U.S. EPA is expected to continue its efforts to implement the Roadmap in 2023. It is also likely that Congress will consider PFAS-related legislation, such as designation of PFAS as hazardous substances under Superfund and source control measures.

In addition to PFAS, the issue of nutrients, especially in the context of wastewater discharges to receiving waters, could garner Congressional and administration attention. During the summer of 2022, a harmful algal bloom (HAB) or “red tide” and extensive fish die off occurred in the San Francisco Bay. Though the specific conditions that caused this HAB are unknown, the issue of nutrients in the San Francisco Bay has been highlighted as a contributing factor. Any potential congressional or administrative discussions would likely focus on nutrient discharge limits or caps that would affect wastewater agencies.

Administrative and legislative discussions regarding PFAS, nutrients, and other water quality issues have the potential to affect EBMUD’s water and wastewater operations. For example, designating PFAS as hazardous substances could impact wastewater treatment facilities, such as EBMUD’s, by requiring that biosolids containing PFAS be considered hazardous waste and disposed of as such. The hazardous waste designation would also potentially subject wastewater treatment facilities to liability for PFAS present in biosolids.

NEXT STEPS

Staff will monitor the development of water quality-related legislation and policies at the federal level and work to ensure EBMUD’s interests are effectively communicated, including through appropriate national associations.

1. Continue to work through relevant water and wastewater industry associations to ensure appropriate standards are established under the Safe Drinking Water Act; Clean Water Act; and Superfund; and to support efforts to eliminate the use of PFAS, establish producer responsibility, and seek expanded federal assistance for PFAS treatment in the water and wastewater sectors, as appropriate.
2. Pursue opportunities to advance EBMUD’s interests in potential nutrient-related discussions, including in relevant funding discussions, as appropriate.

INITIATIVE #4: WATER SUPPLY RELIABILITY AND NATURAL RESOURCES PROTECTION

Water resources issues are expected to be part of the 118th congressional agenda as drought conditions persist across the West. Issues of direct relevance to EBMUD may include Central Valley Project (CVP) operations, CVP allocations, drought response, fishery and habitat restoration and protection, and actions related to the state’s implementation of the Bay-Delta Water Quality Control Plan.

NEXT STEPS

Staff will work to:

1. Protect EBMUD's Mokelumne River water supplies and seek to preserve EBMUD's access to water transfers and its CVP contract supplies.
2. Protect the Mokelumne River fishery, including working to ensure that any policy or program revision, or project or project-related activity that is likely to affect the Mokelumne River fishery includes mitigation for the impacts by the responsible parties.
3. Work with other Municipal and Industrial (M&I) CVP contractors to safeguard CVP policies that support M&I contractors, including access to adequate water supplies.
4. Protect EBMUD's regional water supply programs and projects, including the Freeport Regional Water Project.

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ITEM 9

CORONAVIRUS UPDATE

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AS AN ORAL REPORT

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ITEM 9

WATER SUPPLY UPDATE


WILL BE PROVIDED
AS AN ORAL REPORT


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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 10, 2023

TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager 

FROM: Rischa S. Cole, Secretary of the District 

SUBJECT: Six-Month Forecast of Board Committee and Workshop Agenda Topics for 2023
and Summary of 2022 Committee and Workshop Topics

The attached tables provide a prospective and a retrospective look at Board committees and workshops. The first table provides a forecast for January 2023 through June 2023, identifying items staff proposes to bring before committees, as well as upcoming workshops and events. The second table lists items presented to Board committees, as well as workshops and events, held between August 2022 and December 2022.

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Attachments

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2023 BOARD COMMITTEES AND WORKSHOPS FORECAST (January - June)

	Planning 2nd Tuesdays	Leg/HR 2nd Tuesdays	Finance 4th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
JANUARY	<ul style="list-style-type: none"> • Wildcat Pumping Plant Project Update and Availability of the Draft Mitigated Negative Declaration • Quarry Site Restoration Project Update and Availability of the Draft Environmental Impact Report • Fiscal Year 2022 Annual Readiness Report 	<ul style="list-style-type: none"> • Diversity, Equity, and Inclusion Strategic Plan • State Legislative Initiatives for 2023 • Federal Initiatives for 2023 	<ul style="list-style-type: none"> • Monthly Investment Transactions Reports • Quarterly Investment Report – Dec. 31, 2022 • Quarterly Payroll/Disbursement/Real Estate Summary Report – Dec. 31, 2022 • Revisions to District Policies 	<i>Tentatively cancelled</i>	<ul style="list-style-type: none"> • Los Vaqueros Reservoir JPA (1/11) • FRWA (1/12 - Cancelled) • DERWA (1/23 – Cancelled) • Retirement Board (1/19) • FY 2024/2025 Budget Workshop No. 1 (1/24) • UMRWA (1/27) • DERWA Special Meeting (1/30)
FEBRUARY	<ul style="list-style-type: none"> • Willow Service Center Project Update • GreenGen Pumped Storage Project Update • Trail Pilot Program • RCO Semi-Annual Report 	<ul style="list-style-type: none"> • Diversity, Equity, and Inclusion Strategic Plan • Legislative Update 	<ul style="list-style-type: none"> • Monthly Investment Transactions Report • FY 2023 Semi-Annual Budget Performance Report • Annual Update on Employee Retirement System • Semi-Annual Internal Audit Report 	No meeting	<ul style="list-style-type: none"> • FRWA (2/8) • Los Vaqueros Reservoir JPA (2/8) • Customer Assistance Program Workshop (2/14) • Long-Term Water Supply Workshop (2/28)

	Planning 2nd Tuesdays	Leg/HR 2nd Tuesdays	Finance 4th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
MARCH	<ul style="list-style-type: none"> Annual Water Quality Update Pretreatment and Pollution Prevention Program Update 	<ul style="list-style-type: none"> Diversity, Equity, and Inclusion Strategic Plan Legislative Update 	<ul style="list-style-type: none"> Monthly Investment Transactions Report Adopt Actuarial Valuations of the Retirement System and Set Contribution Rates 	No meeting	<ul style="list-style-type: none"> Los Vaqueros Reservoir JPA (3/8) Retirement Board (3/16) FY 2024/2025 Budget Workshop No. 2 (3/28)
APRIL	<ul style="list-style-type: none"> Annual Recreation Report Salmon Briefing 	<ul style="list-style-type: none"> Diversity, Equity, and Inclusion Strategic Plan Legislative Update 	<ul style="list-style-type: none"> Monthly Investment Transactions Report Quarterly Investment Report – March 31, 2023 Quarterly Payroll/Disbursement/ Real Estate Summary– March 31, 2023 Investment Policy Review 	<ul style="list-style-type: none"> Renewable Energy Greenhouse Gas Inventory Annual Integrated Pest Management Update 	<ul style="list-style-type: none"> Special FY 2024/2025 Budget Workshop No. 3 (4/4) Los Vaqueros Reservoir JPA (4/13) FRWA (4/13) DERWA (4/24) UMRWA (4/28)
MAY	<ul style="list-style-type: none"> Paving and Other Related Services 	<ul style="list-style-type: none"> Diversity, Equity, and Inclusion Strategic Plan Legislative Update 	<ul style="list-style-type: none"> Monthly Investment Transactions Report 	No meeting	<ul style="list-style-type: none"> Los Vaqueros Reservoir JPA (5/10) Retirement (5/18)
JUNE	<i>No items scheduled at this time</i>	<ul style="list-style-type: none"> Diversity, Equity, and Inclusion Strategic Plan Legislative Update 	<ul style="list-style-type: none"> Monthly Investment Transactions Report 	No meeting	<ul style="list-style-type: none"> Los Vaqueros Reservoir JPA (6/14)

2022 BOARD COMMITTEES AND WORKSHOPS SUMMARY (August – December)

	Planning 2nd Tuesdays	Leg/HR 2nd Tuesdays	Finance/Administration 4th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
AUGUST	<ul style="list-style-type: none"> • Dam Safety Program Report • Update on Recycled Water Opportunities with Central Contra Costa Sanitary District 	<ul style="list-style-type: none"> • Diversity, Equity, and Inclusion Strategic Plan Update 	<ul style="list-style-type: none"> • Monthly Investment Transactions Reports • Quarterly Payroll, Disbursement, Real Estate Summary – June 30, 2022 • Quarterly Investment Report – June 30 2022 • Foreign-Owned Business Policy • Annual Internal Audit Report • Applicant Project Process 	No meeting	<ul style="list-style-type: none"> • Los Vaqueros Reservoir JPA (8/10)
SEPTEMBER	<ul style="list-style-type: none"> • Water Quality Semi-Annual Update 	<i>Cancelled</i>	<ul style="list-style-type: none"> • Monthly Investment Transactions Report • Fiscal Year 2023 Insurance Summary • Proposed Fiscal Year 2023 Financing Plan • Revision to District Policies 	No meeting	<ul style="list-style-type: none"> • EBMUD/EBRPD Liaison Committee (9/13) • Los Vaqueros Reservoir JPA (9/14) • Retirement Board (9/22) • DERWA (9/26)

	Planning 2nd Tuesdays	Leg/HR 2nd Tuesdays	Finance/Administration 4th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
OCTOBER	<i>Cancelled</i>	<ul style="list-style-type: none"> • Diversity, Equity, and Inclusion Strategic Plan Update 	<ul style="list-style-type: none"> • Fiscal Year 2022 Key Performance Indicators Report • Fiscal Year 2022 Annual Power Sales Report • Monthly Investment Transactions Report • Quarterly Investment Report – September 30, 2022 • Quarterly Payroll, Disbursement, Real Estate Summary – September 30, 2022 	<ul style="list-style-type: none"> • Resource Recovery Program Update • Renewable Energy Update • Calendar Year 2021 Greenhouse Gas Inventory 	<ul style="list-style-type: none"> • UMRWA (10/7) • Infrastructure Workshop (10/11) • Los Vaqueros Reservoir JPA (10/12) • FRWA (10/13 – Cancelled) • District Projects Tour (10/18)
NOVEMBER	<ul style="list-style-type: none"> • Local Hazard Mitigation Plan • Wet Weather Update • Paving and Other Related Services 	<ul style="list-style-type: none"> • Diversity, Equity, and Inclusion Strategic Plan Update 	<ul style="list-style-type: none"> • Monthly Investment Transactions Report • Financial Review Fiscal Year 2022 • Revisions to District Policies • Employee Reimbursements of at Least \$100 (AB 1542) – June 30, 2022 	No meeting	<ul style="list-style-type: none"> • Los Vaqueros JPA (11/9) • Retirement Board (11/17)


	Planning 2nd Tuesdays	Leg/HR 2nd Tuesdays	Finance/Administration 4th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
DECEMBER	<ul style="list-style-type: none"> • Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Project Update • Upper San Leandro Water Treatment Plant Maintenance and Reliability and Upper San Leandro and Sobrante Water Treatment Plants Chemical Systems Safety Improvements Project Update • Update on Oursan Ridge Conservation Bank • Advanced Metering Infrastructure Business Case Evaluation 	<ul style="list-style-type: none"> • Diversity, Equity, and Inclusion Strategic Plan Update 	<ul style="list-style-type: none"> • Special Meeting – Winter New Development Forum (12/15) 	No meeting	Los Vaqueros Reservoir JPA (12/14)

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 10, 2023

MEMO TO: Board of Directors

FROM: Clifford C. Chan, General Manager 

SUBJECT: 2022 Interdepartmental Committees Annual Reports

SUMMARY

EBMUD Interdepartmental Committees oversee, review, and coordinate issues related to various District functions. As part of their ongoing duties, these committees report their activities annually to the General Manager. Below is a list of the 2022 committees and their Chair(s).

- Art Committee, Charmin Baaqee, Chair
- Consultant Contract Negotiations Committee, Hasan Abdullah, Chair
- Diversity Committee, Jennella Sambour-Wallace and Katherine Tate, Co-Chairs
- Internal Contract Equity Advisory Committee, Beverly Johnson, Chair
- Pipe Committee, Carlton Chan, Chair
 - Material Review Committee, Kelley Smith, Chair
- Sustainability Committee, Chandra Johannesson and Alice Towey, Co-Chairs
- Water Quality Committee, Susan Teefy, Chair
- Water Resources Committee, Lena Tam, Chair (*retired*)

The 2022 reports summarizing the objectives, accomplishments, and future work plans of each committee are attached for your information.

CCC:jmj

Attachments (9)

I:\SEC\2023 Board Related Items\011023 Board Items\OGM – 2022 Interdepartmental Committees Annual Reports.docx

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ART COMMITTEE ANNUAL REPORT - 2022

Formed in 1993, the EBMUD Art Committee meets quarterly to coordinate the exhibition of local artists at District's art gallery located on the 2nd floor of the Administration Building. The committee consists of eight members drawn from different professions and positions within the District. The committee is chaired by Charmin Baaqee, Assistant Engineer.

The Art Committee mounts approximately seven exhibits each year. Three of the exhibits are coordinated in conjunction with the month-long celebrations of Hispanic heritage, Black history and Asian American heritage. On alternate years, one of the regular exhibits showcases the creations of EBMUD employees in what is known as the EBMUD Employee Arts Biennale. This year marked the second year of the COVID-19 pandemic and the Alameda County Shelter-In-Place mandate continued to result in the closure of the administrative offices to the general public and widespread telecommuting for District employees.

Additionally, the Art Committee sponsors an annual one-day Employee Arts and Crafts Fair highlighting the crafts produced by EBMUD employees. This year the event was cancelled due to Shelter-In-Place orders prompted by the COVID-19 pandemic. We are hopeful this event will return in late 2023.

Each of the seven week-long art exhibits is coordinated by one or two committee members with support from the entire committee. Responsibility for coordination is distributed amongst committee members so that each member works on one or two shows per year. Committee members are responsible for:

- Attending quarterly meetings where artwork is selected and scheduled, ideas for new shows are generated, and committee procedures and policies are discussed.
- Seeking out artists, reviewing submitted artwork, and communicating with artists and local art groups.
- Assuring that guidelines for the exhibits are provided to the artists, arranging legal agreements and protecting EBMUD from inappropriate liabilities.
- Coordinating design of invitations, artist statements, exhibit labels and podium materials. Postcard invitations to the exhibit and reception are provided to the artist, and are mailed to several news and community organizations.
- Coordinating delivery, hanging, and taking down of art exhibits (sometimes from multiple artists).
- Publicizing the shows in Zoe Lake, Wastewater Control Rep, through District email and posted to Splashpad, and through mailings.
- Coordinating, hosting, and arranging refreshments for artist receptions.

2022 Accomplishments

The Art Committee did not hold any regular meetings, but the Committee Chair presented information on membership opportunities during New Employee Orientation sessions. This year marked the second year of the COVID-19 pandemic and the Alameda County Shelter-In-Place mandate continued to result in the closure of the administrative offices to the general public and widespread telecommuting for District employees. Therefore, the Art Committee continued to postpone all exhibitions and Art Committee programs until further notice. Beginning January 2023, the District will reopen its facilities to the public, and the committee is hopeful that exhibitions and programming opportunities will resume late spring 2023.

2023 Work Plan

In 2023, the committee will continue focusing on how to resume exhibitions and re-envision local artist engagement, as District employees and the surrounding community eases back into planning and attending larger social events. The committee will be discussing alternative art programming strategies as well as additional health and safety guidelines that may be enacted once exhibit installations and in-person artist receptions resume. We understand that a revamp and/or safe continuance of the District's public art program will require interdepartmental collaboration and guidance. We are hopeful that as a collective, we can build an even better and more thoughtful program. Our commitment to the artist community remains intact and we look forward to helping the District extend an even longer reach, especially during a time when it is most needed.

We will continue to partner with Affinity Groups and the Office of Diversity, Equity, and Culture to ensure that Art Committee programming is inclusive and that District employees are aware of opportunities engage with and celebrate local artists. Proposed ideas include onboarding new members who work in offices outside of the administrative building and brainstorming ideas to make Art Committee events more accessible to everyone.

The District's centennial celebration will take place in 2023 and the committee is working with the Public Affairs Office to embed community focused art programming for the event.

Committee Members

Charmin Baaqee, Assistant Engineer, Chair
Julie Cadigan, Administrative Clerk
Rischa Cole, Secretary of the District
Anya Kamenskaya, Water Conservation Rep

Zoe Lake, Wastewater Control Rep
Andrea Pook, Senior Public Information Rep
Joey Smith, Water Conservation Tech

Adjunct members:

Jonathan Salmon, Assistant General Counsel, Legal Advisor
Michael Bergstrom, Senior Graphic Designer

CONSULTANT CONTRACT NEGOTIATIONS COMMITTEE ANNUAL REPORT - 2022

The Consultant Contract Negotiations Committee (CCNC) was formed in 1999 to coordinate District-wide engineering consultant procurement and contracting practices. The CCNC's purpose is to develop and implement District-wide practices for cost-effective engineering consultant contracting. Development and support of the Professional Services Consultant Roster (PSCR), previously known as the Engineering Consultant Roster (ECR), is one of the primary responsibilities of the CCNC. Providing support for the as-needed training of project managers in procuring, negotiating, and administering consultant contracts is another area of focus for the committee.

The CCNC meets on an ad-hoc basis to coordinate implementation of the current District-wide PSCR and plan for the development of the upcoming PSCR. In 2022, the committee members continued engagement with the Elsie Project Management Team regarding options to include tracking requirements in the new system. In 2023, the committee plans to continue work on evaluating the goals and objectives and implementing the PSCR program.

2022 Accomplishments

- Awarded 60 percent of PSCR contracts to Small Businesses and 31 percent of PSCR contracts to Local Businesses in 2022.
- Achieved 50 percent (3 of 6) utilization of the PSCR by District project managers for PSCR eligible contracts in 2022.

2023 Committee Work Plan/Goals

In 2023, the Committee has the following goals:

- Revise the current PSCR, including evaluation of expanding the number and types of disciplines to accommodate the potential need for increased professional services contracting opportunities starting in 2023.
- Continue work on the evaluation of PSCR goals and objectives, and how to update the PSCR process with input from Senior Management Team and stakeholders. Updates to the PSCR would reflect the District's current engineering contracting needs, current consultant landscape, District values, and contract equity objectives while being consistent with the District's Strategic Plan, forthcoming Diversity, Equity, and Inclusion Strategic Plan, and contracting codes.
- Continue to seek opportunities to improve performance for ethnic minority and women-owned firms (2022 actual level of participation was 86 percent for white men and 14 percent ethnic minority), including a system of prequalifying a larger number of firms for availability to provide engineering services on District projects.
- Develop professional services contracting out guidelines to include contract development, the contracting out process, negotiation of professional services agreements, and contract review and approval processes.

- Develop a custom report to be drawn from Elsie that will capture the data-points which are currently being compiled manually within the Consultant Agreement Spreadsheet History report.

Committee Members

- Kelley K. Smith, Manager of Purchasing
- Tony J. Montano, Manager of Facilities Maintenance and Construction
- Derek T. McDonald General Counsel
- Raffi J. Moughamian, Associate Civil Engineer
- Douglas Y. Higashi, Manager of Wastewater Engineering (*retired*)
- Beverly D. Johnson, Contract Equity Administrator (Roster Manager)
- Hasan M. Abdullah, Senior Civil Engineer (Chair)

DIVERSITY COMMITTEE ANNUAL REPORT – 2022

The Diversity Committee (DC), chartered in 2019, is responsible for ensuring continued progress toward implementation of the District's Diversity, Equity, and Inclusion Strategic Plan (DEISP) initiatives, with a focus on the DEISP Action Items/Action-Oriented Programs outlined in the annually updated Equal Employment Opportunity Program (EEOP).

The DC fosters an inclusive work environment that values the contributions of all District employees and workers. The goal of the DC is to help support a workforce that reflects and embraces all dimensions of diversity in the communities we serve including, but not limited to, gender, race, ethnicity, sexual orientation, physical ability, and veterans' status. The core principles of diversity, equity, and inclusion (DEI) stem from our resolve to engage, support and care for all individuals in our workforce on a human level and the recognition that DEI is fundamentally essential to thrive as individuals, as distinct work groups, and as an organization.

The DC acts as an advisory body to the Diversity and Inclusion Office, Office of Diversity, Equity and Culture (ODEC), and Senior Management Team (SMT). The DC advances the DEISP's Pillar 2 – Workforce Diversity Action Items/EEOP Action-Oriented Programs.

The DC will ensure that DEI activities are closely aligned with the District's Strategic Plan's goal to attract and hire quality candidates that reflect the diversity of our community and the DEISP's goal to attract and retain applicants from diverse and underrepresented groups that is equitably representative across all levels and functions. In its recommendations, the DC will take into account and seek to address the resource implications of these activities.

Objectives

- Encourage and support staff and Affinity Groups to partner with the District to recruit, develop and retain a diverse workforce by actively engaging in outreach, workforce development, retention, engagement, and inclusion activities.
- Support or collaborate with the DIO on related action plans and initiatives.
- Identify and address emerging issues that can improve the District's culture.
- Advise on the creation and implementation of best practices and new initiatives that promote DEI at the District.
- Visibly recognize and communicate DEI best practices achievements.

The DC consists of diverse employees from all levels of the organization, including subject matter experts (SMEs), and representatives from departments across the District and from the Affinity Groups. Meetings are quarterly per the DC Charter.

As the DEISP was being developed, many of the DC members were serving on the Equity Core Team to advise on the development of the Strategic Pillars and its related action items. There was also significant DC and Equity Core Team overlap in staffing for the Racial Equity and Justice (REJ) Strategy Task Forces, which was later incorporated into the DEISP and pilot

project teams. The DC as a whole has been briefed quarterly on DEISP processes and has provided regular input on the DEISP action items.

As the DEISP action items are being implemented, the responsibilities and objectives of the DC may be modified to allow for greater input and participation from the DC members in advising on DEISP updates.

2022 Accomplishments

DEISP

- Pilot Project teams defined projects for pilot-implementation of five key strategic initiatives: Hiring and Recruitment, Promotion & Retention, Contracting & Procurement, Capital Improvement Projects, and Community Engagement.
- The DEISP, which was developed with input from the DC, was approved by the Board on February 22, 2022.
- DC has developed outreach and in-reach strategies to support Pillar 2–Workforce Diversity, of the DEISP.
- DC completed a DEI foundational course and attended a DEI Roundtable session facilitated by a consultant in October 2022.

EEOP

- DC provided feedback and recommendations around implementation of the annual EEOP. In particular, they provided recommendations for addressing job groups with underutilization of minorities and/or women.

2023 Goals

- Develop 2023 workplan to be informed by the annual EEOP and the DEISP.
- Provide feedback and recommendations on updated EEOP goals/strategy.

Committee Members

- Executive Sponsor: Derry Moten, Special Assistant to the General Manager
- Chair: Jennella Sambour-Wallace, Manager of Diversity and Inclusion
- Co-Chair: Katherine Tate, Senior Human Resources Analyst
- Meeting Producer: Courtney Carlson, Human Resources Technician

Subject Matter Experts:

- Cindy Charan, Director of Human Resources
- Vincent James, Manager of Recruitment and Classification
- Jaisha White, ODEC/Employee & Organizational Development Representative

Department Representatives:

- *Vacant*, Wastewater Department
- Barry Gardin, Finance Department
- Scott Hill, Virginia Northrop, and Alberto Mendo, Natural Resources Department

- Latrice King, Customer & Community Services Department
- Sue Leiga, Information Systems Department
- Mario Soares, Operations & Maintenance Department
- Michiko Mares, Engineering & Construction Department

Affinity Group Representatives:

- Christian Narvaez, APEA Representative
- George Cleveland, Danny Pham, Raining Pride Representative
- Rischa Cole, Black Employee Network Representative
- Jose Lopez, Fuerza Latina Representative
- Max Fefer, Disability Advocacy & Rights Team Representative

Additional Invitees:

- EBMUD Toastmasters Representatives: Dawn Benson, Derek Pham
- EBMUD Sustainability Committee Representatives: Chandra Johannesson, Alice Towey
- EBMUD Values Advocates Representatives: Delorean Johnson
- EBMUD UDEA Representative: Dorothy Collier
- EBMUD Art Committee Representative: Charmin Baaqee

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INTERNAL CONTRACT EQUITY ADVISORY COMMITTEE ANNUAL REPORT – 2022

The Internal Contract Equity Advisory Committee was organized in 1990 to:

- Increase the effectiveness of the District's contracting diversity program
- Solicit District-wide input for Contract Equity (CE) Program and reporting enhancements
- Assist with monitoring the program's effectiveness

The committee typically convenes bi-annually to address contracting issues and/or other agencies contracting diversity and local hire initiatives that could positively impact the District's CE Program and the local business community. In 2022, the committee members continued engagement with Elsie, new financial information system, project manager regarding contract awards tracking and reporting requirements in the new system.

In 2023, the committee plans to investigate supplemental contract compliance software options and expansion of current prevailing wage certified payroll software tracking and reporting capabilities.

2022 Accomplishments

- Implemented new CE Program enhancements:
 - Updated on-call contract requirements to be more inclusive and less burdensome for small businesses
 - Reestablished Contract Equity External Advisory Council
- Promoted and participated in outreach activities:
 - Four business forums
 - Fifty-five community outreach events
- Promoting management and staff advocacy for the CE Program

2023 Work Plan/Goals

For 2023, the committee will continue to review and monitor contract participation and workforce utilization and recommend any newly identified initiatives to:

- Collaborate with Diversity, Equity and Inclusion Strategic Plan' Contracts and Procurement Pilot Team on aggressive outreach and business development (education) efforts to:
 - Support and expand business diversity through increased utilization of small, local, women, ethnic minority, LGBTQIA+, and disabled/veteran owned businesses
 - Diversify and expand community outreach and marketing efforts to increase business diversity
- Reach the District's goal of 50 percent small business participation for contract awards of \$80,000 or less
 - Continue to update on-call contract requirements to be more inclusive and less burdensome for small businesses including revising Supplier Performance Form
- Achieve all three District's overall contracting objectives:
 1. White Men 25%

2. White Women 6.3%
 3. Ethnic Minorities 25%
- Promote local hiring on District construction projects while achieving 50 percent good faith goals on all construction projects over \$500,000 of which 30 percent will be local hires from the county(ies) directly impacted by the project.
 - Finalize development of a new Professional Services Consultant Roster and contracting guidelines with the Consultant Contract Negotiations Committee.
 - Work with Office of the General Counsel and the Contract and Procurement Pilot Team, to update Professional Services Contracting Guidelines
 - Continue to look for ways to improve how Diversity Equity and Inclusion efforts can be “quantified” in the evaluation/selection process to assist the District in meeting its contracting objectives and goals
 - Continue to target professional services Small Business First contract awards for contracts of \$250,000 or less.
 - Launch delayed internal and external awards/recognition program.

Committee Members

Beverly Johnson, Contract Equity Administrator (Chair)

Carlton Chan, Engineering Manager

Tim Kline, Attorney II

Doug Higashi, Manager of Wastewater Engineering (*retired*)

Linda Hu, Manager of Water Supply Improvements

Rick Hu, Principal Management Analyst

Kelley Smith, Manager of Purchasing

Serge Terentieff, Engineering Manager

PIPE COMMITTEE ANNUAL REPORT – 2022

The purpose of the Pipe Committee is to establish and maintain standards, specifications, procedures, and practices related to the wide range of subjects involving water and reclaimed water distribution system pipelines and appurtenances. The Pipe Committee is chartered to meet a minimum of three times per year. This summary report describes the Committee's accomplishments in 2022 and goals for 2023.

2022 Accomplishments

Pipe Materials and Appurtenances

Ductile Iron (DI). Installation specifications and standard drawings were completed in late 2022 and incorporated in Volume 1, Standard Specifications for Installation of Water Mains 20-inches and Smaller and Volume 2, Standard Drawings for Installation of Water Mains 20-inches and Smaller. Corrosion Section working with PCE staff concluded the pilot study on joint bonding DI pipe for electrical continuity using pin brazing. The recommendation from the pilot study was to discontinue pin brazing for DI 20-inches and smaller and consider pin brazing for critical large diameter DI transmission pipelines on a case-by-case basis depending on the soil corrosivity.

IPVC. In 2021, IPVC pipe experienced two failures during tapping. Both failures were longitudinal cracks. The failed sections of pipe were both sent back to the manufacturer for materials testing. In addition, the sections of IPVC were sent to PSI Lab in Colorado, an independent testing laboratory. The manufacturer reimbursed the District for all costs. PSI Lab concluded that there are no deficiencies with the IPVC pipe. All tests performed showed that the IPVC material properties exceeded all requirements for AWWA C900 PVC pipe. It was determined that the breaks could have been caused by the District's current tapping procedures. The tapping procedures have been revised and District crews are testing the Mueller Easy Tap and Wheeler Rex. Both tools have advantages and disadvantages but neither tool has resulted in a tapping failure. PCE is in the process of developing a tapping manual with best practices which should be completed by 2023.

Cured-in-Place Pipe (CIPP). The CIPP Specification 2167 is at 90 percent completion with construction planned for summer 2023. CIPP is the process of renewing an existing water main (host pipe) with the installation of a continuous, resin-impregnated flexible tubular lining which is then inflated inside the host pipe to form a hard, impermeable, load bearing and corrosion-resistant pipe. There are 8 CIPP locations totaling almost 3 miles of CIPP installation.

Pilot Projects

Fiber Optic Monitoring. The District in collaboration with the University of California Berkeley successfully installed fiber optic monitoring cables on the 36-inch HDPE pipeline crossing the Hayward Fault as part of the Summit Pressure Zone South pipeline project. The project will allow the UC researchers to collect data on the movement of the Hayward Fault and the effects on the new HDPE pipelines which cross the fault.

Earthquake Resistant Ductile Iron Pipe (ERDIP). PCE crews successfully completed two US Pipe ERDIP project on Highgate in the Kensington hills and Ralston in the Oakland hills. The Highgate project consisted of approximately 1 mile of 6 and 8-inch diameter pipe and the Ralston project consisted of approximately 0.3 miles of 8-inch diameter pipe. Past ERDIP projects were designed with the assistance of the manufacturer; these two projects were designed entirely with District staff. Pipeline Rebuild staff will take the lessons learned from the design and installation and incorporate into future projects. The Center for Smart Infrastructure conducted a tension, compression and four-point bending test of ERDIP in November and plans to conduct a large-scale fault rupture test of ERDIP in early 2023. The results of the test will be shared in 2023.

Alternative Service Materials, Saddles and Service Lines. The copper service laterals at Anson Way and Franciscan Way in Kensington have, over the last 25 years, an average of 4 service repairs per year with 80 percent of the repairs due to the corp stop sheering likely due to ground movement. The Pipe Committee has an approved pilot study to evaluate alternative service materials that allow for some soil movement. The two materials of interest include SaddleCorp and Partially Corrugated Stainless Steel. SaddleCorp was tested at the Center for Smart Infrastructure at the UC Berkeley's Richmond Field Station. SaddleCorp has been used successfully in Texas, Oklahoma, and Florida; and Partially Corrugated Stainless Steel has been used extensively in Japan, Korea, and Taiwan. A preliminary evaluation report will be prepared in 2023.

Fusion Bonded Epoxy Standard Weight Steel Pipe. The Committee approved piloting standard weight steel pipe with fusion bonded epoxy (FBE) lining and FBE and plastic coating for dead-end systems in areas of contaminated soil and geo-hazards. Standard weight steel pipe is more resistant to ground motion and liquefaction than the District's steel pipe due to its thicker wall and the specified type of welded joint, which increases the allowable internal pressure, and axial and shear limits. A pilot project was successfully completed with 6-inch standard weight steel pipe at York and Rosal in Oakland. District forces also successfully installed 8-inch standard weight steel pipe for the Bayfair Pumping Plant project and a 20-inch standard weight steel connection for the Summit Pressure Zone South Pipeline Phase 1 project. This pipe will be used at Tappan Terrace, a dead-end system that will be installed in a steep unimproved easement in Orinda. A memo on the pilot results will be completed in 2023 along with Standard Weight Steel.

Fusion Bonded Epoxy Standard Weight Steel Pipe (FBE), Flex Sleeve. The Pipe Committee evaluated the Flex Sleeve as a fitting to join FBE pipe in order to provide a continuously lined pipe for corrosion purposes. The study concluded that the Flex Sleeve achieves a continuous lining but has many limitations, requires special training and tools, is time consuming to install, and adds additional cost. The recommendation is to consider the use of Flex Sleeves for pipes that have a high consequence of failure. In addition, FBE pipe is standard weight and thicker than the District's typical ML&PCS pipe and can allow for more metal loss due to corrosion without compromising the pipe integrity.

Alpha Valves. The Alpha Valve is a ductile iron AWWA C515 gate valves manufactured by America Flow Control. This valve has restrained fittings and was piloted with IPVC pipe. The District's buried gate valve standard is to use AWWA C509 which is a thicker valve (35% - 50% thicker). The current standard valve is a flanged valve that requires hub adapters on either side of the valve and takes longer to install than the Alpha Valve. Ultimately, the Pipe Committee determined that the thicker valve provides better corrosion protection and would be longer lasting on IPVC installations. The initial time savings of the Alpha Valve does not outweigh the long-term benefits of a thicker valve. The Alpha Valve does not come in an AWWA C509 classification, but if American Flow Control manufactures a C509 gate valve, the District will reconsider the Alpha Valve. For now, the District will continue to use valves that meet AWWA C509 and will discontinue the use of Alpha Valves.

Trench Dams. The Committee approved a pilot to install prefabricated HDPE trench dams instead of the standard controlled density (CDF) fill installation. CDF is labor intensive and costly. These trench dams are manufactured by Trenchdam Systems and relatively easy to install. The pilot project was planned for this year in Oakland on a street with approximately 15-17 percent slope but could not be used because an adjacent utility was too close to the pipeline alignment. A new location will be chosen for the pilot installation in 2023. A memo on the pilot results will be completed following the installation.

Standards and Procedures

NSF61 Single Check Detector Valves for Fire Service. The District issued RFQ 2207 and received bids for 4"-12" single check detector valves on January 12, 2022. RFQ 2207 specifies the need for NSF61 valves, and states AMES 1000DCV valves or equal are approved. However, RFQ 2207 should not have listed AMES 1000DCV as an approved product because the valve is not NSF61 certified and did not receive an exception from the Department of Drinking Water (DDW). The Pipe Committee approved the use of AMES 1000DCV for 12-inch valves and AMES 1000SS for 4-inch through 10-inch valves as these valves are going through the process of receiving an exemption from DDW. Both valves are designed to meet NSF61 as the wetted surface is less than 0.25% lead content by weight so the Pipe Committee is confident the valves should receive NSF61 certification.

Engineering Standard Practice (ESP) 512 Review. ESP 512.1 was divided into five separate ESPs to update the ESP and provide better clarity and direction (512.1, Water Main Design Criteria, ESP 512.6, Water Main Relocation Standards, ESP 512.7, Water Service Design Criteria, ESP 512.8, Water Main Valves and Appurtenances, and ESP 512.9, Water Main Abandonment). The draft and final review of the ESPs by the Pipe Committee members was completed in June 2022. ESPs 512.6 and 512.9 have been finalized and added to the District's ESP library on the Splashpad. ESP's 512.1, 512.7, and 512.8 have been approved by the pipe committee and will be finalized when the updated PVC/IPVC specification has been finalized which is anticipated to occur by the end of 2022. Draft revisions have also been made to ESP 550.1 which include moving seismic design criteria for below ground piping to the new ESP 550.2. Drafts of ESPs 550.1 and 550.2 have been reviewed by the PID seniors and will be routed

to the pipe committee members as well as additional staff with the design division. ESPs 550.1 and 550.2 are planned to be finalized in early 2023.

PVC/IPVC Standard Specification Update. Draft updates to the Standard Specification for PVC have been completed to incorporate IPVC and the new restrained ductile iron fittings and gaskets the District has been installing. The draft revisions have been routed to the Pipe Committee for comments which were received on December 2, 2022. The updated PVC/IPVC specification is anticipated to be complete by the end of 2022. Comments will be reviewed and the revised version will be routed to the Pipe Committee in early 2023 for final comments. An addendum for this Standard Specification will be issued by the Engineering Specification Section once the updates are finalized.

2023 Goals

The Pipe Committee will continue to be the primary forum for information distribution and discussion of issues related to matters involving distribution system pipelines and appurtenances. The Committee will continue to review and update standards, procedures, specifications, and practices as required.

Pipe Materials and Appurtenances

Restrained Ductile Iron Pipe:

- Update Schedule G to reflect new materials.
- Support the purchase of tools and equipment necessary for installation.
- Support training initiatives for designers, installers, inspectors, and maintainers.

ERDIP:

- Complete, evaluate, and document installations with U.S. Pipe's ERDIP products.
- Develop draft installation specifications and updates to existing standard drawings to include ERDIP.
- Update Schedule G to reflect new materials.
- Support the purchase of tools and equipment necessary for installation.

IPVC Pipe:

- Test self-locking gaskets
- Finalize and approve standard specifications and details for installation and maintenance.

Steel Pipe:

- Finalize Standard Weight Steel/FBE Recommendation Memo.
- Begin updating steel pipe standard drawings to reflect any material changes.

HDPE Pipe:

- Update standard specifications and drawings.
- Finalize HDPE Recommendation Memo.

Pilot Projects

- Work with the new Center for Smart Infrastructure to test ERDIP Standards and Procedures.
- Install SaddleCorp and Partially Corrugated Stainless Steel service laterals in Kensington.
- Complete the pilot installation of an HDPE trenchdam.
- Complete memo on standard weight pipe and FBE standard weight pipe.
- Revise Standard Drawings 310-EA and 1870-A to reflect the difference in thickness of steel elbows and stock pipe.
- Update Standards Drawing 1995-A Multiple Branch Service Installations $\frac{3}{4}$ -Inch through 2-Inch to add options for vault installation and staggered meter boxes.
- Update standard specifications and details for iPVC installations.
- Finalize standard drawing for restrained hydrant runs.
- Finalize standard drawing for using restrained fittings for thrust restraint.
- Update ESP 450.1 Annually Informing Local Jurisdictions of Upcoming Capital Projects.
- Update ESP 510.1 Pipe and Fittings – Standard Sizes.
- ESP 512.1 Water Main and Services Design Criteria was divided into five parts and is in final development. Two of the ESPs have been updated, approved and added to the District's ESP Library. Three of the ESPs are in the process of final approval.
 - 512.1, Water Main Design Criteria (APPROVED BY PIPE COMMITTEE),
 - 512.6, Water Main Relocation Standards (FINALIZED),
 - 512.7, Water Service Design Criteria (APPROVED BY PIPE COMMITTEE),
 - 512.8, Water Main Valves and Appurtenances (APPROVED BY PIPE COMMITTEE), and
 - 512.9, Water Main Abandonment Water Mains (FINALIZED),
- Update ESP 512.2 Pipeline Material Estimate.
- Update ESP 514 Identifying Buried Conflicts.
- Update ESP 550.1 Seismic Design Requirements to remove Below Ground Piping section. Create new ESP 550.2 Below Ground Piping – Seismic Design Requirements to include criteria for pipelines in geohazard areas, such as fault zones, liquefaction, and landslides.

Meeting Minutes

The Pipe Committee is chartered to convene at regular intervals at least once every three months. In 2022, the Pipe Committee met four times; January 6, April 21, July 7, and October 17. Meeting minutes have been placed on DOX (Keyword search: Pipe Committee).

Committee Members

Jon Lee	Senior Mechanical Engineer
Marisa Boyce	Senior Civil Engineer, Pipeline Design
Brett Margosian	Senior Civil Engineer, Construction Management and Inspection
Ronald Monteforte	Supervising Plant Inspector
Carlton Chan	Committee Chair, Manager of Pipeline Infrastructure Division
Gistand Williams	Construction Maintenance Superintendent
Mobil Cox	Construction Maintenance Superintendent
Ben Ricketts-Mann	Construction and Maintenance Superintendent
Damon Hom	Superintendent of Water Treatment
Cindy Hunt	Superintendent of Water Treatment
Gina Jenkins	Manager of Meter Reading and Maintenance Support
Laura Johnson	Manager of Pipeline Construction and Equipment
David Katzev	Senior Civil Engineer, Pipeline Rebuild
Antonio Martinez	Manager of Distribution Maintenance and Construction
Marshall McLeod	Senior Civil Engineer, Large Diameter Pipelines and Aqueducts
Dustin La Vallee	Senior Civil Engineer, Pipeline Support
Roberts McMullin	Senior Civil Engineer, Distribution System Engineering
Keith Packard	Associate Corrosion Control Specialist
Vincent Pon	Superintendent of Aqueduct
Jason Reza	Supervising Construction Inspector
Jose Rios	Senior Civil Engineer, Distribution System Planning (<i>for David Rehnstrom</i>)
Kelley Smith	Manager of Purchasing
Michiko Mares	Engineering Manager, Construction Division
Thomas Reinhart	Materials Storage Supervisor
Nicholas Farrell	Assistant Construction and Maintenance Superintendent

MATERIAL REVIEW COMMITTEE ANNUAL REPORT – 2022

The Material Review Committee (MRC) is a standing subcommittee of the Pipe Committee and was formed in March of 1990 with a purpose to provide a working-level group to set priorities and coordinate work in the areas of new product evaluation, complaints on existing products, and changes in specifications and engineering drawings. The MRC is chartered to meet quarterly, and after a pandemic-related hiatus the MRC reconstituted in March 2021. This summary report describes the Committee's accomplishments in 2022 and goals for 2023.

2022 Accomplishments

Ductile Iron (DI) Pipe Materials Standardization and Mortar-Lined/Poly-Coated-Steel (ML/PCS) Drawdown

The MRC Chair and stake holding members continued working on DI-related items such as appropriate appurtenances (gaskets, lube, etc.), installation process, chlorination, jumpers/bonding, procurement and appropriate stock levels. In this process the applicant install specifications were overhauled so that DI could be used for applicant jobs identified as appropriate for being designed in DI.

In direct relation to the increase in DI installs the MRC Chair worked with the Pipe Committee Chair and other stake holding members to identify ways to draw down the sizeable amount of ML&PCS (material being replaced by DI) still in stock at the Oakport Distribution Center. In that effort it was determined that the District will design new applicant jobs and District jobs, where applicable, in ML&PCS until such time that the stock levels reach a point where they can be managed without concern for coating failure due to environmental forces.

Finally, the MRC worked on historical usage numbers for ML&PCS and other materials being replaced or augmented by DI to begin determinations on appropriate stock levels for emergency repairs and specialized use cases. These efforts will continue in an organic fashion moving forward as the District identifies the specific use-cases, narrows the pipe-type and identifies necessary stock levels.

Materials Review Committee (MRC) re-envisioned as the Materials Review and Planning Committee (MRPC) - Inaugural Meeting held on November 30, 2022

Draft Charter

Background: The steady increase in necessary infrastructure replacement, along with a variety of global supply chain issues, has highlighted the District's need for enhanced flexibility and decision expediency for water system materials and supplies. The District's current supply chain logistics process is one under which the District has operated for decades. In the past, processes were sufficient. However, in the last two years the District experienced supply chain instability and a heightened need for just-in-time material availability to support the growing number of system maintenance and enhancement projects.

Vision Statement: Review and innovate the way in which the District plans and executes supply chain logistics. Re-envision the Materials Review Committee as a review and planning body that is comprised of stakeholders who can provide expedited decision-making for emergent issues, as well as long-term streamlining of processes. Goals include identifying appropriate materials for use in District systems, decreasing handling costs, reducing waste both physical and time/labor, ensuring supply chain resiliency, and recognizing/leveraging economies of scale.

The following items have been identified by the committee as areas of focus going forward and include the goals of the previous MRC:

- Planning for, and adoption of, new materials
- Discontinuation of the use of obsolete or inefficient materials
- Identification of equivalent or alternate products
- Materials handling, storage, and inspection
- Materials preparation and delivery to jobsite
- Create process to document and codify decision-making on all materials adopted, rejected or discontinued.
- Create multi-point dissemination plan for information on new materials and revised specifications.

2023 Goals

- Codify the MRPC sphere of influence, duties and methodologies and work toward the items identified in the “charter” above.
- Work with the Pipe Committee to finalize pipe and appurtenance types, identify specific applicability, and determine appropriate stock levels.
- Continue to be a forum for information distribution and discussion of issues related to new product evaluation, existing product issues/modifications, product streamlining, and changes to District specifications.

Committee Members

Kelley Smith, Manager of Purchasing (Chair)

Michael Ambrose, Manager of Maintenance & Construction

Jason Bouslog, Material Storage Supervisor

Laura Johnson, Manager of Pipeline Construction & Equipment

Dustin La Vallee, Senior Civil Engineer

Michiko Mares, Engineering Manager

Roberts McMullin, Senior Civil Engineer

Ron Monteforte, Supervising Plant Inspector

Tom Reinhart, Material Storage Supervisor

Becky Sharpe, Purchasing Contract Supervisor

Donovan Szarka, Assistant Construction/Maintenance Superintendent

SUSTAINABILITY COMMITTEE ANNUAL REPORT – 2022

The Committee's purpose is to advance sustainability practices and policies at the District, consistent with Policy 7.05 – Sustainability and Resilience. The Committee's goals and objectives are to:

- Achieve continuous improvement in sustainability practices with a primary focus on waste reduction, energy conservation, and water conservation;
- Engage staff to identify and implement sustainability opportunities and best practices for improving operations guided by the triple bottom line; and
- Ensure that sustainability practices and concepts are embedded in the District's culture.

The Sustainability Committee's practices and principles support and demonstrate the District's core values of Stewardship, Integrity, Teamwork, and Respect.

2022 Accomplishments

2022 continued to be an unusual year for the Sustainability Committee due to the Covid-19 pandemic. As many District staff continued to telecommute, the Sustainability Committee continued its efforts to offer a hybrid of in-person and virtual events and information.

The Sustainability Committee met six times in 2022 and reports the following accomplishments.

- Earth Day 2022 (hybrid format). For the third year in a row, the traditional in-person Earth Day fair, with invited external guests, was canceled due to Covid-19. The Committee instead offer a variety of virtual and in-person activities and events the week of Earth Day, including a virtual lecture by the local author of the book, "Birds of Lake Merritt," and a Kahoot trivia challenge. In-person events included a birding tour walk around Lake Merritt to see herons and a Succulent Social including ice cream treats. Daily emails offered information on topics including the District's fisheries program; proper waste management; green energy; green business; and climate action.
- As part of the Earth Day celebrations in the month of April, the Committee also created a "Photo Challenge." Employees were provided with a set of photo categories to choose from. Staff were invited to try to capture photos by visiting and exploring EBMUD watershed trails and submitting their favorite shots in each category of the competition including best wildlife, best landscape, best family shot and more.
- The Sustainability Committee's bimonthly meetings occasionally featured presentations from in-house subject matter experts including Victor Gonzales on Energy Improvements, Chris Dembiczak on the District's greenhouse gas emissions inventory and Climate Action, Chandra Johannesson on Integrated Pest Management, Mike Ambrose on the Green Fleet Master Plan, and Brad Ledesma and Grace Su on the District's Groundwater Sustainability Plan and DREAM Project.
- The Bike Subcommittee relaunched with the goal of encouraging bike commuting and the use of sustainable transportation alternatives. The Subcommittee created a page on the Splashpad with information on bike commuting, held monthly meetings, and organized a social ride on September 29. The Subcommittee also conducted a District-wide survey on

commute habits and interest in bike commuting that will be used to make recommendations to the District.

- In April, the Committee worked with Graphics and Janitorial staff to finalize and post new waste sorting signage in break rooms and bathrooms. The new signs provide information on correctly sorting materials for recycling, compost, and the landfill.
- Sustainability Committee members presented to the U.C. Berkely Civil Engineering 112 course on topics related to sustainability, resilience, and climate change.
- Green Business Certifications: the Main Administration Building was certified and the East Area Service Center was recertified this year. Currently eleven facilities are certified.
- Promoted California Clean Air Day, October 5, by encouraging employees to sign up for clean air pledges and preparing a resolution that was adopted by the Board on September 27.
- Several other projects had been put on hold pending the end of the pandemic, including the conclusion and evaluation of the plastics reduction pilot.

2023 Work Plan and Goals

- Continue coordination with Diversity and Inclusion Committee focusing on the nexus of sustainability and equity.
- Potential coordination with the District's Centennial celebration, such as a themed speaker or other event.
- If staff are able to return to the office and hold events, the Committee will host our annual Earth Day fair. If not, we will host a virtual Earth Day event that may include speakers, games, or other activities to promote sustainability.
- Coordinate with Clean-up Week in April 2023. Introduce surplus room concept.
- Consider a virtual succulent garden event. Make materials available in advance.
- Recipe exchange.
- Green business certification: planning to pursue one additional facility and recertify two others.
- Green bag speaker series topic ideas such as: biodiversity, carbon farming, Fibershed.
- Visit to Skyline Ranch - could vary how it is run depending on pandemic situation.
- Hold the annual crop swap in Spring/Fall 2023; dates may flex to accommodate for variety in harvest periods per staff feedback.
- Continue development and implementation of an outreach program to educate employees on proper waste sorting (i.e., recycling, composting, and landfill).
- Continue and expand employee outreach and education (Splashes, intranet, reports, Green Bags/Engineers' Forum).
- Support the Senior Management Team's priority planning and actions on sustainability and resilience and development of the Climate Resiliency and Adaptation Plan.
- Evaluate the efficacy of the pilot program for centralized purchasing and distribution of sustainable party supplies for District sponsored events.
- Evaluate the efficacy of the pilot program for centralized purchasing and distribution of re-useable dishes at targeted sites.
- Continue to explore eco-friendly commute alternatives for employees; how best can the Committee support assessment of the current telecommute framework.

- Pursue additional Green Business and WaterSmart certifications of additional District facilities.
- Support District wide Climate Resiliency activities.
- Continue to advance a “culture of sustainability” at the District at all levels and in all workgroups.

Committee Members

Michael Ambrose, Manager of Maintenance and Construction

Greg Benson, Senior Administrative Clerk

Jolene Bertetto, Water Conservation Representative

Nadia Borisova, Environmental Health & Safety Specialist II

Allison Brede, Water Treatment Operator

Tracy Da Lomba, Water System Inspector II

Suzanne Delbou, Management Analyst I

Adam Edgell, Sr. Administrative Clerk

Hoyt Fay, Grounds Maintenance Specialist II

Samuel Feldman-Crough, Manager of Budget

Vincent Flores, Plant Structures Maintenance Supervisor

Geneva Gondak, Water Conservation Representative

Chandra Johannesson, Manager of Environmental Compliance (Co-Chair)

Dennis Karaim, Drafting Supervisor

Steven Kekki, Manager of Fleet and Construction Support

Tina Kwan, Senior Administrative Clerk

Dana Mims, Administrative Services Supervisor

Tony Montano, Manager of Facility Maintenance & Construction

Bruce Moog, Grounds Maintenance Specialist II

Virginia Northrop, Senior Ranger/Naturalist

Jose Perez, Engineering Designer I

Ivette Rivera, Gardener Foreman

Aaron Ross, Sr. Cross Connection Specialist

Carolyn Shadan, Assistant Engineer

Luke Sires, Water Conservation Representative

Joey Smith, Water Conservation Technician

Kelley Smith, Manager of Purchasing

Alice Towey, Environmental Affairs Officer (Co-Chair)

Theresa Walker, Janitor Supervisor

Agnes Wan, Associate Architect

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WATER QUALITY COMMITTEE ANNUAL REPORT – 2022

The purpose and charge of the Water Quality Committee are to:

- Review, oversee, and coordinate the District’s drinking water quality program
- Promote the efficient collection, management, and use of water quality information
- Promote distribution of water quality information throughout the District
- Track, review, and comment on legislation and regulations affecting drinking water
- Recommend appropriate actions as needed to respond to drinking water quality issues
- Set District water quality goals

The Committee meets on the third Thursday of each month. Eleven meetings were held during 2022. For each meeting, agendas were developed, meeting minutes were created, reviewed, finalized, and links were distributed to the members. All files were delivered electronically. Due to the ongoing pandemic, the meetings were all conducted virtually via MS Teams.

2022 Accomplishments

- At least 22 charts and figures containing current and historical water quality data from multiple locations were created each month. Electronic versions are stored on the intranet for use by committee members later as needed.
- Monthly charts were reviewed by the group at each meeting and trends or changes in various water quality parameters were discussed. Review of these charts facilitated discussion of ongoing or potential upcoming water quality issues.
- As in 2021, the committee paid special attention to nitrification in the distribution system, discussed factors that influence its occurrence, and reviewed treatment and operational actions that might be considered for control. Disinfection byproduct issues were reviewed closely, as well as taste and odor and algal-related issues. Also, water quality information from the drought supplemental supply was reviewed and discussed.
- The committee helped coordinate completion of the Regional Water Quality Control Board’s mercury study, which focused on San Pablo Reservoir.
- Proposed legislation and draft regulatory changes were tracked, and comments were developed when appropriate. In particular, the committee discussed the potential impact of legislative proposals related to pipes made of galvanized steel and lead, and provided data and technical input to state staff to support upcoming lead guidance documents.
- Two semi-annual water quality reports were prepared for the Board of Directors summarizing the status of the District’s compliance with regulatory requirements as well as with the District’s water quality goals. These semi-annual reports were presented to the Planning Committee.
- The committee provided input for the District’s annual Consumer Confidence Report and for the mid-year update which will be required under upcoming federal regulations.
- The committee reviewed design and construction progress and provided input regarding upcoming capital projects at water treatment plants and distribution system facilities that will impact on water quality.

- The committee reviewed results of ongoing research projects and discussed potential applications to the District. Members of the committee participated in various research projects, both as Project Advisory Committee members and as participating utilities, and shared information about these projects at committee meetings. Further, members of the committee actively participate in industry organizations and share relevant water quality information and updates with the group.

2023 Work Plan and Goals

In 2023, the committee will continue to meet monthly to review, coordinate, and oversee the District's water quality program. Specifically, the committee plans to

- Continue reviewing and modifying as necessary the District's water quality goals and ensure that they incorporate all relevant contaminants and are appropriately set to incorporate the latest technical information and regulatory requirements.
- Continue reviewing upcoming legislative and regulatory changes; develop and submit comments where appropriate. Advocate for sound science in the development of legislation and regulation.
- Continue improving the display and dissemination of water quality data, particularly by using new tools such as mapping and web-based applications.
- Participate in water industry organizations and exchange water quality information and research results with other water utilities and organizations.
- Ensure that water quality issues are considered and addressed in all District projects that may impact water quality.

Committee Members

Mitch Allan, Water Distribution Supervisor

Michael Ambrose, Manager of Maintenance & Construction

Charles Beckman, Manager of Watershed & Recreation

Yuriy Bondarenko, Chemist II

David Briggs, Director of Operation and Maintenance

Carlton Chan, Engineering Manager

Augustus Cicala, Associate Civil Engineer

Roberto Cortez, Manager of Water Supply

Michael Hartlaub, Senior Civil Engineer

Scott Hill, Manager of Watershed & Recreation

Damon Hom, Water Distribution Superintendent

Linda Hu, Manager of Water Supply Improvements

Cindy Hunt, Water Quality Superintendent

Chandra Johannesson, Manager of Environmental Compliance

Brett Kawakami, Engineering Manager

Drew Lerer, Senior Environmental Health & Safety Specialist

Jack Lim, Senior Chemist

Kristi Schwab, Senior Chemist

David McGeorge, Assistance Superintendent of Aqueduct

Water Quality Committee Report – 2022

January 10, 2023

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Jason Mitchell, Laboratory Supervisor

Clarence Peralta, Superintendent of Water Treatment

Vincent Pon, Superintendent of Aqueduct

Javier Ramos, Water Distribution Supervisor

David Rehnstrom, Engineering Manager

Yuyun Shang, Manager of Laboratory and Technical Services

Serge Terentieff, Engineering Manager

Gordon Williams, Manager of Planning & Analysis

David Woodard, Manager of Regulatory Compliance

Lori Work Kazimi, Senior Engineer

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WATER RESOURCES COMMITTEE FINAL REPORT – 2022

The purpose of this final report is to summarize accomplishments of the Water Resources Committee (WRC) for the General Manager per Procedure 603. The WRC was originally formed to coordinate the District's activities associated with major water resources initiatives (e.g., Camanche Permit Extension) and respond to emerging water resources issues and activities (e.g., Water Quality Control Plan). The WRC also help coordinate tours of the District's watershed lands and review major regional and state-wide documents.

The WRC has not met as a unique committee in at least four years. The coordination and actions of the WRC has been replaced with project specific teams or workshops focused on key issues (e.g., Bay Delta Team, Long-Term Water Supply Workshop, USBR Coordination Team). Consistent messaging and approaches are accomplished through inter-team collaboration and periodic meetings with Department directors and the General Manager. This final report summarizes accomplishments between 2007 and 2021, followed by an update on existing activities originally reported under the WRC now being reported through other teams, and a list of activities completed in 2022.

2007 to 2021 Accomplishments

- Coordination of Camanche Permit Extension (2007 to 2016)
- Coordination of Bay-Delta Water Quality Control Plan Update and Voluntary Agreements (since 2014)
- State-Wide Document Review and Response Letters/Presentations
 - 2009 Delta Reform Act
 - Bay Delta Conservation Plan
 - California Water Plan Updates
 - Delta Conveyance/WaterFix
 - Delta Stewardship Council Delta Plan
 - USBR Water Management Plan
 - UWMP Act Amendments
- Various Tours of East Bay and Upcountry Watershed Lands
- Water Right Related Updates (e.g., petitions, litigation) to Senior Management

Update on Major WRC Member Activities Now Reported through Project-Specific Teams

The following is a final update on the existing major activities originally reported under the WRC Report that are now being reported through other project team reports, updates, and workshops.

U.S. Bureau of Reclamation (USBR) Central Valley Project (CVP) Water Supply Contract –The District coordinated with USBR and obtained a Warren Act Contract to deliver 20,000 acre-feet of supplemental water purchased from Placer County Water Agency. Due to continued drought conditions, the District did not receive a CVP water allocation or qualify for a water allocation for Public Health and Safety. The District assisted Contra Costa Water District and delivered its

CVP allocation through the Freeport Project and the EBMUD-CCWD intertie. USBR CVP Contract activities are now coordinated through coordination meetings between Operations, Water Rights, and Water Supply Improvements.

Bay-Delta Water Quality Control Plan Update and Voluntary Agreement – On August 11, 2022, the District and the State signed, through amendment, the March 29, 2022, Memorandum of Understanding for a valley-wide Voluntary Agreement (VA) that includes the Mokelumne River watershed. Throughout 2022, the WRC collaborated and worked closely with several stakeholders in the Bay-Delta watershed-wide process to update the State Water Resources Control Board (SWRCB)'s Bay-Delta Water Quality Control Plan (Bay-Delta Plan). Staff proactively participated in the VA negotiations in the following ways:

- Participated in weekly VA System Wide Action Team (SWAT) meetings with the state and other parties, negotiating VA governance, implementation, monitoring and reporting.
- Conducted numerous meetings and technical briefings and coordinated negotiations with the state and other parties, sharing information, reviewing modeling alternatives and associated analyses, and moving negotiations forward on multiple fronts.
- Convened meetings with the Mokelumne Stakeholder partners to share information and strategize on issues of mutual concern.
- Conducted lower Mokelumne River tour with recently appointed State Water Resources Control Board member, Nichole Morgan, on February 18.

The Voluntary Agreements are now coordinated through the District's internal Bay-Delta Team.

Other Activities Completed in 2022

The WRC members also led efforts on the following key water resources initiatives in 2022:

- Curtailments: Coordinated drought activities to ensure compliance with SWRCB curtailment orders and obtained exceptions from SWRCB key curtailment orders that allowed EBMUD to continue diverting from the Mokelumne River. Future reporting will be accomplished through the Drought Committee.
- Delta Conveyance Project: Staff reviewed the Draft Environmental Impact Report (DEIR) to assess potential impacts to EBMUD from the project and will submit a comment letter to Department of Water Resources (DWR) by the comment deadline of December 16, 2022. Future reporting will be accomplished through the District's internal Bay-Delta Team.
- DREAM¹ Project: Obtained approval from the State Water Resources Control Board for the DREAM Project Operations Plan to operate the DREAM Project if surplus water is available using recycled water credits. Future reporting will be accomplished through coordination meetings with the Water Supply Improvements Division (WSID).

¹ DREAM: Demonstration, Recharge, Extraction, and Aquifer Management

- Los Vaqueros Expansion: Coordinated with Contra Costa Water District (CCWD) to evaluate water rights options, schedule, and CEQA needs. Future reporting will be accomplished through coordination meetings with WSID.
- Long-Term Water Use Efficiency: Participated in several workshops held by DWR and State Water Resources Control Board (SWRCB), and proposed modifications to proposed legislation. Reporting will be accomplished through coordination meetings with Water Conservation.
- Water Loss Audit: The Water Loss Audit for calendar year 2021 was completed and submitted to the SWRCB electronically on September 27, 2022. Reporting will be accomplished through the Water Loss Audit Committee.

Committee Members

Lena Tam	Manager of Water Resources Planning (Chair - retired)
Brad Ledesma	Manager of Water Resources Planning
Benjamin Bray	Senior Civil Engineer
David Briggs	Director of Operations and Maintenance
Clifford Chan	General Manager
Roberto Cortez	Manager of Water Operations
Fred Etheridge	Assistant General Counsel (retired)
I-Pei Hsiu	Associate Civil Engineer
Linda Hu	Manager of Water Supply Improvements
Priyanka Jain	Senior Civil Engineer
Derek McDonald	General Counsel
Chris Potter	Senior Civil Engineer
Jose Setka	Environmental Affairs Officer (retired)
Michael Tognolini	Director of Water and Natural Resources
Ana Ulloa	Senior Civil Engineer
Michelle Workman	Manager of Fisheries and Wildlife

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 10, 2023

MEMO TO: Board of Directors

FROM: Clifford C. Chan, General Manager *CCC*

SUBJECT: Monthly Report – December 2022

HIGHLIGHTS

In December, the Oursan Ridge Conservation Bank reached a major milestone as the Endowment Fund became fully funded. The Endowment Fund will reimburse the District for long-term costs of monitoring and maintenance of the Bank's lands and resources. The Endowment Fund amount was \$1,496,066. Additional revenue generated from sales of conservation credits is now being tracked as a watershed lands fund, per Policy 4.21 - Land and Conservation/Mitigation Credit Sales - Use of Funds, for the purchase of additional watershed lands as they become available.

WATER SUPPLY

East Bayshore Recycled Water Project (EBRWP) update. On December 5, final inspections were completed and Buildings B1 and B2 streetscapes of the Sherwin Williams Project in Emeryville were connected to recycled water. This completes Phase 1 construction of the development while work continues on Phase 2 and a public park within the same complex. On December 12, staff met with U.C. Berkeley to discuss potential expansion of EBRWP to provide recycled water to U.C. Berkeley sites. Staff provided an update of the completed hydraulic analysis and status of upcoming California Environmental Quality Act documentation for EBRWP pipeline expansions. U.C. Berkeley will provide additional information regarding recycled water demands. Staff will continue to coordinate with U.C. Berkeley on this topic.

In December, the District submitted all required diversion reports in accordance with the drought declaration and emergency regulations. On December 7 and 13, six reports on actual diversions from Pardee and Camanche Reservoirs for October 2022 and six additional reports for projected demands for January 2023 were submitted to the State Water Resources Control Board.

In December, staff met with Chevron to discuss planning for a pilot-scale test at the Richmond Advanced Recycled Expansion (RARE) recycled water facility. The pilot test will evaluate operational impacts and discharge permit compliance associated with expanding RARE using Chevron's refinery effluent as a new source of supply.

On December 14, the District submitted an application to the Department of Water Resources for the Sustainable Groundwater Management Round 2 Grant Program. The requested grant amount is \$2,580,000 for work to implement the East Bay Plains Subbasin Groundwater Sustainability Plan.

Precipitation. The East Bay precipitation for December was 12.56 inches (261 percent of average) and the season total was 14.40 inches (145 percent of average). The Mokelumne precipitation for December was 21.28 inches (267 percent of average) and the season total was 28.81 inches (167 percent of average).

Water Releases

Camanche Reservoir. The average rate of Camanche release for December was 225 cfs (181 cfs generation, 16 cfs sluice, and 28 cfs through the hatchery), and the average flow below Woodbridge Dam was 198 cfs, both in accordance with the Joint Settlement Agreement "Dry" water year criteria.

East Bay Reservoirs. There were no East Bay reservoir releases in December.

Water Storage

Mokelumne reservoirs storage is 109 percent of average. As of December 31, 2022, Pardee was at 570.3 feet or 117 percent of average, and Camanche was at 213.1 feet or 103 percent of average. Combined Pardee and Camanche reservoir storage was 476,000 acre-feet compared to 361,000 acre-feet last year.

East Bay reservoirs storage is 112 percent of average. As of December 31, 2022, Upper San Leandro (USL) was at 455.2 feet or 129 percent of average, San Pablo was at 305.9 feet or 115 percent of average, and Briones was at 571.3 feet or 104 percent of average. Total terminal reservoir storage was 135,000 acre-feet compared to 131,000 acre-feet last year.

Mokelumne Aqueducts and Raw Water Pumping Plants (RWPPs). The average rate of Mokelumne Aqueduct draft for December 2022 was 74 MGD. Aqueduct No. 2, Walnut Creek, Moraga and Briones Raw Water Pumping Plants remained out of service for the month.

Water Production. Average rate of gross water production for December:

	December 2022	December 2021	December 2020	Average of FY 2005-2007
East of Hills	24 MGD	25 MGD	31 MGD	30 MGD
West of Hills	96 MGD	97 MGD	104 MGD	126 MGD
Total	120 MGD	122 MGD	135 MGD	156 MGD
Max Day Production	131 MGD (12/2/2022)	134 MGD (12/1/2021)	155 MGD (12/7/2020)	

Note: Data are all from preliminary daily operational reports and are subject to revision

WATER QUALITY AND ENVIRONMENTAL PROTECTION

In December, three industrial customers in the wastewater service area were issued a Notice of Violation (NOV). The first NOV was issued to an adhesive manufacturer located in Berkeley for discharging wastewater with a pH below the District's local limits. The second NOV was issued to a metal finishing facility located in Oakland for discharging wastewater above the Federal limit for copper. The third NOV was issued to a metal plating business in Berkeley for failing to comply with the Cease and Desist Order issued by the District in November. Since metal plating business in Berkeley failed to comply with its first NOV, another NOV was issued this month that gives a revised date and imposes a new fee. OGC is reviewing to further the process within the District's authority but have not yet filed legal action. These industrial customers are required to submit a written technical report and pay fees to cover the District's re-inspection, sampling, and administrative costs.

In December, the District participated in a microplastics study sponsored by the Southern California Coastal Water Research Project in partnership with the California Association of Sanitary Agencies. The study is focused on characterizing the removal efficiency of microplastics by California wastewater treatment plants. To support the study, the District, with assistance from the San Francisco Estuary Institute, collected two sets of 24-hour composite samples from the Main Wastewater Treatment Plant's effluent.

In December, several control burns took place in the East Bay watershed. On December 1 and 15, 19 brush piles were burned adjacent to the Rocky Ridge Trail as part of the Tunnel East Bay Fuel Break project. This project is being undertaken in collaboration with Moraga Orinda Fire District (MOFD). On December 7 and 13, approximately 120 logs were burned at the San Pablo pine tree removal project site. This log burning project was a pilot undertaken by EBMUD and MOFD with approval from the Bay Area Air Quality Management District to evaluate the feasibility of burning larger fuel to reduce biomass.

In December, California tiger salamander (CTS) trap arrays located in Amador and San Joaquin counties continue to be operated during rain events. CTS monitoring is a requirement of the District's safe harbor agreement upcountry to ensure the District's compliance with existing agreements and to show positive results when endangered species are encountered on the watershed. As of December 12, fifteen CTS have been captured.

In December, seasonal salmonid field monitoring was conducted in the Mokelumne River. As of December 20, 6,889 Chinook salmon have been observed passing the Woodbridge Irrigation District Dam. Staff continued to conduct weekly redd surveys, with a cumulative total of 825 Chinook salmon redds observed as of December 21. In addition, weekly carcass surveys continue to be conducted. To date, 41 Chinook salmon carcasses have been encountered and 8 heads collected. The upstream rotary screw trap was installed on December 8. The Chinook salmon egg model projects the first Mokelumne River redd emergence on January 9. Using this projected date, the upstream rotary trap will be set for the first time on January 2, one week prior to that projected emergence.

On December 1, a restoration project was completed north of Camanche Reservoir near the China Gulch Trail. Native seed was applied, and the area was protected with wood chips to cover bare soil and retain moisture. Signs and barriers were put in place to protect the site.

On December 22, the District submitted the East Bay Habitat Conservation Plan (HCP) Annual Report to the U.S. Fish and Wildlife Service. The annual report includes status updates on endangered species populations on the East Bay watershed, EBMUD restoration efforts for endangered species and a summary of how well avoidance measures prevented take (meaning harm or mortality) to these species during watershed maintenance activities. No take of HCP covered species was reported for 2022.

All authorized discharges from the Main Wastewater Treatment Plant (MWWTP) were in compliance with the permit limits for the month of December. This is the 280th consecutive month that the MWWTP experienced no exceedances.

The District received no odor complaints from the public in December.

INFRASTRUCTURE INVESTMENT

In December, staff began the Lavina Court area pipeline replacement project in Orinda. This project will replace asbestos cement pipe with approximately 700 feet of 6-inch structurally enhanced polyvinyl chloride pipe. This project is expected to be completed in January 2023.

In December, staff began the Webster Street area pipeline replacement project in Oakland. This project will replace cast iron pipe with approximately 5,200 feet of 6-inch structurally enhanced polyvinyl chloride pipe. This project is expected to be completed in May 2023.

In December, staff completed the Fruitvale Avenue pipeline replacement project in Oakland. This project replaced cast iron pipe with 1,610 feet of 8- and 12-inch mortar-lined plastic-coated steel pipe.

In December, staff completed the second phase of the Overhill Road area pipeline replacement project in Orinda. This project replaced cast iron pipe with approximately 2,075 feet of 12-inch mortar-lined zinc coated ductile iron pipe.

On December 6, staff conducted the annual Emergency Action Plan notification drill for the Mokelumne River dams. The annual simulated drill complies with the Federal Energy Regulatory Commission (FERC) requirements while strengthening coordination of FERC-required emergency responses with the Emergency Operations Team. Staff is collecting feedback from participants to develop lessons learned and an improvement plan. The findings will be reported to FERC by the end of March 2023.

In December, staff completed the design of the Dechlorination Facility Improvements Phase 3 Project under SD-431. This \$2.1 million construction project involves replacement of

three chemical storage tanks and portions of the associated piping; building renovations, including the HVAC system, drainage sumps and pumps, fencing, safety and area lighting; demolition of abandoned equipment; and related work. Construction is expected to be completed in early 2024.

Mains repaired in December totaled 128. The attached table lists the mains repaired by staff in December, sorted by city and street. The table indicates the source of the leaks in three categories: non-surfacing leaks discovered by leak detection technologies, breaks caused by contractors or other agencies, and all other main breaks. The associated map shows the location of the main repairs.

CUSTOMER AND COMMUNITY SERVICES

In December, staff attended the American Geophysical Union’s fall meeting in Chicago. Over 100 countries gathered to share research and network to better understand our planet and environment, and our role in preserving its future.

On December 3, the District hosted a cleanup event at the historic Wildermuth House. Staff worked with five volunteers to perform landscape maintenance of the historic Wildermuth House heritage garden south of Pardee Reservoir. Staff also provided interpretive talks for interested trail users.

On December 7, staff conducted an environmental field trip for Bear Creek High School at the Mokelumne River Day Use Area. The students were from the Advanced Placement Environmental Science class. During the field trip, students planted native vegetation in the Mokelumne River Day Use Area and collected various field data established for fisheries surveys on the lower Mokelumne River. Approximately 10 people attended.

On December 7, staff met with the City of Walnut Creek, the Walnut Creek Downtown Association, and business owners to discuss the Locust/Bonanza Cluster Pipeline Replacement Project. Staff discussed impacts on outdoor dining.

On December 7, staff presented at the City of Oakland Beat 35x Neighborhood Council meeting. The presentation highlighted information on the District and wet weather facility rates. Approximately 15 people attended.

On December 8, staff presented at the Lodi Sunrise Rotary Club meeting. The presentation highlighted EBMUD’s management of the lower Mokelumne River, the Mokelumne River salmon population, and pulse flow implementation. Approximately 20 people attended.

On December 8, staff met with the City of San Pablo to discuss better communication regarding construction activities and notifications to residents and city staff.

On December 8, staff met with the City of Orinda to coordinate construction activities. The two agencies shared information on current and upcoming work.

On December 8, staff attended the Water Education Foundation’s virtual Winter Outlook Workshop. The event featured expert research meteorologists and climate scientists from the National Weather Service, Scripps Institution of Oceanography’s Center for Western Weather and Water Extremes, Department of Water Resources, and others discussing improvements in the science of long-range forecasting, critical for managing water supplies, and what may be in store for this winter's precipitation.

On December 12, staff met with the City of Lafayette to discuss the Lafayette Reservoir Tower Seismic Upgrade Project. Staff provided information on the results of detailed seismic studies and input from the Division of Safety of Dams. The project includes shortening the tower to eliminate the seismic hazard and strengthening the spillway and outlet conduits within the dam. The new tower will feature an aesthetic treatment with a beveled platform and decorative parapet. Staff also discussed construction phasing and plans for public outreach. Staff is scheduled to present to Lafayette City Council on Monday, January 9, 2023.

On December 13, staff met with Contra Costa County Public Works to coordinate construction activities. The two agencies shared information on current and upcoming work.

On December 13, staff presented at the Northern California Pipe Users Group meeting. The presentation highlighted the partnership between U.C. Berkeley and EBMUD on the Center for Smart Infrastructure (CSI) and how the CSI will address challenges with aging infrastructure, climate change, water supply and natural resources, and emergency and community preparedness by using a holistic approach to provide resilient and sustainable networks through state-of-the-art testing equipment, smart sensors and robotics, and big data and machine learning. Approximately 50 people attended.

On December 15, the District hosted a virtual Developer Forum. Staff provided detailed information related to the applicant approval process. The forum provided an opportunity for the applicant community to ask questions to 15 District subject matter experts on how applications are processed. Approximately 150 people attended.

On December 15, staff met with City of San Ramon to coordinate construction activities. The two agencies shared information on current and upcoming work.

On December 19, staff met with AC Transit to discuss the Oakland Inner Harbor Pipeline Crossings Project. Staff provided information on impacts to commuter transit services in Alameda.

On December 21, staff met with Oakland’s Skyline High School to discuss the Palo Seco Madrone Rehabilitation Project. Staff provided information on traffic and construction impacts and reviewed protocols for securing the reservoir facility and school while the perimeter fence is being updated.

As of December 31, 2022, a total of 2,973 letters were generated and mailed to customers who have exceeded the excessive use penalty threshold. If these customers are unable to take corrective actions during the following billing cycle, they would be subject to the excessive use penalty and their information would be subject to the Public Records Act. Below is a breakdown of the excessive use letters sent by ward and city through December 31, 2022.

Excessive Use Letters by Ward Sent as of December 31, 2022							
Ward	July*	August	September	October	November	December	Totals
1		8	6	6	3	6	29
2		640	207	213	48	47	1155
3		84	65	55	22	16	242
4		10	10	4	7	8	39
5		9	10	9	3	9	40
6		13	14	13	14	9	63
7		32	12	22	6	8	80
Totals	1,325	796	324	322	103	103	2,973
*Reporting started in August 2022							

Excessive Use Letters by City Sent as of December 31, 2022							
City	July	August	September	October	November	December	Totals
Alameda	3	6	0	3	1	1	14
Alamo	290	170	62	60	11	12	605
Albany	0	0	0	0	0	0	0
Berkeley	14	4	7	2	6	5	38
Castro Valley	6	10	3	5	1	4	29
Crockett	0	0	0	0	0	0	0
Danville	343	278	57	77	14	13	782
Diablo	44	49	0	16	0	0	109
El Cerrito	2	4	1	1	0	1	9
El Sobrante	0	0	1	0	1	1	3
Emeryville	0	0	0	0	0	0	0
Hayward	10	8	3	5	0	0	26
Hercules	1	2	0	1	0	1	5
Kensington	1	1	0	1	0	1	4
Lafayette	218	125	45	49	12	17	466
Moraga	25	25	13	7	3	0	73
Oakland	100	24	24	26	19	22	215
Orinda	125	41	32	30	15	6	249
Piedmont	30	5	12	6	1	1	55
Pinole	0	2	0	3	0	0	5
Pleasant Hill	3	2	3	0	2	1	11
Richmond	24	9	5	5	3	4	50
Rodeo	3	0	2	0	0	1	6
San Leandro	14	3	4	6	4	6	37
San Lorenzo	5	1	5	1	2	0	14
San Pablo	4	0	1	0	0	0	5
San Ramon	9	11	7	9	0	4	40
Selby	0	0	0	0	0	0	0
Walnut Creek	51	16	37	9	8	2	123
Totals	1,325	796	324	322	103	103	2,973

Media. Stories focused on mapping the health of the East Bay’s open spaces, including 60,000 acres of EBMUD protected watershed (Berkeleyside). Several news reports focused on recent storms and their potential impact on District reservoirs and the ongoing drought (NBC Bay Area, KTVU, Cal Matters). A news segment aired about an early morning alarm at the Central Reservoir in Oakland (KTVU) and a news crew covered a water main break in Oakland that impacted about 300 customers on December 5 (KTVU). A report looked at how Bay Area water utilities are cracking down on excessive outdoor watering – including EBMUD (SF Chronicle), and an EBMUD customer with a large water bill was the focus of a story (SF Chronicle). Finally, the District’s Resource Recovery project was highlighted in a video (Northern California Public Media).

Social Media:

Social Platform	Popular Topic	Impression Generation	# Followers	Change Over Last Month
Twitter	Not available due to Twitter server issue 1/3/2023	-	-	-
Facebook	Rain reminder to turn off irrigation	470	1,822	1
LinkedIn	Job opportunities	1,652	8,173	90
Nextdoor	Orinda Water Treatment Plant upgrade construction notice	1,603		

Staff conducted public outreach to neighbors and interested parties on the following projects:

- Bellevue Cluster Pipeline Replacement Project (Oakland)
- Buena Vista Interceptor repairs (Alameda)
- Clayton/Central Avenue Pipeline Relocation (El Cerrito)
- Embarcadero/East Oakland Sewer Interceptor Improvements Project (Oakland)
- Highgate Road Cluster Pipeline Replacement Project (Kensington)
- Locust and Bonanza Cluster Pipeline Replacement Project (Walnut Creek)
- Madrone and Palo Seco Pumping Plant Rehabilitation Project (Oakland)
- Margarido Cluster Pipeline Replacement Project (Oakland)
- Moraga Flood and Erosion Control Project (Moraga)
- Norton Cluster Pipeline Replacement Project (Oakland)
- Oakland Inner Harbor Pipeline Crossings Project (Alameda & Oakland)
- Pump Station M Rehabilitation Project (Alameda)
- S15 – South Interceptor repairs (Oakland)
- San Pablo Water Treatment Plant fence construction (Kensington)
- San Pablo Water Treatment Plant tree removal (Kensington)
- Special Structures Phase 1 (Oakland)

- Upper San Leandro Water Treatment Plant Maintenance, Reliability, and Chemical System Safety Improvements Project (Oakland)

Contract Equity

On December 7, the District hosted a contractors meet and greet event at the Administration Building. Staff provided information on District contract opportunities and the District's Contract Equity Program. This event was held in partnership with the National Association of Minority Contractors and Contractors Resource Center. Approximately 100 people attended.

Contract Equity staff participated in the following customer events and outreach activities:

- December 9 - U.C. Small & Diverse Business Advisory Council – 24 attendees
- December 13 - Women Business Enterprise Council Pacific – BOLD Success Conference: Audacious, Relentless, and Triumphant Women Entrepreneurs – 80 attendees
- December 14 - Supplier Diversity/Workforce Dev Professionals Network Meet Up – Holiday Mixer – 50 attendees
- December 15 - Western Regional Minority Supplier Development Council 2022 Annual Meeting – 55 attendees

Water Conservation

On December 6 and 13, the District hosted a landscape design assistance training. The comprehensive training included an overview of EBMUD's water supply, landscape and irrigation rebates, and the process and procedures for the Landscape Design Assistance Program. Approximately 40 people attended.

On December 7, staff presented at the Northern California Golf, Turf & Water Summit in Walnut Creek. The presentation highlighted the District service area, programs, and services. Approximately 150 people attended.

On December 7, staff presented at Oakland's Latitude High School 11th grade biology class. The presentations highlighted where our water originates, and actions students can take with their families to save water. The students will utilize the information to create videos related to water conservation for a class assignment. Approximately 50 people attended.

On December 11, staff presented at Evergreen Nursery in San Leandro. The presentation highlighted EBMUD water supply, drought, landscape and irrigation rebates, plant selection and design, and other water conservation tools and resources. Approximately 10 people attended.

On December 12, the District hosted a Landscape Advisory Project Committee meeting. The meeting included a report on the District's water supply and drought update, low-water

ground covers and low-water lawn alternative discussion, and water conservation program and project updates. Approximately 20 people attended.

On December 12, the District was recognized as a prominent partner of Contra Costa County's Master Gardeners. Recognition was giving to partners with exceptional volunteer accomplishments in the community.

On December 12, staff met with the Alameda Bayport Homeowners Association's (HOA) landscape managers to discuss the 2022 irrigation season for their 39 irrigation-only meters. Staff provided information on their nine smart meters, District drought regulations, and ways to increase conservation measures in the landscape. This bi-annual presentation is part of an ongoing water efficiency effort with the HOA to plan for and then review the results of each year's irrigation season.

WORKFORCE PLANNING AND DEVELOPMENT

Staff participated in events/activities that support the District's long-term efforts to develop a diverse pipeline of candidates for future workforce needs and expand collaborative relationships with local partner organizations:

- **December 8, staff participated in a tour of Oakland's Laney College offered to high school students.** Staff provided information about District internships, careers, recruitments, and application processes. Approximately 50 people attended.
- **December 9, staff conducted a tour for pre-apprenticeship trades program participants of Oakland's Rising Sun Center for Opportunity of the District's Central Machine Shop and Main Wastewater Treatment Plant.** Staff provided information about District careers in water and wastewater. Approximately 15 people attended.
- **December 9, staff participated in Laney College's "Women in Machining" event in Oakland.** Staff provided information on District internships, machining careers, recruitments, and application processes. Approximately 25 people attended.
- **December 14, staff attended Oakland Housing Authority's "Holiday Job Fair."** Staff provided information on District internships, careers, recruitments, and application processes. Approximately 60 people attended.
- **December 16, staff participated in YouthBuild's "Project Hope Speed Interviewing Challenge" in Livermore.** Staff conducted mock interviews and provided information on District careers, recruitments, and application processes. Approximately 15 people attended.

Tuition Reimbursement

	December 2022	FY2023 Total
# of Employees	7	57
# of Classes	9	82
Total Reimbursed	\$4,926.48	\$63,470.38

Employment Information

	December 2022	FY2023 Total
Retirements – Regular	1	45
Retirements – Vested	6	14
Hires/Rehires	8	103
Other Separations	1	49

FINANCIAL STABILITY

In December, an additional qualified vendor was added to the agreements for Original Equipment Manufacturer parts for fleet vehicles and equipment. Downtown Auto Center meets District standards and has been added to increase flexibility and vendor availability.

As of December 2022, the District received reimbursement payments from the Low-Income Household Water Assistance Program (LIHWAP) for \$373,972.09 for customers in Alameda County and \$43,702.92 for customers in Contra Costa County. LIHWAP payments are processed through designated local service providers for each county. The total amount received to date is \$417,675.01 and additional payments are expected as the state continues to rollout the program.

Low-Income Household Water Assistance Program as of December 31, 2022		
County	Total Payment Amount	Total Count
Alameda County	\$373,972.09	395
Contra Costa County	\$43,702.92	59
Grand Total	\$417,675.01	454

Low-Income Household Water Assistance Program by Month - July thru December 2022														
Month	July		August		September		October		November		December		Total to Date	
County	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received	Accounts	Payment Received
Alameda	17	\$14,105.43	78	\$70,570.04	92	\$85,690.99	78	\$67,563.45	49	\$48,161.64	81	\$87,880.54	395	\$373,972.09
Contra Costa	0	\$0.00	10	\$5,707.69	12	\$6,295.35	10	\$7,408.44	13	\$8,318.57	14	\$15,972.87	59	\$43,702.92
Totals	17	\$14,105.43	88	\$76,277.73	104	\$91,986.34	88	\$74,971.89	62	\$56,480.21	95	\$103,853.41	454	\$417,675.01

The estimated earned revenue from the Main Wastewater Treatment Plant Power Generation Station’s surplus power sales for December is \$64,138. The District sold renewable power and related Renewable Energy Credits (RECs) to the Port of Oakland. The sale of RECs generated \$20,688 from the Port of Oakland. Earned revenue for FY 2023 to date is estimated at \$377,260 or 75 percent of the total FY 2023 budget of \$500,000.

The estimated earned revenue from Mokelumne power sales for December is \$4,290,000. The District sold renewable power and related Renewable Energy Credits (RECs) to Marin Clean Energy (MCE). Sales of RECs generated \$136,000 from MCE. Resource Adequacy (RA) capacity sales to 3 Phases Renewables, Inc. and Shell Energy collectively earned \$102,030. Earned revenue to date through December is estimated at \$8,640,000 or 172.9 percent of the FY 2023 budgeted \$5.0 million. Forecasted revenue for FY 2023 is \$17.4 million.

There were no material, supply, or construction contracts from \$80,001 to \$100,000 and six general and professional service agreements from \$30,001 up to \$80,000 approved by the General Manager in December 2022.

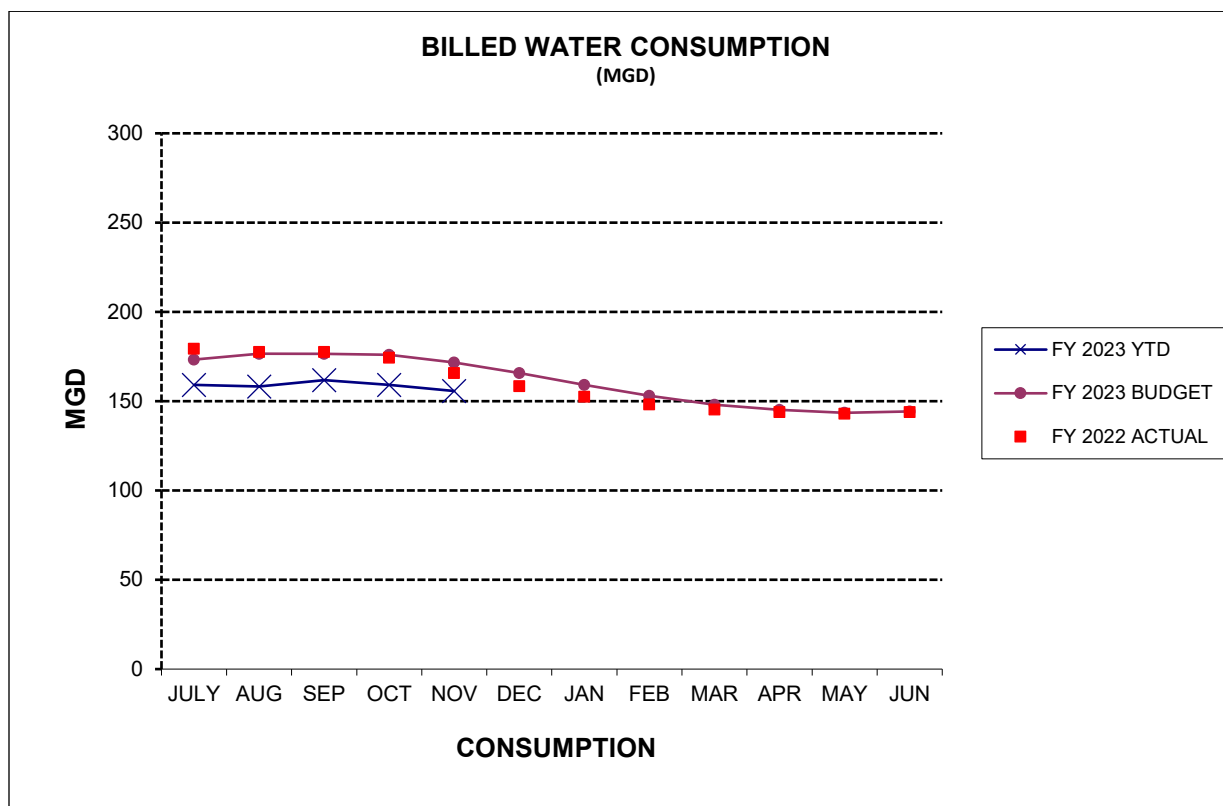
VENDOR NAME	DATE AWARDED	CEP STATUS	ITEM (S) PURCHASED	PROJECT	CONTRACT TERM	VALUE
D&M Utility Services of CA	12/5/22	White Male	Utility locating and mapping services at the Pardee Center	N/A	N/A	\$49,950
Northgate Environmental Management, Inc.	12/12/22	White Women	Consulting Services related to a cement mortar lining study	N/A	N/A	\$80,000
Rainbow Waterproofing & Restoration Co.	12/21/22	White Male	Services to waterproof the Administration Building 4th floor terrace	N/A	N/A	\$52,915
Isle Inc.	12/21/22	White Male	Amendment to existing agreement under PO EBM201879 to increase by \$60,000 for additional Center for Smart Infrastructure workshop support and guidance	N/A	N/A	\$80,000
Rand Worldwide Subsidiary, Inc. dba IMAGINiT Technologies	12/28/22	Publicly Held Corporation	Services to complete the pipeline infrastructure CAD Manual, provide CAD training, and assist with CAD-BIM technical support	N/A	N/A	\$74,000
Unico Mechanical Corp.	12/29/22	White Male	Services to repair the damaged brake disc on the Pardee Powerhouse Unit 1 generator rotor	N/A	N/A	\$76,400

Water Sales (Consumption)

The following consumption information is the average water consumption in millions of gallons per day (MGD) for the first five month of FY 2023. The budgeted average daily water consumption for FY 2023 is 145.8 MGD, and summer month consumption is generally higher due to outdoor watering. The table below shows the average billed water consumption information by customer class with a comparison to FY 2022 data for the same period of time.

On April 26, 2022 the Board declared a water shortage emergency and Stage 2 drought. Resolution No. 35287-22 establishes a District-wide mandatory water use reduction goal of 10 percent.

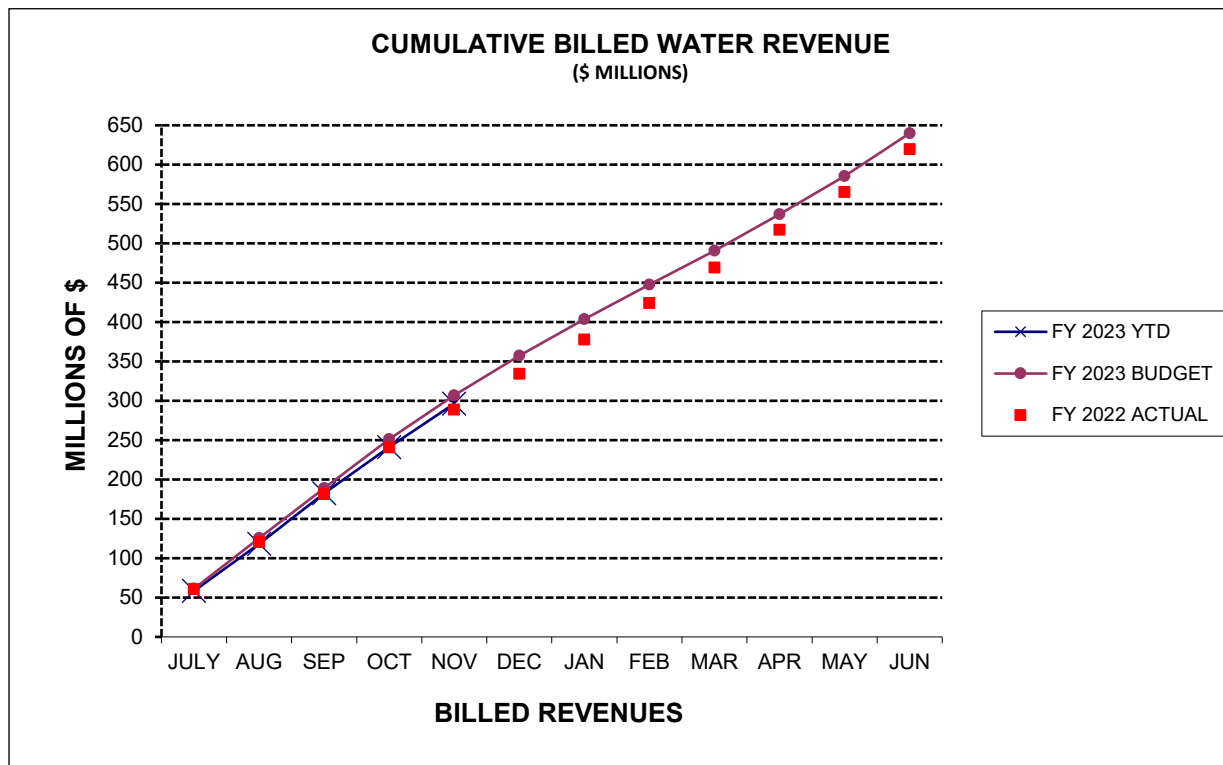
Fiscal Year-to-Date Billed Water Consumption			
Usage Type	FY 2023 (MGD)	FY 2022 (MGD)	Year-over-Year (% change)
Residential	78.0	84.9	-8.1%
Commercial	52.2	53.6	-2.6%
Industrial	17.8	19.1	-6.8%
Public Authority	7.7	8.1	-4.9%
Total Billed Water Consumption	155.7	165.7	-6.0%



Source: Customer Information System

Water Sales (Revenue)

Water revenues billed through November were \$296.4 million or 1.1% more than the FY 2022 revenue through November of \$293.3 million. (FY 2022 revenue excludes approximately \$13.8 million collected in July 2021 resulting from a backbill to the Chevron Richmond Refinery where two meters were found to be under-registering.) This increase reflects lower November 2022 water sales, partially offset by the 4.0% FY 2023 rate increase and a Stage 2 Drought Surcharge of 8.0% on Water Flow Charges. Total FY 2023 water revenues through November are \$10.3 million, or 3.4%, less than the budgeted water revenue of \$306.7 million.



Source: Customer Information System

December 2022 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
ALAMEDA		MARINER SQUARE	DR	STEEL	6	1962	2,880	12/13/2022	12/14/2022	Y
ALAMO		DEAN	RD	STEEL	12	1963	21,600	11/30/2022	12/2/2022	Y
ALBANY		CALHOUN	ST	CAST IRON	4	1927	28,800	12/13/2022	12/16/2022	Y
ALBANY		SAN PABLO	AVE	CAST IRON	4	1934	1,800	12/11/2022	12/11/2022	Y
ALBANY		STANNAGE	AVE	CAST IRON	4	1927	23,040	12/21/2022	12/22/2022	Y
ALBANY		WASHINGTON	AVE	CAST IRON	8	1947	20,160	12/9/2022	12/15/2022	Y
BERKELEY		7TH	ST	CAST IRON	6	1927	22,500	12/2/2022	12/2/2022	Y
BERKELEY		ADDISON	ST	CAST IRON	6	1941	23,040	12/18/2022	12/19/2022	Y
BERKELEY		BUENA	AVE	CAST IRON	6	1950	0	12/5/2022	12/7/2022	Y
BERKELEY		BUENA	AVE	CAST IRON	2	1927	40,320	12/13/2022	12/19/2022	Y
BERKELEY		CAMPUS	DR	CAST IRON	6	1956	630	12/22/2022	12/23/2022	Y
BERKELEY		DELAWARE	ST	CAST IRON	6	1931	0	12/7/2022	12/13/2022	Y
BERKELEY		EUCLID	AVE	STEEL	8	2009	1,080	12/19/2022	12/20/2022	Y
BERKELEY		HEARST	AVE	CAST IRON	6	1940	43,200	12/16/2022	12/20/2022	Y
BERKELEY		SAN MATEO	RD	CAST IRON	4	1911	5,400	12/17/2022	12/17/2022	Y
BERKELEY		SAN PABLO	AVE	CAST IRON	4	1930	9,000	12/23/2022	12/23/2022	Y
BERKELEY		SOUTHAMPTON	AVE	STEEL	8	1958	10,080	12/8/2022	12/14/2022	Y
BERKELEY		SOUTHAMPTON	AVE	CAST IRON	6	1958	9,000	12/14/2022	12/15/2022	Y
BERKELEY		TYLER	ST	CAST IRON	6	1940	17,280	12/19/2022	12/22/2022	Y
CASTRO VALLEY		JENSEN	RD	CAST IRON	6	1931	18,000	12/21/2022	12/21/2022	Y
CASTRO VALLEY		VILLAREAL	DR	ASBESTOS CEMENT	8	1980	4,500	12/4/2022	12/5/2022	Y
CROCKETT		VIRGINIA	ST	STEEL	6	1976	0	11/29/2022	12/8/2022	Y
DANVILLE		COMPO VIA		ASBESTOS CEMENT	6	1956	3,600	12/21/2022	12/21/2022	Y
DIABLO		CABALLO RANCHERO	DR	STEEL	6	1960	9,000	12/5/2022	12/5/2022	Y
EL CERRITO		ARLINGTON	BL	CAST IRON	8	1935	2,700	12/1/2022	12/1/2022	Y
EL CERRITO		CONTRA COSTA	DR	CAST IRON	6	1948	7,200	12/17/2022	12/21/2022	Y
EL CERRITO		NAVILLIER	ST	CAST IRON	8	1953	450	12/15/2022	12/15/2022	Y
EL CERRITO		PEBBLE BEACH	CT	ASBESTOS CEMENT	6	1967	8,640	11/30/2022	12/5/2022	Y
EL CERRITO		PORTOLA	DR	CAST IRON	6	1930	1,800	12/13/2022	12/13/2022	Y

**KPI = turn around time to repair the leak*

December 2022 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
EMERYVILLE		45TH	ST	CAST IRON	10	1931	900	12/23/2022	12/24/2022	Y
EMERYVILLE		HOLLIS	ST	CAST IRON	4	1939	30,240	12/22/2022	12/28/2022	Y
HAYWARD		2ND	ST	CAST IRON	4	1933	3,600	12/20/2022	12/21/2022	Y
HAYWARD		CHERRY	WAY	CAST IRON	4	1941	64,800	11/30/2022	12/8/2022	Y
HAYWARD		MEEKLAND	AVE	CAST IRON	6	1938	22,500	12/7/2022	12/8/2022	Y
HAYWARD		SHASTA	ST	CAST IRON	6	1950	8,640	12/7/2022	12/12/2022	Y
KENSINGTON		YALE	CIR	CAST IRON	4	1936	2,700	12/6/2022	12/6/2022	Y
LAFAYETTE		MORAGA	RD	STEEL	12	1947	0	7/13/2022	12/15/2022	N
LAFAYETTE		PLEASANT HILL	RD	CAST IRON	6	1941	0	11/29/2022	12/14/2022	Y
LAFAYETTE		TERRA TERESA		ASBESTOS CEMENT	6	1983	4,500	12/4/2022	12/4/2022	Y
MORAGA		AUGUSTA	DR	STEEL	12	1985	2,880	12/8/2022	12/9/2022	Y
MORAGA		LANCE	CT	ASBESTOS CEMENT	6	1959	0	11/29/2022	12/6/2022	Y
OAKLAND		2ND	AVE	CAST IRON	6	1935	1,080	12/14/2022	12/14/2022	Y
OAKLAND		10TH	AVE	CAST IRON	6	1930	27,000	12/15/2022	12/15/2022	Y
OAKLAND		21ST	AVE	CAST IRON	6	1926	2,700	12/8/2022	12/8/2022	Y
OAKLAND		22ND	AVE	CAST IRON	6	1925	17,280	12/11/2022	12/14/2022	Y
OAKLAND		22ND	AVE	CAST IRON	6	1925	4,320	12/14/2022	12/14/2022	Y
OAKLAND		22ND	AVE	CAST IRON	6	1925	900	12/14/2022	12/14/2022	Y
OAKLAND	E	24TH	ST	CAST IRON	6	1929	2,250	12/24/2022	12/24/2022	Y
OAKLAND	E	24TH	ST	CAST IRON	6	1929	1,800	12/28/2022	12/28/2022	Y
OAKLAND	E	28TH	ST	CAST IRON	4	1948	1,800	12/16/2022	12/16/2022	Y
OAKLAND		33RD	ST	CAST IRON	6	1926	12,960	12/5/2022	12/7/2022	Y
OAKLAND		66TH	AVE	STEEL	12	1966	180,000	12/24/2022	12/24/2022	Y
OAKLAND		71ST	AVE	CAST IRON	4	1926	2,880	12/22/2022	12/22/2022	Y
OAKLAND		104TH	AVE	CAST IRON	6	1938	14,400	12/1/2022	12/2/2022	Y
OAKLAND		104TH	AVE	CAST IRON	6	1938	22,500	12/2/2022	12/2/2022	Y
OAKLAND		91ST	AVE	CAST IRON	4	1934	27,000	12/4/2022	12/4/2022	Y
OAKLAND		ANTIOCH	CT	CAST IRON	4	1951	1,800	12/6/2022	12/6/2022	Y
OAKLAND		ARDMORE	AVE	CAST IRON	4	1928	5,400	12/18/2022	12/19/2022	Y

**KPI = turn around time to repair the leak*

December 2022 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
OAKLAND		BROADWAY		CAST IRON	6	1929	4,500	12/21/2022	12/21/2022	Y
OAKLAND		CLEMENS	RD	STEEL	6	1954	900	12/6/2022	12/6/2022	Y
OAKLAND		CORTERREAL	AVE	CAST IRON	6	1950	1,800	12/7/2022	12/8/2022	Y
OAKLAND		DOVER	ST	CAST IRON	6	1938	1,080	12/19/2022	12/20/2022	Y
OAKLAND		ECHO	AVE	CAST IRON	6	1938	1,350	12/9/2022	12/9/2022	Y
OAKLAND		EMBARCADERO		CAST IRON	12	1949	180	12/1/2022	12/4/2022	N
OAKLAND		EMBARCADERO		CAST IRON	8	1925	3,600	12/18/2022	12/19/2022	Y
OAKLAND		EMPIRE	RD	CAST IRON	6	1943	9,000	12/27/2022	12/27/2022	Y
OAKLAND		FOOTHILL	BL	CAST IRON	6	1937	2,250	12/15/2022	12/15/2022	Y
OAKLAND		GRAFFIAN	ST	CAST IRON	6	1940	14,400	12/11/2022	12/12/2022	Y
OAKLAND		HOLLY	ST	CAST IRON	4	1938	4,500	12/17/2022	12/17/2022	Y
OAKLAND		INTERNATIONAL	BL	CAST IRON	8	1912	4,320	12/5/2022	12/5/2022	Y
OAKLAND		LEIMERT	BL	CAST IRON	4	1928	4,500	12/22/2022	12/23/2022	Y
OAKLAND		LINWOOD	AVE	CAST IRON	6	1928	23,040	12/5/2022	12/5/2022	Y
OAKLAND		MAXWELL	AVE	CAST IRON	6	1934	14,400	12/5/2022	12/6/2022	Y
OAKLAND		MERRIEWOOD	DR	CAST IRON	6	1938	0	11/29/2022	12/6/2022	Y
OAKLAND		MINNA	AVE	CAST IRON	6	1937	4,500	12/4/2022	12/5/2022	
OAKLAND		MORCOM	AVE	CAST IRON	6	1924	9,000	12/12/2022	12/13/2022	
OAKLAND		MORGAN	AVE	CAST IRON	6	1939	20,160	12/8/2022	12/14/2022	
OAKLAND		MORSE	DR	CAST IRON	6	1934	0	12/19/2022	12/19/2022	
OAKLAND		NEVIL	ST	CAST IRON	6	1929	900	12/10/2022	12/10/2022	
OAKLAND		NEY	AVE	CAST IRON	6	1926	9,000	12/4/2022	12/4/2022	
OAKLAND		OAK	ST	CAST IRON	8	1929	2,250	12/2/2022	12/5/2022	
OAKLAND		OAKLAND	AVE	CAST IRON	6	1933	18,000	12/22/2022	12/22/2022	
OAKLAND		OUTLOOK	AVE	CAST IRON	4	1927	2,250	12/13/2022	12/13/2022	
OAKLAND		PARK	BL	CAST IRON	6	1936	27,000	12/3/2022	12/3/2022	
OAKLAND		PARK	BL	CAST IRON	6	1936	27,000	12/12/2022	12/12/2022	
OAKLAND		REDDING	ST	CAST IRON	6	1949	21,600	12/6/2022	12/8/2022	
OAKLAND		RHODA	AVE	ASBESTOS CEMENT	6	1963	5,760	11/28/2022	12/1/2022	

**KPI = turn around time to repair the leak*

December 2022 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
OAKLAND		SAN PABLO	AVE	CAST IRON	4	1894	13,500	12/3/2022	12/3/2022	
OAKLAND		STEELE	ST	CAST IRON	6	1925	14,400	12/8/2022	12/9/2022	
OAKLAND		SYLVAN	AVE	CAST IRON	4	1957	900	12/2/2022	12/2/2022	
OAKLAND		TELEGRAPH	AVE	CAST IRON	6	1927	9,000	12/24/2022	12/24/2022	
OAKLAND		TRASK	ST	CAST IRON	4	1930	3,600	12/4/2022	12/5/2022	Y
OAKLAND		WARNER	AVE	CAST IRON	4	1942	0	12/21/2022	12/21/2022	Y
OAKLAND		WATTLING	ST	CAST IRON	8	1945	17,280	12/22/2022	12/24/2022	Y
ORINDA		CAMINO DEL DIABLO		CAST IRON	4	1941	9,000	12/16/2022	12/16/2022	Y
ORINDA		HIDDEN	LN	STEEL	6	1970	14,400	12/20/2022	12/20/2022	
ORINDA		MINER	RD	CAST IRON	6	1938	6,300	12/2/2022	12/2/2022	
ORINDA		MINER	RD	STEEL	6	1968	36,000	12/2/2022	12/3/2022	
ORINDA		MINER	RD	CAST IRON	6	1937	36,000	12/3/2022	12/3/2022	
ORINDA		MINER	RD	CAST IRON	6	1937	90,000	12/13/2022	12/13/2022	
ORINDA		ORINDA	WAY	CAST IRON	8	1934	2,250	12/3/2022	12/4/2022	
ORINDA		OVERHILL	RD	CAST IRON	8	1946	20,160	12/4/2022	12/5/2022	
PIEDMONT		PARKSIDE	DR	CAST IRON	4	1928	17,280	12/16/2022	12/21/2022	
PIEDMONT		SANDRINGHAM	RD	CAST IRON	8	1929	36,000	12/13/2022	12/14/2022	
PINOLE		SILVERCREST	ST	ASBESTOS CEMENT	6	1968	900	12/8/2022	12/9/2022	
PLEASANT HILL		CROYDEN	DR	ASBESTOS CEMENT	8	1968	1,800	12/7/2022	12/7/2022	
PLEASANT HILL		OAK PARK	BL	CAST IRON	4	1941	1,800	12/5/2022	12/6/2022	
RICHMOND		9TH	ST	CAST IRON	6	1934	9,000	12/2/2022	12/2/2022	
RICHMOND		43RD	ST	CAST IRON	6	1938	1,800	12/2/2022	12/2/2022	
RICHMOND		BISSELL	AVE	CAST IRON	8	1957	1,800	12/5/2022	12/5/2022	
RICHMOND		CENTER	AVE	CAST IRON	6	1943	720	12/20/2022	12/21/2022	Y
RICHMOND		FLORIDA	AVE	CAST IRON	6	1941	36,000	12/9/2022	12/9/2022	Y
RICHMOND		NEVIN	AVE	CAST IRON	4	1931	1,800	12/21/2022	12/21/2022	Y
RICHMOND		SONOMA	ST	CAST IRON	6	1951	1,800	12/22/2022	12/22/2022	Y
RODEO		SHARON	AVE	CAST IRON	4	1951	14,400	12/18/2022	12/19/2022	Y
SAN LEANDRO		137TH	AVE	CAST IRON	6	1947	1,080	12/25/2022	12/25/2022	Y

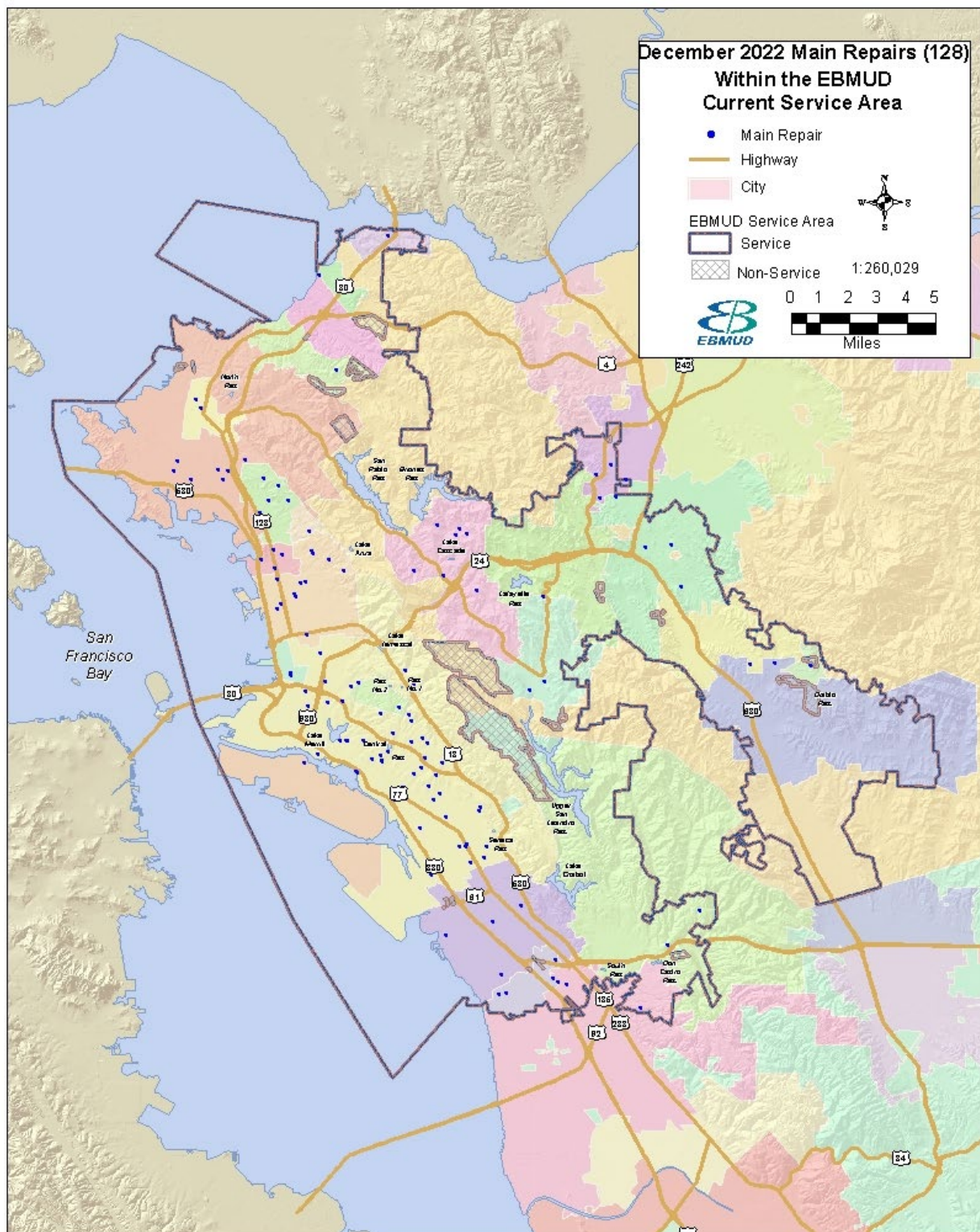
**KPI = turn around time to repair the leak*

December 2022 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
SAN LEANDRO		ALVARADO	ST	CAST IRON	6	1948	0	9/2/2022	12/12/2022	N
SAN LEANDRO		AURORA	DR	CAST IRON	6	1938	450	12/14/2022	12/15/2022	Y
SAN LEANDRO		DEWEY	ST	ASBESTOS CEMENT	6	1950	0	12/16/2022	12/16/2022	Y
SAN LORENZO		BOCKMAN	RD	ASBESTOS CEMENT	8	1956	0	12/12/2022	12/12/2022	Y
SAN LORENZO		CORTE GERALDO		ASBESTOS CEMENT	4	1955	900	12/9/2022	12/9/2022	Y
SAN LORENZO		ELGIN	ST	CAST IRON	4	1938	0	12/10/2022	12/10/2022	Y
SAN PABLO		21ST	ST	CAST IRON	4	1946	900	12/15/2022	12/15/2022	Y
SAN PABLO		COLIN	ST	CAST IRON	4	1942	900	12/7/2022	12/7/2022	Y
WALNUT CREEK		BONANZA	ST	CAST IRON	8	1953	1,350	12/27/2022	12/28/2022	Y
WALNUT CREEK		CRESTON	RD	CAST IRON	6	1951	4,500	12/7/2022	12/7/2022	Y
WALNUT CREEK		RUDGEAR	RD	ASBESTOS CEMENT	6	1956	18,000	12/17/2022	12/17/2022	Y
WALNUT CREEK		SUMMIT	RD	ASBESTOS CEMENT	8	1957	900	12/21/2022	12/21/2022	Y

	1,466,640
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Non-surfacing leaks discovered by leak detection technologies	0
Breaks caused by contractors or other agencies	0
Other main breaks	128
Total water main repairs	128

**KPI = turn around time to repair the leak*



Customer Account Delinquency Information							
DECEMBER 2022							
(Data collection began September 1, 2017)							
CUSTOMER ASSIST. PROGRAM (CAP) ENROLLMENT	July	August	September	October ²⁶	November ²⁷	December ²⁸	Totals
New CAP Participants	162	161	134	104	154	89	10,756
CAP Renewals	266	201	158	160	168	111	10,792
CAP Departures	509	381	382	343	346	345	13,517
Total Active CAP Participants w/Active Accounts	8,795	8,735	8,735	8,729	8,794	8,818	
PAYMENT PLANS	July	August	September	October	November	December	Totals
Approved Payment Plans	1,142	1,143	1,369	1,602	1,707	1,716	198,242
Payment Plans Established After Service Interruptions	-	-	-	-	-	-	1,320
SERVICE INTERRUPTIONS - RESIDENTIAL	July	August	September	October	November	December	Totals
15-day Final Collection Notices	15,670	18,109	17,683	19,302	15,280	16,192	1,000,490
48-hr Service Interruptions Notices ³	9,728	12,907	9,990	12,187	11,612	10,600	576,497
Service Interruption Orders Created	*	*	*	*	*	*	82,689
Service Interruptions Completed (Actual)	*	*	*	*	*	*	22,712
CAP Enrolled Service Interruptions	*	*	*	*	*	*	802
WATER THEFT	July	August	September	October	November	December	Totals
No. of Incidents	5	4	2	4	2	2	417
No. of 2nd or 3rd Occurrences	-	-	-	-	-	-	41
No. Water Theft Penalties Issued	-	-	-	-	-	-	227
No. of Appeals Received	-	-	-	-	-	-	10
No. of 1st Appeals Approved	-	-	-	-	-	-	5
No. of 1st Appeals Denied	-	-	-	-	-	-	7
Multi-Family Liens ¹	July	August	September	October	November	December	Totals
Liens Filed	-	-	-	85	-	51	5,285
Released	64	149	105	18	-	9	4,814
Transferred to Alameda Cty.	-	-	-	-	-	-	1,889
Transferred to Contra Costa Cty.	-	-	-	-	-	-	373
Total/Month	64	149	105	103	0	60	12,361
BAD DEBT - WRITE OFFS ²	July	August	September	October	November	December	Totals
Total Referred to Collection Agency	\$ 151,099	\$ 188,227	\$ 372,744	\$ 280,326	\$ 259,605	TBD ²⁸	\$ 11,054,052
Write-Off % to Billed Revenue	0.23%	0.28%	0.52%	0.43%	0.41%	TBD ²⁸	

¹Liens filed monthly represent delinquent accounts 4-6 months in arrears.

²Information not available until the 20th of the month is normally one month behind, however due to summer schedule July and August to be updated in September 2020.

³48-hour notices were generated, but not mailed to customers since March 23, 2020. Customers are receiving payment reminders in-lieu of 48-hours notices.

²⁶CAP through September 27, 2022; bad debt % only for June 2022; October collection agency amt. not available as of November 1, 2022.

²⁷ CAP applications processed through November 18, 2022.

²⁸ CAP applications processed through December 16, 2022.

**Notes: - Effective March 12, 2020, the District suspended "Disconnects Due to Non-Payment" (DNP) to residential customers, withheld mailing 48-hr notices to customers, and began restoring service to all customers shutoff as of January 2020. The DNP information will be omitted from this table until the District resumes DNP activities.*

Water Theft Type/City	Alameda	Alamo	Albany	Berkeley	Castro Valley	Crockett	Danville	El Cerrito	El Sobrante	Emeryville	Hayward	Hercules
Meter	2	1	2	16	3	2	1	2	3	1	7	4
Illegal Connection	-	1	-	1	-	-	-	-	-	-	-	-
Hydrant	-	-	-	-	-	-	-	-	-	-	-	-
Total	2	2	2	17	3	2	1	2	3	1	7	4

Water Theft Type/City	Lafayette	Oakland	Piedmont	Pinole	Richmond	Rodeo	San Lorenzo	San Leandro	San Pablo	San Ramon	Walnut Creek	Totals since 9/1/2017
Meter	1	258	1	6	77	7	2	8	4	2	1	411
Illegal Connection	-	3	-	-	-	-	-	-	-	-	1	6
Hydrant	-	-	-	-	-	-	-	-	-	-	-	0
Total	1	261	1	6	77	7	2	8	4	2	2	417

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 5, 2023

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager *CCC*

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Planning Committee Minutes – December 13, 2022

Chair Marguerite Young called to order the Planning Committee meeting at 9:04 a.m. and announced that in accordance with Government Code section 54953(e), the meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting. Director Frank Mellon was present at roll call. Director Lesa R. McIntosh arrived at 9:10 a.m. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Director of Operations and Maintenance David A. Briggs, Director of Engineering and Construction Olujimi O. Yolooye, Director of Water and Natural Resources Michael T. Tognolini, Senior Civil Engineer Timothy P. Karlstand, Associate Civil Engineer Deborah C. Russell, Senior Civil Engineer Casey J. LeBlanc, Principal Management Analyst Jon Bauer, and Secretary of the District Rischa S. Cole.

Public Comment. None.

Presentations/Documentation. 1) Presentation entitled “Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Project Update,” dated December 13, 2022; 2) Presentation entitled “USL WTP Maintenance and Reliability & USL and Sobrante WTPs Chemical Systems Safety Improvements Project Update,” dated December 13, 2022; 3) Presentation entitled “Oursan Ridge Conservation Bank Update,” dated December 13, 2022; and 4) Presentation entitled “Advanced Metering Infrastructure Business Case Evaluation,” dated December 13, 2022.

Orinda Water Treatment Plant (WTP) Disinfection and Chemical Systems Safety Improvements Project Update. Senior Civil Engineer Timothy P. Karlstand provided the update. The project consists of two subprojects that are estimated to cost \$325 million and to be completed over five years. Work includes installation of a new disinfection facility, comprised of an underground ultra violet disinfection and chlorine contact basin (UV/CCB) facility and an above-ground maintenance and UV electrical building; a grounds maintenance building and associated parking area; new effluent piping and connections to the Claremont Tunnel and Los Altos No. 2 Pumping Plant; new electrical buildings; a standby generator and fuel storage tank; modifications to the raw water channel; demolition of existing grounds maintenance and mechanical maintenance facilities; and new chemical storage and feed systems. Mr. Karlstand reviewed the organization of the project team which include numerous District, consultant and contract staff, and the teams’ five pillars of success - safety, quality, schedule cost and control, client satisfaction, and community relations. Construction of temporary facilities at the District-owned North Orinda Sports Field to house Operations and Maintenance staff during construction, improvements to the raw water control systems, overall site preparations for the excavation for the underground UV/CCB facility, and the first phase of construction of the temporary chemical systems are underway. All are expected to be completed by spring 2023. Staff has developed a comprehensive community communication plan to include public meetings; project brochures; tours; open houses; social media posts; a project webpage on eb mud.com; press releases; information in the *Orinda Outlook*, the Orinda City Manager’s weekly electronic newsletter; Wagner Ranch School; and interpretive signage outside the WTP. He reviewed construction

activities scheduled for 2023 and said the project is expected to be completed by spring 2027. Staff is scheduled to provide the next project update to the Planning Committee in December 2023. The Committee asked questions about the excavation including worker safety; how the dirt will be managed; how water entering the site will be managed; potential impacts to the ecosystem after the water is treated and discharged to nearby creeks; and plans to manage risks during the excavation and for the overall project. The Committee requested additional project updates in advance of December 2023 and a copy of the project's risk management report. It was moved by Director McIntosh, seconded by Director Mellon, and carried (3-0) by voice vote to accept the report.

Upper San Leandro (USL) Water Treatment Plant (WTP) Maintenance and Reliability and USL and Sobrante WTPs Chemical Systems Safety Improvements Project Update. Associate Civil Engineer Deborah C. Russell presented the update. The USL WTP Maintenance and Reliability Project has been combined with the USL and Sobrante WTP Chemical Systems Safety Improvements Project (CSSIP) to reduce construction costs and minimize the impact to operations. Project costs are estimated at \$210 million. The District received \$3.5 million under the federal Consolidated Appropriations Act, 2022 for the USL WTP project. The capacity of the USL WTP is currently limited to 45 million gallons per day (MGD) during periods of poor water quality. The project will remove these limitations to allow reliable operation at the plant's permitted capacity of 60 MGD and will also improve seismic reliability and provide water savings. The CSSIP will improve safety for operations and maintenance staff and improve reliability and maintenance of the chemical systems. Ms. Russell discussed the overall project scope, goals and locations in El Sobrante and Oakland, as well as the importance of ensuring the reliability of the USL WTP. She reviewed key community concerns and mitigation measures for traffic control, trees and landscaping, and noise management and reported community engagement and outreach was completed in May and December 2022. The project has a dedicated webpage on ebmud.com and staff conducted individual coordination with adjacent neighbors. A community meeting will be held in March 2023, and a public open house will be held at the USL WTP in late spring 2023 prior to start of construction. Construction bids are scheduled to open in January 2023 with construction anticipated to start in July 2023 and conclude by November 2026. Ms. Russell and General Manager Clifford C. Chan responded to questions from the Committee regarding plans for the San Pablo WTP after it is decommissioned; outreach to elected officials and schools near the project; project funding; and outreach to union contractors. The Committee asked staff to ensure community outreach for the project is similar to outreach for the Orinda WTP project; for information on whether the pre-qualified prime- and sub-contractors are union contractors; and to begin including information on whether prime- and sub-contractors pre-qualified for future projects are union contractors. It was moved by Director Mellon, seconded by Director McIntosh, and carried (3-0) by voice vote to accept the report.

Update on the Oursan Ridge Conservation Bank (Bank). Principal Management Analyst Jon Bauer reported the Bank was established to preserve in perpetuity 429.9 acres (or about 1.5 percent of the District's East Bay Watershed) to protect and enhance habitat for the California red-legged frog and Alameda whipsnake and preserve onsite biodiversity. All 429.9 acres of the Bank are available as transferrable credits for third-party purchases. To date, 65 credits have been sold under 22 transactions with sales revenue totaling \$2.4 million. Revenue generated from the Bank is used to purchase watershed land to protect the District's water quality. The Bank has generated sufficient revenue to fully fund the Bank's Endowment Fund (Fund) which is held in trust under an Endowment Agreement by the non-profit Wildlife Heritage Foundation and was initially set at approximately \$1.26 million. However, the Fund's target has risen with the consumer price index changes to approximately \$1.5 million. In December, staff

will make the final deposit to the Fund and once it is fully mature, the Fund will cover the District's long-term cost for Bank monitoring and management. Staff will continue selling the remaining credits which are currently estimated at \$18 million and will deposit the resulting revenue into the District's "watershed lands" fund per Policy 4.21, Land and Conservation / Mitigation Credit Sales – Use of Funds. The watershed lands fund will be seeded with approximately \$900,000 remaining after fulfilling the Endowment Fund. Staff will also continue monitoring and managing Bank activities and monitoring for opportunities to purchase property adjacent to the District's East Bay and upcountry watersheds. In response to questions from the Committee, Mr. Bauer confirmed the District has purchased approximately half the credits sold to date for EBMUD projects and that based on the current rate of sales, it could take decades to sell the remaining credits. It was moved by Director McIntosh, seconded by Director Mellon, and carried (3-0) by voice vote to accept the report.

Advanced Metering Infrastructure (AMI) Business Case Evaluation. Senior Civil Engineer Casey J. LeBlanc provided an overview of the District's existing AMI system, findings and conclusions from the consultant's business case evaluation and next steps. The District's existing system has approximately 20,000 meters throughout the service area (about 3,000 installed on the largest commercial accounts and 17,000 on randomly selected residential accounts) that are read using seven AMI collectors (i.e., AMI antennas mounted on towers). Mr. LeBlanc discussed the benefits of AMI as well as the general evaluation criteria and the AMI technologies analyzed for the business case. A full, fixed network system would require 50 to 500 additional towers depending on the vendor and cost approximately \$170 million to \$185 million with a 14-year payback. A full, cellular system would reduce tower construction and potential neighborhood opposition but would have greater meter costs at approximately \$165 million to \$180 million with a 17-year payback. He noted that costs for replacement AMI systems are also included in these estimates. New temporary staffing would be needed for the planning, design, and construction phases; however, the number of positions will depend on the duration of construction. The consultant also analyzed two partial systems – the District's current system, and a system that would include 20 percent of District accounts (the District's existing system plus all commercial, industrial, institutional, and higher-use residential customers). The 20 percent system would require \$22 million in capital and about \$1.5 million for annual operation and maintenance. Mr. LeBlanc explained how an AMI system could be a component of the District's Water Conservation Program and said based on the estimated costs, paybacks, and risks, staff does not recommend investing in a full system at this time. Expanded use of the existing AMI system or implementation of a larger partial AMI system representative of the service area may prove more cost effective. Staff is scheduled to discuss the findings from the evaluation at the February 2023 Long-Term Water Supply Board Workshop. Mr. LeBlanc and General Manager Clifford C. Chan responded to questions from the Committee about ongoing replacement costs for labor and equipment; the number of towers needed for a full system or a partial system with 20 percent of District accounts; alternatives for staff that may no longer be required to read meters; the loss of community presence if staff is no longer required to read meters; and providing flumes in the future for customers that are not on the AMI system. The Committee requested a breakdown of costs for the initial AMI system and the ongoing replacement costs for the various AMI system alternatives. It was moved by Director Mellon, seconded by Director McIntosh and carried (3-0) by voice vote to accept the report.

Adjournment. Chair Young adjourned the meeting at 10:19 a.m.

CCC:RSC

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 5, 2023

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager *CCC*

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Legislative/Human Resources Committee Minutes – December 13, 2022

Chair Lesa R. McIntosh called to order the Legislative/Human Resources Committee meeting at 10:21 a.m. and announced that in accordance with Government Code section 54953(e), the meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting. Directors John A. Coleman and William B. Patterson were present at roll call. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Special Assistant to the General Manager Derry L. Moten, and Secretary of the District Rischa S. Cole.

Public Comment. Addressing the Committee was Ivette Rivera who commented on documents she provided to the Committee.

Presentations/Documentation. 1) Presentation entitled “Diversity, Equity, and Inclusion Strategic Plan Update,” dated December 13, 2022; 2) Document entitled, “Exhibit 108” regarding Case 3:21-cv-04325-AGT Document 83-7 Filed 11/29/22; 3) Cover page and pages 13-17 from EBMUD Affirmative Action and Equal Employment Opportunity FY03 Program Report FY04 Affirmative Action Plan, October 2003; 4) EBMUD FY05 Strategic Plan; 5) Memo dated June 1, 2004 to All Employees from Dennis M. Diemer, General Manager regarding FY05 Strategic Plan; 6) Memo dated June 15, 2004 to WOM Department Staff from Richard G. Sykes, Manager of Water System regarding FY05 Strategic Plan; and 7) Booklet entitled, “Building EBMUD’s Future,” dated January 2004.

Diversity, Equity, and Inclusion Strategic Plan (DEISP) Update. Special Assistant to the General Manager Derry L. Moten reviewed overall progress on the DEISP and actions completed or in progress for the five DEISP strategic pillars (Leadership Commitment, Workforce Diversity, Inclusive Culture, Supplier Diversity, and Social Responsibility). Under Leadership Commitment, new Senior Management Team members, the Equity Core Team, and the Diversity Committee will participate in two training courses focused on cultural and racial equity. The Equity Core Teams continue working on five pilot projects regarding hiring and recruitment; promotion and retention; contracts and procurement; capital improvement projects; and community engagement. Under Workforce Diversity, staff participated in four outreach events, began conducting focus groups on mobility for employees working in classifications earning District salary range 55 or lower, and is tracking the progression of internal employees participating in the Ranger Intern Program. Under Inclusive Culture, staff has started conducting exit surveys and interviews. Under Supplier Diversity, staff participated in six outreach events and continued research on supplier diversity partnership opportunities. Under Social Responsibility, staff continues participating in the Right Relations Program, a 9-month, cohort-based pilot program to build alliances with local Native American communities. Mr. Moten highlighted the members and roles of the three DEISP governance teams; upcoming training for governance team members; cultural equity videos being reviewed and discussed by Senior Management Team members; and provided a comprehensive overview

of the District's post-secondary internships that are administered through the Peralta Colleges Foundation and aim to increase the pool of qualified candidates for District positions that are hard to fill or that have been identified as having underutilization of minorities and/or women. Other programs with this focus include the High School Summer Internship, the District's partnership with Toolworks, and the Community Trainee Program. Mr. Moten requested feedback from the Committee and responded to questions regarding the three DEISP governance teams; the potential to work with labor councils and unions to recruit for hard to fill positions; and training to assist new employees with identifying conscious and unconscious bias. Addressing the Committee was 1) Eric Larsen, President, AFSCME Local 444 who commented on the District's internship programs; and 2) Ivette Rivera who commented on remarks she made during the November 8, 2022 Legislative/Human Resources Committee meeting regarding DEISP Strategic Pillar 1 and the qualifications of a staff member in the District's Diversity and Inclusion Office. The Committee asked staff to consider working with labor councils and union halls for apprentice programs and to consider partnering with Diablo Valley College and Contra Costa College as part of the District's post-secondary internship program. It was moved by Director Coleman, seconded by Director Patterson and carried (3-0) by voice vote to accept the report.

Adjournment. Chair McIntosh adjourned the meeting at 11:03 a.m.

CCC/RSC