



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

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375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

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**Notice of Location Change**

**REGULAR CLOSED SESSION  
and  
REGULAR BUSINESS MEETINGS  
Thursday, September 14, 2021  
*\*\*Virtual\*\****

In accordance with the Governor's Executive Order N-08-21 which suspends portions of the Brown Act, a physical location will not be provided for these meetings. The Regular Closed Session Meeting scheduled for 11:00 a.m., and the Regular Business Meeting scheduled for 1:15 p.m., **will be conducted via webinar and teleconference only.**

Dated: September 9, 2021

A handwritten signature in blue ink that reads 'Rischa S. Cole'.

Rischa S. Cole  
Secretary of the District

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

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375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

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**AGENDA**  
**REGULAR CLOSED SESSION**  
**Tuesday, September 14, 2021**  
**11:00 a.m.**  
***\*\*Virtual\****

**Location**

In accordance with the Governor's Executive Order N-08-21 which suspends portions of the Brown Act, **this meeting will be conducted by webinar and teleconference only.** A physical location will not be provided for this meeting.

**\*\*\*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.

**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. Threat to public services or facilities pursuant to Government Code section 54957:  
Conference with David A. Briggs, Director of Operations & Maintenance; and Steven G. Frew, Manager of Security and Emergency Preparedness.
3. Threat to public services or facilities pursuant to Government Code section 54957:  
Conference with David A. Briggs, Director of Operations & Maintenance; Laura A. Acosta, Manager of Human Resources; and Niger M. Edwards, Manager of Employee Relations.
4. Conference with Labor Negotiators Gregory Ramirez and Jeff Bailey from the Industrial Employers Distributors Association; Clifford C. Chan, General Manager; Sophia D. Skoda, Director of Finance; Laura A. Acosta, Manager of Human Resources; and Niger M. Edwards, Manager of Employee Relations, 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.

**ANNOUNCEMENT OF CLOSED SESSION AGENDA:** (Continued)

5. Conference with Board designated representatives President Doug Linney and Director Lesa R. McIntosh regarding the compensation of the General Manager pursuant to Government Code section 54957.6.

*(The Board will discuss Closed Session agenda items via webinar or teleconference.)*

**REGULAR BUSINESS MEETING**

**1:15 p.m.**

**\*\*Virtual\*\***

**Location**

In accordance with the Governor's Executive Order N-08-21 which suspends portions of the Brown Act, **this meeting will be conducted by webinar and teleconference only.** A physical location will not be provided for this meeting.

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

**ROLL CALL:**

**BOARD OF DIRECTORS:**

- Pledge of Allegiance

**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 9 recommendations.)

1. Approve the Regular Meeting Minutes of August 24, 2021.
2. File correspondence with the Board.
3. Award a contract to the lowest responsive/responsible bidder, Frank A. Olsen Company LLC, to supply four butterfly valves for the Upper San Leandro Water Treatment Plant beginning on or after September 14, 2021 for a total cost, after the addition of taxes and fees, not to exceed \$308,700 under Request for Quotation No. 2115.
4. Award a contract to the lowest responsive/responsible bidder, Atlas Performance Industries, Inc., for supplying a 48-ft by 60-ft commercial modular building for the District-Owned North Orinda Sports Fields Temporary Maintenance Facilities Project for a total cost, after the addition of taxes and fees, not to exceed \$402,652 under Request for Quotation No. 2119.

**CONSENT CALENDAR:** (Continued)

5. Authorize an agreement beginning on or after September 15, 2021 with Jacobs Associates, Inc. dba McMillen Jacobs Associates in an amount not to exceed \$562,340 for entry plans and inspection services for the San Pablo Supply Tunnel and the Upper San Leandro Supply Tunnel.
6. Authorize an amendment to the agreement previously amended under Board Motion No. 077-19 with Pacific States Environmental Contractors, Inc. to increase the agreement amount by \$6,800,000 to a total amount not to exceed \$28,106,000, and extend the agreement term to October 3, 2023, for trench soils management and removal services.
7. Authorize an amendment to the agreement previously authorized under Board Motion No. 073-21 with Oppenheimer Investigations Group to increase the agreement amount by \$30,000 to a total amount not to exceed \$140,000 and extend the agreement term to June 30, 2022, for Equal Employment Opportunity investigative services.
8. Approve a 65-month lease agreement with 25 Orinda Way LLC, for 4,461 square feet of office space located at 25 Orinda Way, Orinda to support the District's Orinda Water Treatment Plant's Disinfection Improvements and Chemical Systems Safety Improvement Projects construction management team. The term of the lease is March 2022 through July 2027. The base monthly rent is \$17,621 with a three percent annual escalation and pass-through costs.
9. Authorize the Office of General Counsel to continue the employment of the law firm of Hanson Bridgett LLP, for specialized legal services related to construction, public contracts and procurement, claims, intellectual property and technology matters, tax, public pension law, labor and employment, and litigation matters.

**DETERMINATION AND DISCUSSION:**

10. Review Board of Directors vacation schedule.
11. Approve guidelines and criteria for the District's 2021-2022 redistricting efforts.
12. Authorize actions related to the District's participation in the Los Vaqueros Reservoir Expansion Project.
  - 12.1. Adopt a resolution authorizing the General Manager to execute the Los Vaqueros Reservoir Joint Exercise of Powers Agreement. (Resolution)
  - 12.2. Adopt a resolution appointing a representative and an alternate representative to the Board of Directors of the Los Vaqueros Reservoir Joint Powers Authority. (Resolution)
  - 12.3. Authorize an amendment to the cost-sharing agreement previously authorized under Board Motion Nos. 039-19 and 203-20 with seven other water agencies to increase the agreement amount by \$897,120 to a total amount not to exceed \$2,264,910 and extend the agreement term to December 31, 2022 to fund planning and other pre-construction activities for the proposed Los Vaqueros Reservoir Expansion Project.

**DETERMINATION AND DISCUSSION:** (Continued)

13. Introduction and first reading of the new Excessive Water Use Penalty Ordinance, which repeals Ordinance No. 364-15 entitled "Excessive Water Use Penalty Ordinance for Drought Stages 3 and 4" and reenacts its provisions as amended to (i) conform the Ordinance to the requirements of Chapter 3.3 of Division 1 of the California Water Code by prohibiting and penalizing excessive water use during a declared Stage 2 drought while mandatory water use restrictions are in effect and/or when the District is affected by a Governor-declared drought emergency based on local conditions, (ii) modify the definition of excessive water use in certain circumstances, (iii) fix the penalty amount, and (iv) make other changes necessary or appropriate for the effective implementation of the Ordinance.

(Introduction and 1<sup>st</sup> Reading – Ordinance No. 373-21)

14. General Manager's Report:
- Coronavirus Update
  - 2021 Drought Update
  - Monthly Report – August 2021

**REPORTS AND DIRECTOR COMMENTS:**

15. Committee Reports:
- EBMUD/EBRPD Liaison
  - Redistricting Ad Hoc
  - Finance/Administration
  - Planning
16. Other Items for Future Consideration.
17. Director Comments.

**ADJOURNMENT:**

***The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, September 28, 2021.***

**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 11<sup>th</sup> Street, Oakland, California, during normal business hours, and can be viewed on our website at [www.ebmud.com](http://www.ebmud.com).*

## BOARD CALENDAR

Date	Meeting	Time/Location	Topics
Tuesday, September 14	Planning Committee	9:15 a.m. Virtual	<ul style="list-style-type: none"> <li>Orinda Water Treatment Plant Disinfection Improvements and Orinda Water Treatment Plant Chemical Systems Safety Improvements Projects Update</li> <li>Water Quality Program Semi-Annual Update</li> <li>Main Wastewater Treatment Plant Seismic Retrofit Program Update</li> <li>Regulatory Compliance Semi-Annual Report – January 2021 – June 2021</li> <li>Camanche – Riverview Fire Protection</li> </ul>
	Legislative/Human Resources Committee		<i>Cancelled</i>
	Board of Directors	11:00 a.m. Virtual 1:15 p.m. Virtual	<ul style="list-style-type: none"> <li>Closed Session</li> <li>Regular Meeting</li> </ul>
Tuesday, September 28	Redistricting Ad Hoc Committee	TBD Virtual	
	Finance/Administration Committee	TBD Virtual	
	Board of Directors	11:00 a.m. Virtual 1:15 p.m. Virtual	<ul style="list-style-type: none"> <li>Closed Session</li> <li>Regular Meeting</li> </ul>
Tuesday, October 12	Planning Committee	TBD Virtual	
	Legislative/Human Resources Committee	TBD Virtual	
	Board of Directors	11:00 a.m. Virtual 1:15 p.m. Virtual	<ul style="list-style-type: none"> <li>Closed Session</li> <li>Regular Meeting</li> </ul>

### 2021 Board Committee Members

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



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**Closed Session and Regular Business Meetings  
Tuesday, September 14, 2021  
11:00 a.m. and 1:15 p.m.**

EBMUD public Board meetings will be conducted via Zoom.  
*Please note that Board meetings are recorded, live-streamed, and posted on the District's website.*

*Please visit this page beforehand to familiarize yourself with Zoom.*  
<https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

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>

**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.

If you wish to provide public comment please:

- 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
- The Secretary will call each speaker in the order received
- 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
- 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 keep track of time and inform each speaker when the allotted time has concluded

**Submitting written comments or materials**

- Email written comments or other materials for the Board of Directors to [SecOffice@ebmud.com](mailto: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.

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**To observe the public portion of the 11:00 a.m. Closed Session Meeting and the entirety of the 1:15 p.m. Regular Business Meeting, please visit:** <https://www.ebmud.com/about-us/board-directors/board-meetings/>

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**MINUTES**

**Tuesday, August 24, 2021**

**East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California  
\*Virtual\***

**Regular Closed Session Meeting**

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:01 a.m. He announced that in accordance with the Governor's Executive Order N-08-21 which suspends portions of the Brown Act, this meeting would be 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. All Directors participated remotely.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Manager of Risk Management Vladimir Bessarabov (Item 1a), Director of Engineering and Construction Olujimi O. Yoloye (Item 1b), Engineering Manager Carlton D. Chan (Item 1b), Assistant General Counsel Fred S. Etheridge (Item 2), Director of Water and Natural Resources Michael T. Tognolini (Item 2), Engineering Manager Lena L. Tam (Item 2), Assistant General Counsel Lourdes Matthew (Items 3 and 4), Director of Operations and Maintenance David A. Briggs (Items 3 and 4), Manager of Human Resources Laura A. Acosta (Items 3 and 4), Manager of Employee Relations Niger M. Edwards (Items 3 and 4), Director of Finance Sophia D. Skoda (Item 4), and Industrial Employers Distributors Association representatives Gregory Ramirez and Jeff Bailey (Item 4).

**PUBLIC COMMENT**

- Addressing the Board were the following: 1) Eric O. Larsen, President, AFSCME Local 444 commented on the COVID-19 pandemic and said the union opposes the mandatory vaccination policy for employees. He asked the Board to hold off on implementing the policy to allow employees to consult with their doctors and to consider offering routine testing for unvaccinated employees in lieu of mandatory vaccinations; 2) Joseph Q. Pangelinan, Chief Steward, AFSCME Local 444 commented on the mandatory vaccination policy for employees, the number of vaccinated District employees that have contracted COVID to date, and data from the Alameda and Contra Costa counties' websites regarding COVID; 3) Zander Maverick, EBMUD employee expressed support for the Board's decision to mandate vaccines for employees, and commented on weekly testing for unvaccinated employees, and reports of insurance companies' plans to reduce or decline testing for unvaccinated people; 4) Joey D. Smith, President, AFSCME Local 2019 commented on the mandatory vaccination policy for

employees and asked the Board to take a step back on mandating vaccines; 5) Brandon R. Batteate, commented on adverse effects from COVID vaccines and adverse effects and deaths reported on the CDC website; 6) George D. Cleveland, Chief Steward, AFSCME Local 2019 commented on staff being forced to retire because of the Board's decision to mandate vaccines and asked the Board to consider impacts to staffing levels; 7) Ivette Rivera, EBMUD employee commented on District violations of the California Public Records Act in regards to Board meeting video recordings, violations of the Brown Act in regards to delays in the start times for recent Board meetings, and President Linney's statement in response to her comments during the August 10, 2021 Board meetings regarding the civil rights lawsuit filed against the District by former District attorneys Saji Pierce and Ayriel Bland; 8) Gary Walters II, EBMUD employee and ratepayer commented he agreed with comments from union leadership on the mandatory vaccination policy for employees and commented on social distancing and disinfection, the ratio of vaccinated to unvaccinated transmissions, and the number of vaccinated District employees that have contracted COVID to date; 9) Jennifer Grey, EBMUD employee commented on the mandatory vaccination policy for employees, said she feels discriminated against, and asked the Board to reconsider the policy and discuss options with staff; 10) Ausberto Beltran, EBMUD employee commented on the mandatory vaccination policy for employees, said the mandate will set a terrible precedent, and asked the Board to encourage instead of mandating employees get vaccinated; and 11) Dustin, EBMUD employee commented on the mandatory vaccination policy for employees, said some staff is feeling discriminated against, and asked the Board to reconsider mandating vaccines for employees.

President Linney thanked employees for their comments and acknowledged addressing vaccinations at the District is a challenging issue.

### **ANNOUNCEMENT OF CLOSED SESSION AGENDA**

President Linney announced the closed session agenda and the Board convened for discussion.

### **Regular Business Meeting**

President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:18 p.m. He announced that in accordance with the Governor's Executive Order N-08-21 which suspends portions of the Brown Act, this meeting would be 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. All Directors participated remotely. 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.



### **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

### **PUBLIC COMMENT**

- Addressing the Board was Ivette Rivera, EBMUD employee who commented on District violations of the California Public Records Act in regards to Board meeting video recordings, the video recording of the August 10, 2021 Board meeting posted on YouTube, and President Linney's statement in response to her comments during the August 10, 2021 Board meetings regarding the civil rights lawsuit filed against the District by former District attorneys Saji Pierce and Ayriel Bland.

### **CONSENT CALENDAR**

- Items 1 and 7 were pulled from the Consent Calendar for discussion.
  - Motion by Director Coleman, seconded by Director McIntosh to approve the recommended actions for Items 2-6 and 8-10 on the Consent Calendar carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 149-21** – Approved the Regular Meeting Minutes of August 10, 2021.
    - Eric O. Larsen, President, AFSCME Local 444 commented the meeting minutes did not reflect the Board's intent in Motion No. 142-21 regarding the availability of paid leave under Senate Bill 95 after September 30 for vaccinated employees required to quarantine due to exposure to COVID outside of work. He said the motion, as restated by General Manager Chan, was narrowed to only cover vaccinated employees directed to quarantine due to workplace exposure. Mr. Larsen requested the minutes be held until staff reviewed the meeting recording to confirm the intent of Board was captured as the motion was promulgated. President Linney and General Manager Chan responded the Board would discuss extending the balance of paid leave under Senate Bill 95 to vaccinated employees required to quarantine due to exposure to COVID outside of work during discussion of Agenda Item 12.
    - Motion by Director Mellon, seconded by Director Coleman to approve Item 1, as written, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
  2. The following correspondence was filed with the Board: **1)** Email dated August 22, 2021 from Gary Palhegyi, EBMUD employee to the Board of Directors opposing the District's vaccination mandate; **2)** Email dated August 23, 2021 from Michael Hartlaub, EBMUD employee in support of the District's vaccination mandate; **3)** Email dated August 24, 2021 to the Board of Directors from Gistand Williams, EBMUD employee in support of the District's vaccination mandate; **4)** Presentation entitled, "Mokelumne Aqueduct No. 2 (MOK2) Leak Emergency Declaration," dated August 24, 2021; **5)** Presentation entitled, "Coronavirus Update," dated August 24, 2021; **6)** Presentation entitled, "Los Vaqueros Reservoir Expansion," dated August 24, 2021; and **7)** Presentation entitled, "Capital Project Construction Update," dated August 24, 2021.

3. **Motion No. 143-21** – Awarded a contract to the lowest responsive/responsible bidder, Mountain Cascade, Inc., in an amount not to exceed \$7,072,886 for construction of Pump Station M Rehabilitation and Force Main Investigation under Specification SD-398.
4. **Motion No. 144-21** – Authorized an amendment to the concession contract for the San Pablo Reservoir Recreation Area previously awarded under Board Motion No. 015-21 with Ortega National Parks, LLC to extend the contract term to December 31, 2026.
5. **Motion No. 145-21** – Authorized an agreement beginning on or after August 24, 2021 with TJKM Transportation Consultants in an amount not to exceed \$85,000 for a traffic and road improvement study of Pardee Dam Road.
6. **Motion No. 146-21** – Authorized agreements with Backstrom McCarley Berry & Co. LLC and Montague DeRose and Associates, LLC for municipal advisor services beginning on or after September 13, 2021 for five years with two options to renew for additional one-year periods, in an aggregate amount, including option years, not to exceed \$2,940,000.
- 7a-b. **Motion No. 150-21** – Authorized amendments to the agreements previously authorized under Board Motion No. 211-20 with the following service providers to increase the aggregate amount of those agreements by \$3,700,000 to a total aggregate amount not to exceed \$14,250,000 and extended the term of the agreements to August 24, 2022 for the rental of fully maintained and operated (FM&O) dump truck services: Allied Materials, Inc.; Channa Trucking; CIA Trucking; Curbside Trucking LLC; JD Trucking Company; Darrah Trucking & Excavating, Inc.; Tri Valley Water Trucks, Inc.; E.M. Blair Trucking; Gloria Washington Trucking, Inc.; Hills Trucking; Ibarra Trucking; Inder Trucking; Jackson Transportation; Just Because Trucking Inc.; Mae Trucking; Royal Trucking/Maintenance; S&L Enterprises; S&L Trucking LLC; Sky Rock, Inc.; S.M.G. Trucking; Sudden Sam's Trucking; Sunny Motors Transport, Inc.; Tom Aiken General Engineering; and Wide Area, Inc; and authorized additional agreements for FM&O dump truck services, on an as-needed basis, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager's monthly report.
  - Eric O. Larsen, President, AFSCME Local 444 commented the union objects to extending these agreements and said recruitments for truck drivers and heavy equipment operators at the District should be open and continuous. Mr. Larsen asked if the District's contractors will be required to be vaccinated. General Manager Chan said the Board received an information memo in response to Mr. Larsen's comments at the August 10, 2021 Board meeting regarding truck driver and heavy transport operator recruitments and highlighted information contained in the memo. There was a discussion regarding ongoing vacancies, keeping recruitments for these classifications open and continuous, and vaccination requirements for contractors. Manager of Maintenance and Construction/Water Operations Michael R. Ambrose advised contractors will have the same vaccination requirements as District employees.

- Motion by Director Mellon, seconded by Director Coleman to approve the recommended actions for Items 7a-b, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
- 8. **Motion No. 147-21** – Authorized the General Manager to purchase 2,000 acre-feet of Central Valley Project water from Contra Costa Water District for an amount not to exceed \$875,000.
- 9. **Motion No. 148-21** – Approved the June 2021 and July 2021 Monthly Investment Transactions Reports.
- 10. **Resolution No. 35243-21** – Adopting New Policy 2.27, Lactation Accommodation; Revised Policy 3.02, California Environmental Quality Act Implementation; Revised Policy 3.04, Coordination of District Construction and Maintenance Work with Other Agencies; Revised Policy 7.01, Aqueduct and Distribution Pipeline Rights-Of-Way; Revised Policy 7.11, Use of District Bay Area Facilities; Revised Policy 7.15, Climate Action; and Revised Policy 8.04, Establishing Wastewater Capacity Fees.

## **DETERMINATION AND DISCUSSION**

### **11.1- Response to declaration of emergency for the repair of Mokelumne Aqueduct No. 2.** **11.2**

Director of Engineering and Construction Olujimi O. Yoloye presented an update on the need to declare a District emergency to repair the leaking aqueduct. On August 6, 2021, staff was notified of a leak on the aqueduct at Station 1620 located in the City of Stockton and temporarily repaired the leak. On August 9, staff assessed the aqueduct and discovered corrosion at the leak site which is directly under a Union Pacific Railroad bridge. Staff recommended immediate repair to avoid risks to water operations and significant liability associated with the railroad and surrounding private property. On August 18, to expedite repairs to the aqueduct, the General Manager, in consultation with the Board President, declared a District emergency in accordance with Policy 7.03 – Emergency Preparedness/Business Continuity. Mr. Yoloye discussed the leak location and surrounding facilities, operational impacts and risk, the repair plan, as well as how the District is currently addressing the leak. He noted the District already has replacement pipe in inventory which will reduce the repair time by three to four months. Staff is asking the Board to ratify the General Manager's "Declaration of Emergency" in accordance with Policy 7.03 as it prepares a contract with Ranger Pipelines, Inc. to complete the repairs which are estimated at \$700,000 to \$1,000,000. The District also plans to hire a consultant to monitor settlement of the Union Pacific Railroad bridge. Staff will continue consulting with Union Pacific Railroad as well as secure any necessary approvals. Mr. Yoloye responded to Board questions regarding the type of pipe being replaced, how long the aqueduct will be out of service, evaluation of Mokelumne Aqueduct Nos. 1 and 3, how long the aqueduct was leaking, and potential causes of the leak. He said staff will provide information on cause and failure, additional contracts awarded and repair progress during updates under the emergency declaration. The Board requested additional information on aqueduct maintenance and inspection activities as well as long-term plans to rehabilitate the aqueducts.

- Motion by Director Mellon, seconded by Director Patterson to approve the recommended actions for Items 11.1-11.2 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. 35244-21** – Ratifying General Manager’s Declaration of the Existence of a District Emergency and Authorizing Expenditure of Sums as Needed in Response to Such Emergency.

12. **General Manager’s Report.**

Coronavirus Update

General Manager Clifford C. Chan summarized the District’s vaccination policy discussed with the Board on August 10. He clarified the District added a six-week timeframe for when employees need to be fully vaccinated which was not discussed on August 10. Director of Operations and Maintenance David A. Briggs presented an update on daily positive COVID-19 cases in Alameda and Contra Costa counties as of August 21; District, state and counties’ vaccination rates; the number of positive COVID-19 cases at the District noting 54 percent of the cases in the last two months involved fully vaccinated staff; the number of staff currently quarantined; the latest information on state, federal and local guidelines for vaccinations and testing as well as vaccination policies at other public utilities and private companies. Mr. Briggs reviewed the District’s vaccination/paid leave policy and implementation priorities. Under the policy, employees will need to report proof of vaccination to the District by September 6 or begin weekly COVID-19 testing; testing will be performed on the employee’s own time and at the employee’s expense; employees will be required to be vaccinated six weeks after FDA normal use authorization of a vaccine; exemptions for vaccinations will be granted for employees with legitimate medical and religious reasons; and after September 30, District paid leave will be limited to vaccinated staff exposed to COVID-19 at work.

- Addressing the Board were the following: 1) Alicia Chakrabarti, EBMUD employee and ratepayer thanked the Board for the District’s vaccination policy; 2) Sofia Kolidas, EBMUD employee commended the Board for mandating vaccines for employees; 3) Lindsay Edelman, EBMUD employee asked the Board to consider encouraging employees to get vaccinated instead of mandating vaccines and said a mandate will cause divisions between staff; 4) Artem Dyachenko, EBMUD employee thanked the Board and the General Manager for the District’s vaccination policy; 5) Jason Conopa, EBMUD employee commented on the District’s vaccination policy, offering testing at no cost for employees, a policy for employees that may experience adverse reactions from the vaccine, telecommute options for immunocompromised or unvaccinated employees, and masks and social distancing instead of mandatory vaccines; 6) Wendy Ibarra, 2<sup>nd</sup> Vice President, AFSCME Local 2019 read comments from a Local 2019 member regarding the District’s vaccination policy, masking and social distancing and a request for the Board to reconsider mandating vaccines for employees; 7) Eric O. Larsen, President, AFSCME Local 444 commented on the COVID-19 pandemic and said the union opposes mandatory vaccinations. He asked the Board to hold off implementing the policy to allow employees to consult with their doctors; to not make vaccination status a condition of employment; and to extend the COVID-19 supplemental leave; 8) Cindy Green, EBMUD employee and ratepayer thanked the Board for the District’s vaccination policy; 9) Loren Spalina, EBMUD employee asked the Board to pause or reconsider implementing the vaccination policy; 9) Rachel, EBMUD employee commented she is opposed to the Board mandating vaccines for employees; 10) Sean Barrow, EBMUD employee commented vaccinations are the only way to go and said he is in favor of continuing to wear masks; 11) Morgan Gleason-Fenton, EBMUD employee thanked the

Board for the District's vaccination policy; 12) Chloe Cheok, EBMUD employee and ratepayer thanked the Board for the District's vaccination policy; and 13) George D. Cleveland, Chief Steward, AFSCME Local 2019 commented on unvaccinated, immunocompromised employees being required to use their own time and funds for weekly COVID-19 testing.

All Board members thanked the employees for their comments. The Board commented on the vaccination policy, personal experiences with family and friends that have contracted COVID, and encouraged employees to get vaccinated. Overall, the Board expressed continued support for the vaccination policy discussed on August 10. General Manager Chan responded to the comment from George Cleveland and clarified that employees with a medical or religious exemption would be provided District time for weekly COVID-19 testing. Mr. Chan thanked the employees for their comments and the Board for its support and summarized next steps for implementing the policy.

#### Los Vaqueros Reservoir Expansion Project Update

Manager of Water Supply Linda Hu presented an update on the District's potential participation in Contra Costa Water District's (CCWD) proposed expansion of Los Vaqueros Reservoir from 160 thousand acre-feet (TAF) to 275 TAF with six other water agencies (Alameda County Water District, Grasslands Water District, San Francisco Public Utilities Commission, San Luis Delta Mendota Water Authority, Santa Clara Valley Water District, and Zone 7 Water Agency). The project would provide supplemental water supply to EBMUD during droughts and emergencies with the District's cost share currently estimated to be between \$50 to \$100 million for 30 thousand acre-feet of storage in Los Vaqueros. Total estimated project capital costs is \$900 million. Staff completed negotiations of a Joint Powers Authority (JPA), is assisting CCWD with preparation for a California Water Commission grant feasibility hearing and is currently negotiating a third amendment to the existing cost-sharing agreement. Ms. Hu reviewed the project background and benefits to the District which include water supply reliability, enhancing water quality and water for the wildlife refuges in the Central Valley. One near-term project driver is the October 20, 2021 California Water Commission grant feasibility hearing. The project partners must demonstrate the project is feasible to remain grant eligible and formation of the JPA is key to demonstrating feasibility. The JPA formation process started in May 2020 and JPA agreement negotiations have been completed. The proposed JPA will include all project partners with the Department of Water Resources serving as the ex officio. Joining the JPA does not legally bind or otherwise commit EBMUD to participating in the project and she noted there are opportunities to exit the JPA before District funding commitments are required. The proposed final JPA agreement will be presented to the Board for consideration at its meeting on September 14, 2021 and at the same meeting, the Board will be asked to consider appointing primary and alternate representatives to the JPA Board. Each appointee may be a member of EBMUD's Board of Directors or a management-level employee. She highlighted initial JPA Board activities and proposed amendments to the Multiparty Agreement. The current Multiparty Agreement expires on December 31, 2021 and additional funding is necessary for additional preconstruction activities including design and permitting. Consequently, the potential partners are negotiating a third amendment to the Multiparty Agreement. The Board will also be asked to consider approving the amendment to the Multiparty Agreement at its September 14 meeting. In conclusion she reviewed the near-term project schedule and said the first JPA meeting will be scheduled for mid-November. The Board thanked staff for their work on the project.

- Director Coleman left the meeting at 3:20 p.m.

#### Capital Project Construction Update

Director of Engineering and Construction Olujimi O. Yolo presented an overview of the District's infrastructure investment plan and approach to construction management and community outreach and highlighted work on three large projects planned in FY22 and FY23: the Orinda Water Treatment Plant Disinfection Improvements in Orinda; the Upper San Leandro (USL) Water Treatment Plant (WTP) Maintenance and Reliability Improvements in Oakland; and the Oakland Inner Harbor Pipeline Crossing in Alameda and Oakland. The project at the Orinda Water Treatment Plant will improve disinfection reliability, reduce disinfection by-products, and improve facilities. Due to the complex nature of the project he reported the District prequalified the general contractor and some of the sub-bidders. The project is estimated to cost \$220 million and construction is anticipated to start in spring 2022 and take five years. The USL and Sobrante WTP project will improve plant capacity, drought capabilities, chemical facilities, and reduce water loss at USL. It will improve chemical facilities at Sobrante and has the potential to receive federal funding. The project is estimated to cost \$101 million and construction is anticipated to start in summer 2022 and take three years. The Oakland Inner Harbor Pipeline Crossing in Alameda and Oakland will install 3,000 feet of 32" pipe under the Oakland Inner Harbor and 10,000 feet of 24" pipe within Oakland and Alameda streets. The project is estimated to cost \$35 million and construction is anticipated to start in spring 2022 and take 2.5 years. Mr. Yolo discussed how the District manages projects using a partnering approach with various District workgroups, contractors, subcontractors and suppliers and how the District engages the community prior to and during construction. He reviewed typical construction mitigations noting they can vary based on project location, type of construction, and whether California Environmental Quality Act mitigation monitoring is required. Staff will present updates to the Planning Committee on the Orinda project in September, the Oakland Inner Harbor project in November and the USL and Sobrante project in December. Mr. Yolo responded to Board questions on plans to bring recycled water to Alameda using the old crossing from the Oakland Inner Harbor Pipeline Crossing project.

### **REPORTS AND DIRECTOR COMMENTS**

#### **13. Committee Reports.**

- Filed with the Board were the Minutes for the August 10, 2021 Planning Committee meeting.
- President Linney reported the Redistricting Ad Hoc Committee met earlier in the day (remotely) and received an update on the draft redistricting guidelines and criteria and the proposed redistricting activity schedule.
- Finance/Administration Committee Chair William B. Patterson reported the Committee met earlier in the day (remotely) and received an update on the Monthly Investment Transactions Reports for June and July; the Quarterly Financial Reports; the proposed Water Infrastructure Finance and Innovation Act Loan; the Annual Internal Audit Report; and the adoption of a new policy on lactation accommodations and proposed revisions to six District policies.

14. **Other Items for Future Consideration.**

None.

15. **Director Comments.**

- Director Coleman reported on plans to present to the Rotary Club of Livermore Valley on September 7; present to the Walnut Creek Chamber of Commerce September 14 (remotely); attend the ACWA Federal Affairs Committee on September 15 (remotely); present to the Pleasant Hill Rotary on September 23; attend the DERWA Board meeting on September 27; and attend the UMRWA Board meeting on October 1.
- Directors Katz, McIntosh, Mellon, Patterson, Young, and President Linney had no reports.

**ADJOURNMENT**

President Linney adjourned the meeting at 3:42 p.m.

SUBMITTED BY:

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Rischa S. Cole, Secretary of the District

APPROVED: September 14, 2021

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Doug A. Linney, President of the Board

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AGENDA NO. 3.  
MEETING DATE September 14, 2021

**TITLE PURCHASE OF LARGE DIAMETER VALVES FOR UPPER SAN LEANDRO  
WATER TREATMENT PLANT**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input checked="" type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
<b>ACTION</b>	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

Award a contract to the lowest responsive/responsible bidder, Frank A. Olsen Company LLC, to supply four butterfly valves for the Upper San Leandro (USL) Water Treatment Plant (WTP) beginning on or after September 14, 2021 for a total cost, after the addition of taxes and fees, not to exceed \$308,700 under Request for Quotation (RFQ) No. 2115.

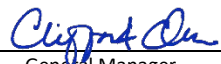
**SUMMARY**

This equipment pre-purchase includes fabrication and delivery of four large-diameter (66-inch) butterfly valves that will be installed in the inlet/outlet piping of the WTP's chlorine contact basin (CCB). The valves are to be delivered no later than May 2022 and will be installed under the upcoming USL WTP Maintenance and Reliability and USL and Sobrante WTP Chemical Systems Safety Improvements Project (Project), under Specification 2128, currently scheduled for Board consideration in June 2022. This project was discussed at the November 26, 2019 and November 10, 2020 Long-Term Infrastructure Investment Workshops.

**DISCUSSION**

USL WTP is a key conventional water treatment facility needed to support critical distribution system outages, drought operations, emergency operations, and peak summer demands. Work completed under Specification 2128 will eliminate capacity limitations that currently prevent the treatment plant from sustaining its permitted rate of 60 million gallons per day and address maintenance and reliability issues caused by aging infrastructure and equipment.

The four butterfly valves must be installed in the inlet/outlet piping to facilitate construction of the Project, by enabling isolation of the tank and facilitate the separation of treated and untreated water as required by the California Division of Drinking Water. It is necessary to pre-purchase the valves due to the long lead time for fabrication and delivery of the equipment, which has intensified due to supply-chain issues associated with the continued COVID-19 pandemic. The pre-purchase will also facilitate the timely installation of the valves during planned USL WTP outages and reduce the risk of construction delays. This project supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

Funds Available: FY22/23, CIP#000437; Page 35	Budget Coding: WSC/557/5521/2011371:41	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Engineering and Construction	Olujimi O. Yoloje	 General Manager
Attachment(s): Location Map; Bid Summary; P-035; P-061		

## **VENDOR SELECTION**

An RFQ was posted on the District's website and sent to 159 potential proposers and advertised in the Oakland Tribune. Four bids were received. Frank A. Olsen Company LLC was the lowest responsive/responsible bidder.

## **SUSTAINABILITY**

### **Economic**

Funding for this item is available in the FY22/23 adopted capital budget for the Treatment Plant Upgrades Project.

The completion of Specification 2128, under which these valves will be installed, will improve reliability and resolve infrastructure maintenance issues at the treatment plant.

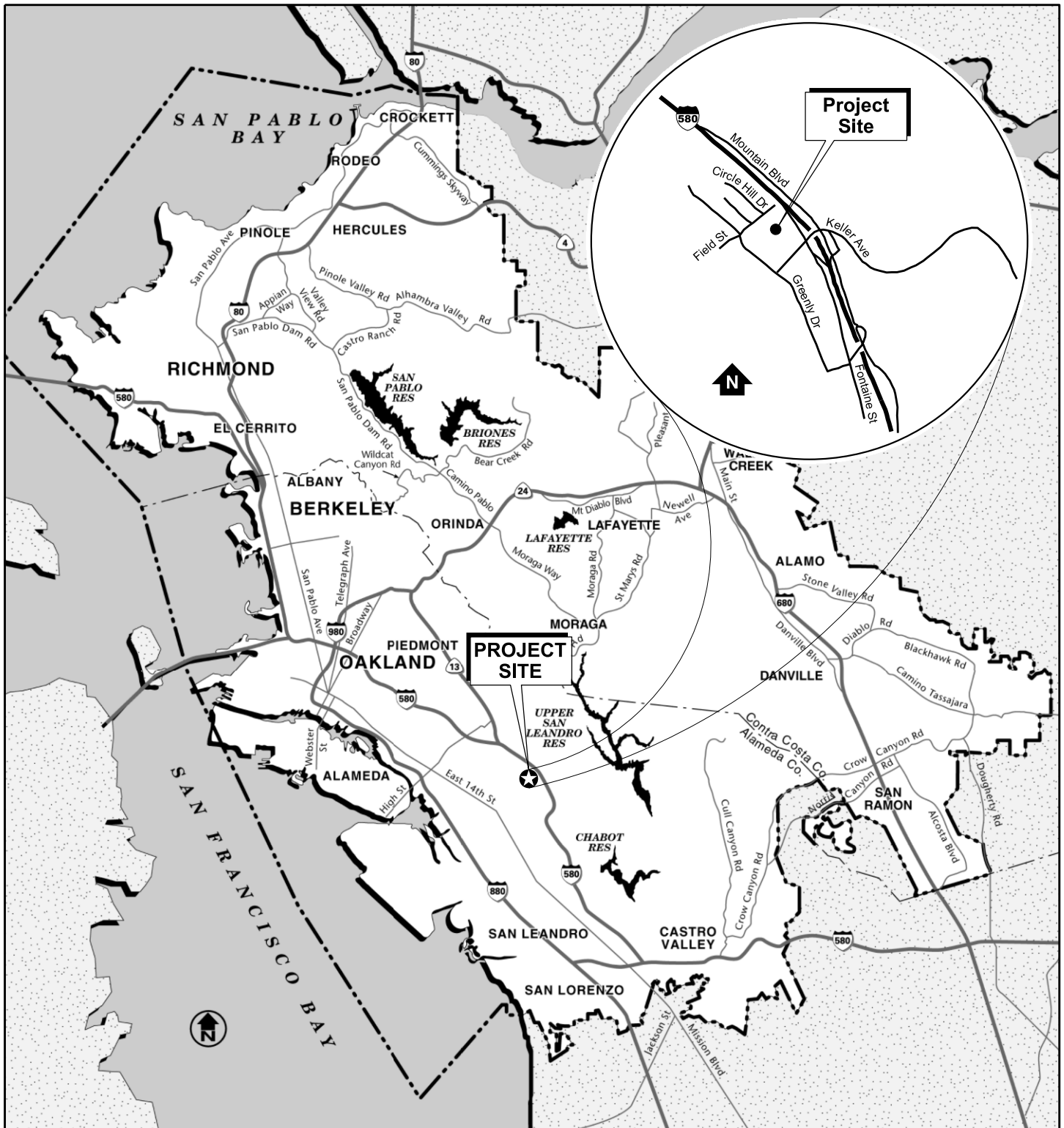
### **Environmental**

The Project is a project-level element within the Water Treatment and Transmission Improvements Program Environmental Impact Report which was certified and approved by the Board in 2006 under Resolution No. 33576-06. The Project scope was refined during detailed design. Since there were no new significant impacts or substantial increases in the severity of the previously identified impacts due to the scope changes, an addendum to the EIR was prepared and posted on ebmud.com and with the state clearinghouse on April 15, 2021.

## **ALTERNATIVES**

**Postpone purchase of the valves.** This alternative is not recommended because the valves are integral to the construction and operation of the plant's CCB, and they have a long lead time for fabrication and delivery. Postponing the pre-purchase may delay the construction of the CCB, which is on the critical path for completion of Specification 2128.

**Rebid the RFQ.** This alternative is not recommended because the District engaged in a fair bid process.



## PROJECT SITE LOCATION MAP

NOT TO SCALE

**EAST BAY MUNICIPAL UTILITY DISTRICT**

**PURCHASE OF 66-INCH LARGE  
DIAMETER VALVES  
FOR UPPER SAN LEANDRO  
WATER TREATMENT PLANT**

**RFQ NO. 2115**

**EAST BAY MUNICIPAL UTILITY DISTRICT**

**REQUEST FOR QUOTATION NO. 2115**

**Large Diameter Valves for Upper San Leandro Water Treatment Plant**

**Bids Received by 1:30 PM on June 30, 2021**

	<b>BIDDER</b>	<b>SBE (Y/N)</b>	<b>TOTAL AMOUNT BID</b>	<b>TOTAL AFTER APPLICATION OF SBE PREFERENCE</b>
1.	Capital Flow Inc.	Y	\$234,870.00	\$215,012.27
2.	Core & Main dba R&B Company	N	No Bid	N/A
3.	Ferguson Enterprises, LLC	N	\$283,681.92	\$283,681.92
4.	Frank A. Olsen Co., LLC	N	\$210,000.00	\$210,000.00
5.	Val-Matic Valve and Manufacturing Corp.	N	\$214,407.00	\$214,407.00

NOTE: Prices do not include sales tax.

\*SBE – Small Business Enterprise



## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

<b>TITLE</b> <b>Materials and Supplies - RFQ No.: 2115</b>  Purchase of 66-inch Large Diameter Valves for Upper San Leandro Water Treatment							<b>DATE:</b>  August 23, 2021					
<b>CONTRACTOR:</b>  Frank A. Olsen Company LLC Livermore, CA 94551					Local / Small Business		<b>PERCENTAGE OF CONTRACT DOLLARS</b>					
<b>BID/PROPOSER'S PRICE:</b>		<b>FIRM'S OWNERSHIP</b>			<b>Availability Group</b>		<b>Contracting Objectives</b>		<b>Participation</b>			
\$308,700 *		White		Men	White Men		25%		100.0%			
\$308,700 *		White		Men	White Women		2%		0.0%			
\$308,700 *		White		Men	Ethnic Minorities		25%		0.0%			
<b>CONTRACT EQUITY PARTICIPATION</b>												
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
<b>PRIME:</b> Frank A. Olsen Company LLC  <b>SUBS:</b> None		\$308,700	White	X	W	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>TOTAL</b>		\$308,700				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>												
		White Men		White Women		Ethnic Minorities		Total Employees				
No. of Employees:		9		3		2		14				
Percent of Total Employees:		64.3%		21.4%		14.3%						
MSA Labor Market %:		28.0%		23.6%		48.4%						
MSA Labor Market Location:		California										
<b>COMMENTS</b>												
<b>Contract Equity Participation - 100% White Men participation.</b>  *Total not to exceed: \$308,700												
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: <b>Purchase of 66-inch Large Diameter Valves for Upper San Leandro Water Treatment</b>		Ethnic Minority Percentages From U.S. Census Data						
			<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>	
		<b>National</b>	10.5	10.7	3.7	0.7	27.3	
<b>Materials and Supplies - RFQ No.: 2115</b>		<b>DATE:</b> 8/23/2021	<b>9 Bay Area Counties</b>	5.5	16.2	14.2	0.4	39.9
			<b>Alameda/CC Counties</b>	10.7	15.6	15.4	0.5	46.2
<b>R=Recmmd P=Prime S=Sub</b>	<b>Composition of Ownership</b>	<b>Number of Ethnic Minority Employees</b>						
<b>Company Name, Owner/Contact Person, Address, and Phone Number</b>			<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>	<b>PERCENT</b>
<b>MSA %</b>								
<b>RP</b>	<b>WM: L/SBE</b>	<b>Company Wide</b>	0	2	0	0	2	14.3%
Frank A. Olsen Company LLC Sharon Viramontes 286 Rickenbacker Circle Livermore, CA 94551  925-961-8888		<b>Manager/Prof</b>	0	0	0	0	0	0.0%
		<b>Technical/Sales</b>	0	1	0	0	1	20.0%
		<b>Clerical/Skilled</b>	0	0	0	0	0	0.0%
		<b>Semi/Unskilled</b>	0	1	0	0	1	100.0%
		<b>Bay Area</b>	0	1	0	0	1	9.1%
		<b>AA Plan on File:</b>	<b>NA</b>		<b>Date of last contract with District:</b>		<b>NA</b>	
		<b>Co. Wide MSA:</b>	<b>California</b>		<b># Employees-Co. Wide:</b>		<b>14</b>	
								<b>Bay Area:</b>
								<b>11</b>
<b>P</b>	<b>WM: L/SBE</b>	<b>Company Wide</b>	1	1	0	0	2	15.4%
Capital Flow Inc. Dererk Burk 7640 Wilbur Way, #2 Sacramneto, CA 95828  916-540-7884		<b>Manager/Prof</b>	0	0	0	0	0	0.0%
		<b>Technical/Sales</b>	0	0	0	0	0	0.0%
		<b>Clerical/Skilled</b>	1	1	0	0	2	66.7%
		<b>Semi/Unskilled</b>	0	0	0	0	0	0.0%
		<b>Bay Area</b>	0	0	0	0	-	0.0%
		<b>Co. Wide MSA:</b>	<b>Sacramento</b>		<b># Employees-Co. Wide:</b>		<b>13</b>	
								<b>Bay Area:</b>
								<b>0</b>
<b>P</b>	<b>WM</b>	<b>Company Wide</b>	2,897	3,717	710	140	7,464	28.9%
Ferguson Enterprises LLC Charlotte Murch 12500 Jefferson Avenue Newport News, VA 23602  757-989-2870		<b>Manager/Prof</b>	339	439	200	25	1,003	16.0%
		<b>Technical/Sales</b>	406	1,036	175	44	1,661	20.1%
		<b>Clerical/Skilled</b>	466	548	116	14	1,144	32.3%
		<b>Semi/Unskilled</b>	1,686	1,694	219	57	3,656	47.0%
		<b>Bay Area</b>	53	134	52	4	243	66.0%
		<b>Co. Wide MSA:</b>	<b>Total USA</b>		<b># Employees-Co. Wide:</b>		<b>25,861</b>	
								<b>Bay Area:</b>
								<b>368</b>
<b>P</b>	<b>WM</b>	<b>Company Wide</b>	6	54	3	0	63	44.7%
Val-Matic Valve Chris Brown 905 Riverside Drive Elmhurst, IL 60120  630-993-4055		<b>Manager/Prof</b>	1	3	1	0	5	12.2%
		<b>Technical/Sales</b>	0	3	1	0	4	30.8%
		<b>Clerical/Skilled</b>	5	15	1	0	21	43.8%
		<b>Semi/Unskilled</b>	0	33	0	0	33	84.6%
		<b>Bay Area</b>	0	0	0	0	0	0.0%
		<b>Co. Wide MSA:</b>	<b>Illinois</b>		<b># Employees-Co. Wide:</b>		<b>141</b>	
								<b>Bay Area:</b>
								<b>0</b>

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)



AGENDA NO. 4.  
MEETING DATE September 14, 2021

**TITLE PURCHASE OF MOBILE OFFICE BUILDING FOR DISTRICT-OWNED NORTH ORINDA SPORTS FIELDS TEMPORARY MAINTENANCE FACILITIES PROJECT**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input checked="" type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
<b>ACTION</b>	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

Award a contract to the lowest responsive/responsible bidder, Atlas Performance Industries, Inc., for supplying a 48-ft by 60-ft commercial modular building for the District-Owned North Orinda Sports Fields Temporary Maintenance Facilities Project (Project) for a total cost, after the addition of taxes and fees, not to exceed \$402,652 under Request for Quotation (RFQ) No. 2119.


**SUMMARY**

A mobile office building is needed to accommodate District staff who will be temporarily relocated from the Orinda Water Treatment Plant (WTP) site during construction of the Orinda WTP Disinfection Improvements Project (Specification 2139). This item was discussed at the December 12, 2017, February 13, 2018, July 9, 2019, March 10, 2020, and September 14, 2021 Planning Committee meetings.

**DISCUSSION**

As part of the upcoming Orinda WTP Disinfection Improvements Project, existing grounds maintenance and mechanical maintenance buildings will be demolished to make room for the new Orinda WTP ultraviolet/chlorine contact basin (UV/CCB) disinfection facility, which includes a maintenance and UV electrical (MAUVE) building, a grounds maintenance building and associated parking area. District staff who report to these locations will be temporarily relocated to the District-Owned North Orinda Sports Fields Temporary Maintenance Facilities, located adjacent to the Orinda Sports Fields at the intersection of Camino Pablo and Los Amigos Court, for the duration of the Project (approximately 4-5 years).

The temporary facilities will be installed under Specification 2178, District-Owned North Orinda Sports Fields Temporary Maintenance Facilities, with planned bid open and award dates of September 15, 2021 and October 12, 2021, respectively. The Project is located in Orinda, approximately 0.3 miles from the Orinda WTP, in Contra Costa County, California (see Location Map). The temporary facilities and site improvements, which will be used for the duration of construction for Specification 2139 (approximately 4-5 years), will include new paving and access gates, parking, offices and workspaces, storage containers, a locker room, and showers for approximately 16 District staff, including water treatment plant supervisors and administrative staff, and mechanical, grounds and electrical maintenance staff. The Board

Funds Available: FY22/23; CIP#000437; Page 35	Budget Coding: WSC/557/5521/2012269:22	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department  Engineering and Construction	Department Director or Manager  Olujimi O. Yoloye	Approved   General Manager
Attachment(s): Location Map; Bid Summary; P-035; P-061		

will also be asked to consider authorizing a rental agreement to lease additional office space at 25 Orinda Way, for construction staff for the duration of Specification 2139 at its September 14, 2021 meeting.

Construction of the Project is scheduled to begin in December 2021, with installation of the commercial modular building purchased under this contract and relocation of District staff by summer 2022. After completion of Specification 2139, which is scheduled for award in November 2021 and construction starting in summer 2022, District grounds and mechanical maintenance staff will move into the newly constructed MAUVE building, and the storage containers and temporary modular building purchased under this contract will be removed from the District-Owned North Orinda Sports Fields site. This procurement supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

## **VENDOR SELECTION**

An RFQ was posted on the District's website on July 8, 2021 and sent to three vendors. Three bids were received. The bid summary is attached. Atlas Performance Industries, Inc. was the lowest responsive/responsible bidder.

## **SUSTAINABILITY**

### **Economic**

Funding for this purchase is available in the FY22/23 adopted capital budget for the Treatment Plant Upgrades Project.

### **Social**

The new mobile office building will allow District staff to temporarily relocated from the Orinda WTP during the construction of the Orinda WTP Disinfection Improvements Project and continue to perform their work duties.

### **Environmental**

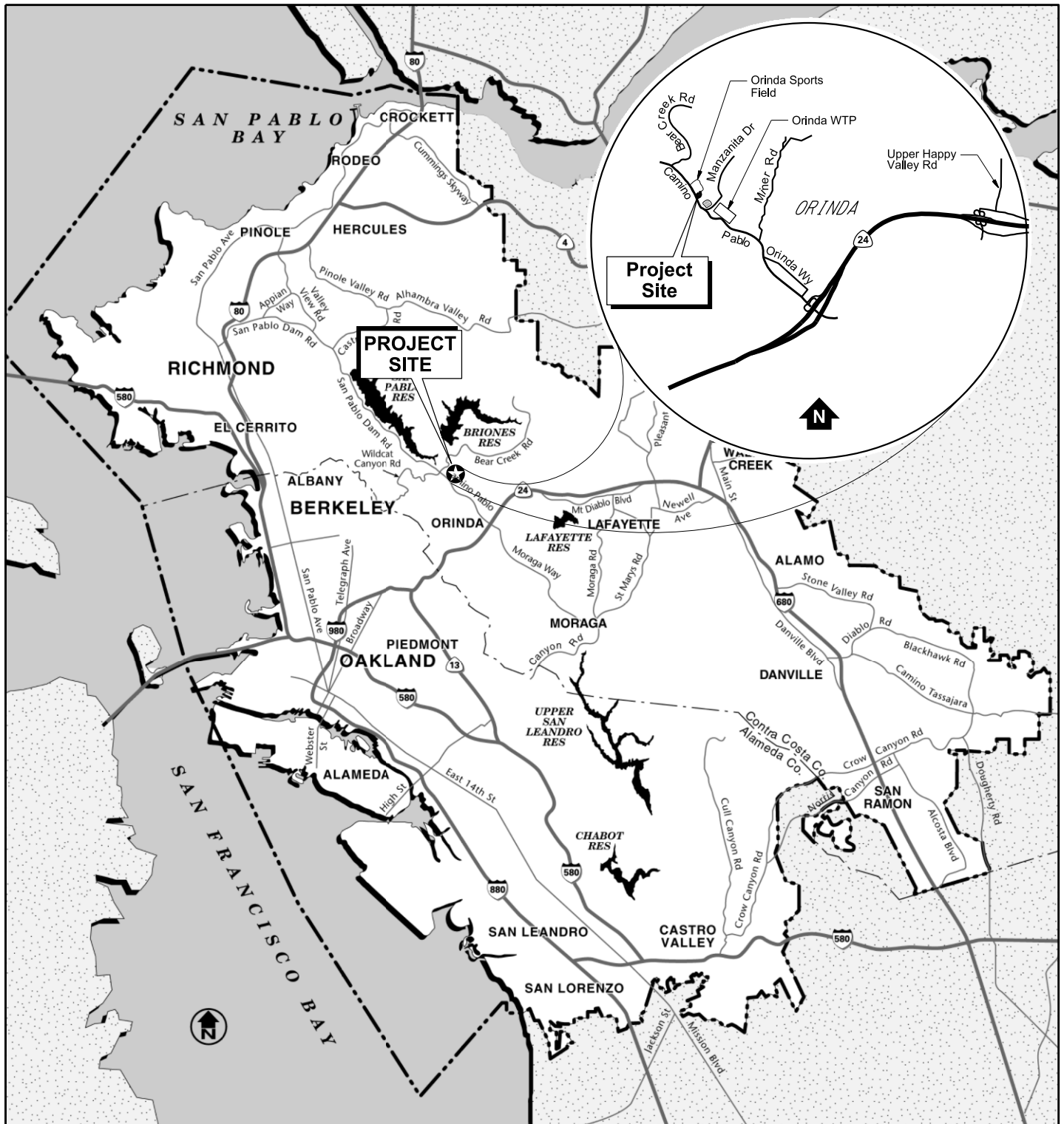
This modular building is needed to support the Orinda WTP Disinfection Improvements Project, which will improve operational reliability and ensure long-term compliance with environmental regulations and District water quality goals. The planned use for this site, including erection of a mobile office trailer was included in the Orinda WTP Disinfection Improvements Project's Supplemental Environmental Impact Report which was certified under Board Resolution No. 35210-20.

## **ALTERNATIVES**

**Do not purchase the mobile office building.** This alternative is not recommended because District staff perform work in the grounds maintenance and mechanical maintenance buildings at the Orinda WTP and there are no other nearby facilities that can accommodate staff. These buildings will be demolished during the construction of Specification 2139.

**Rent a mobile office building.** This alternative is not recommended as it would be more expensive to rent mobile office space for the 4-5 year duration.





## PROJECT SITE LOCATION MAP

NOT TO SCALE

**EAST BAY MUNICIPAL UTILITY DISTRICT**

**MOBILE OFFICE BUILDING  
FOR  
NORTH ORINDA SPORTS FIELDS**

**FIGURE 1**

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**REQUEST FOR QUOTATION NO. 2119**  
**Mobile Office Building for North Orinda Sports Fields**  
**Temporary Maintenance Facilities**

**Bids Received by 1:30 PM on August 4, 2021**

	<b>BIDDER</b>	<b>SBE (Y/N)</b>	<b>TOTAL AMOUNT BID</b>	<b>TOTAL AFTER APPLICATION OF SBE PREFERENCE</b>
1.	Atlas Performance Industries, Inc.	Y	\$402,652.00	\$371,365.78
2.	Blok Modular Constructors, Inc.	Y	\$458,750.00	\$427,463.78
3.	Global Modular, Inc.	N	\$446,946.00	\$446,946.00

NOTE: Prices do not include sales tax.

\*SBE – Small Business Enterprise



## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

<b>TITLE</b> <b>Materials and Supplies - RFQ No.: 2119</b>  Award Contract for Pre-Purchase of Mobile Office Building for District-Owned North Orinda Sports Fields Temporary Maintenance Facilities Project						<b>DATE:</b>  August 31, 2021						
<b>CONTRACTOR:</b>  Atlas Performance Industries, Inc. Santa Maria, CA 93458					<b>PERCENTAGE OF CONTRACT DOLLARS</b>							
Small Business					Availability Group		Contracting Objectives		Participation			
<b>BID/PROPOSER'S PRICE:</b>		<b>FIRM'S OWNERSHIP</b>			White Men		25%		87.5%			
		Ethnicity	Gender		White Women		2%		0.0%			
\$402,652.00 *		White	Men		Ethnic Minorities		25%		12.5%			
<b>CONTRACT EQUITY PARTICIPATION</b>												
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
<b>PRIME:</b> Atlas Performance Industries, Inc.		\$352,152	White	X		87.5%						
<b>SUBS:</b> Hernandez Painting KC Coatings Santa Maria Drywall AMCO		\$5,000 \$3,500 \$10,000 \$32,000	Hispanic Hispanic Hispanic Black	X X X X				1.2% 0.9% 2.5% 7.9%				
<b>TOTAL</b>		\$402,652				87.5%	0.0%	12.5%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>												
			White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:			4		3		40		47			
Percent of Total Employees:			8.5%		6.4%		85.1%					
MSA Labor Market %:			31.8%		28.6%		39.6%					
MSA Labor Market Location:			Santa Barbara-Santa Maria-Lompoc									
<b>COMMENTS</b>												
<b>Contract Equity Participation</b> - 87.5% White Men participation and 12.5% Ethnic Minority participation.  *Total not to exceed: \$402,652												
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: <b>Award Contract for Pre-Purchase of Mobile Office Building for District-Owned North Orinda Sports Fields Temporary Maintenance Facilities Project</b>		Ethnic Minority Percentages From U.S. Census Data							
			<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>		
		<b>National</b>	10.5	10.7	3.7	0.7	27.3		
<b>Materials and Supplies - RFQ No.: 2119</b>		<b>9 Bay Area Counties</b>	5.5	16.2	14.2	0.4	39.9		
DATE: 8/31/2021		<b>Alameda/CC Counties</b>	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>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>	<b>PERCENT</b>	<b>MSA %</b>
<b>RP</b>	<b>WM: SBE</b>	<b>Company Wide</b>	0	40	0	0	40	85.1%	39.6%
Atlas Performance Industries, Inc. Ted Martino 1916 W. Stowell Road Santa Maria, CA 93458  800-394-9217		Manager/Prof	0	4	0	0	4	57.1%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	36	0	0	36	100.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		<b>Bay Area</b>	0	0	0	0	0	0.0%	39.9%
		AA Plan on File:	NA		Date of last contract with District:		NA		
		Co. Wide MSA:	Santa Barbara-Santa Maria-L # Employees-Co. Wide:		47		Bay Area:		0
<b>S</b>	<b>EMM: H - SBE</b>	<b>Company Wide</b>	INFORMATION NOT PROVIDED						
Hernandez Painting  241 C Street Lemoore, CA 93248		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		<b>Bay Area</b>							
		Co. Wide MSA:							
<b>S</b>	<b>EMM: H</b>	<b>Company Wide</b>	INFORMATION NOT PROVIDED						
KC Coatings  79 Regal Road, Unit 18 Guelph, ON N1K 1B6  905-699-2922		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		<b>Bay Area</b>							
		Co. Wide MSA:							
<b>S</b>	<b>EMM: H</b>	<b>Company Wide</b>	INFORMATION NOT PROVIDED						
Santa Maria Drywall  1436 Marilyn Way Santa Maria, CA 93454  805-922-3745		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		<b>Bay Area</b>							
		Co. Wide MSA:							
<b>S</b>	<b>EMM: B</b>	<b>Company Wide</b>	INFORMATION NOT PROVIDED						
AMCO  13925 Benson Avenue Chino, CA 91710  800-782-0116		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		<b>Bay Area</b>							
		Co. Wide MSA:							

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.**

<b>Title:</b> <b>Award Contract for Pre-Purchase of Mobile Office Building for District-Owned North Orinda Sports Fields Temporary Maintenance Facilities Project</b>			<b>Ethnic Minority Percentages From U.S. Census Data</b>						
				<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>	
			<b>National</b>	10.5	10.7	3.7	0.7	27.3	
<b>Materials and Supplies - RFQ No.: 2119</b>		<b>DATE:</b> 6/7/2002	<b>9 Bay Area Counties</b>	5.5	16.2	14.2	0.4	39.9	
			<b>Alameda/CC Counties</b>	10.7	15.6	15.4	0.5	46.2	
<b>R=Recmmnd P=Prime S=Sub</b>	<b>Composition of Ownership</b>	<b>Number of Ethnic Minority Employees</b>							
<b>Company Name, Owner/Contact Person, Address, and Phone Number</b>			<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>	<b>PERCENT</b>	<b>MSA %</b>
<b>P</b>	<b>WM: SBE</b>	<b>Company Wide</b>	0	1	1	0	2	50.0%	48.4%
Blok Modular Constructors, Inc. Kevin Kruze 404 N. 2nd Avenue, Suite C Upland, CA 91786 888-256-5663		Manager/Prof	0	0	1	0	1	50.0%	
		Technical/Sales	0	1	0	0	0	0.0%	
		Clerical/Skilled	0	0	0	0	0	0.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		<b>Bay Area</b>	0	0	0	0	0	0.0%	39.9%
Co. Wide MSA:		<b>California</b>	# Employees-Co. Wide: 4				Bay Area: 0		
<b>P</b>	<b>WM</b>	<b>Company Wide</b>	9	40	3	0	52	94.5%	54.0%
Global Modular, Inc. Adam De Bard 450 Commerce Avenue Atwater, CA 95301 209-676-8029		Manager/Prof	4	2	3	0	9	90.0%	
		Technical/Sales	3	1	0	0	4	100.0%	
		Clerical/Skilled	0	0	0	0	0	0.0%	
		Semi/Unskilled	2	37	0	0	39	100.0%	
		<b>Bay Area</b>	0	0	0	0	0	0.0%	39.9%
Co. Wide MSA:		<b>Merced</b>	# Employees-Co. Wide: 55				Bay Area: 0		

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)

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AGENDA NO. 5.  
MEETING DATE September 14, 2021

**TITLE    INSPECTION SERVICES FOR SAN PABLO AND UPPER SAN LEANDRO SUPPLY TUNNELS**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input checked="" type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
<b>ACTION</b>	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

Authorize an agreement beginning on or after September 15, 2021 with Jacobs Associates, Inc. dba McMillen Jacobs Associates (MJA) in an amount not to exceed \$562,340 for entry plans and inspection services for the San Pablo Supply Tunnel and the Upper San Leandro (USL) Supply Tunnel.

**SUMMARY**

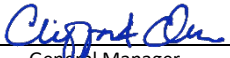
The inspections will evaluate the current condition of the tunnels to determine the scope of repairs that may be necessary. MJA will develop an entry and inspection plan, provide tunnel safety, perform inspections, and develop an inspection report with findings and recommendations for repair and future inspection of each tunnel.

**DISCUSSION**

The San Pablo and USL Supply Tunnels provide raw water from the San Pablo and USL Reservoirs to their respective water treatment plants. Both tunnels were constructed in the 1920s. The San Pablo Supply Tunnel was last inspected in 1986 and is approximately 2.6 miles long and generally oval and horseshoe shaped in cross section, with an average height of 5.5 feet and width of 4.5 feet. The San Pablo Supply Tunnel is not currently in use but could be used during emergency operations or planned outages. The USL Supply Tunnel was last inspected in 1987 and is approximately 1.4 miles long and is horseshoe shaped in cross section and is approximately 6.5 feet high by 5.5 feet wide. The USL Supply Tunnel is needed for USL Water Treatment Plant operations in order to meet high demand during the summer months. Repairs were last made on both tunnels to address leakage around the time of the last inspections.

Staff will dewater the tunnels, provide safe entry, and enter the tunnels with MJA as part of the inspection team. MJA will provide ventilation, communication, and emergency rescue services. The San Pablo Supply Tunnel is scheduled for inspection in November 2021. The USL Supply Tunnel is scheduled for inspection in the summer or fall 2022 in coordination with other projects and operational needs, particularly related to operation during drought conditions.

This agreement supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

Funds Available: FY22/23 CIP#1000810; Page #28	Budget Coding: 534/2014550/7999/5231	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Engineering and Construction	Olujimi O. Yoloye	 General Manager
Attachment(s): P-035, P-061		

## **CONSULTANT SELECTION**

A request for proposals was sent to the 47 consulting firms on the District's Engineering Consultant Roster. The District received four proposals that were evaluated by a selection committee. MJA was selected based on their qualifications, experience, and approach to the project.

## **SUSTAINABILITY**

### **Economic**

Funding for this work is available in the FY22/23 adopted capital budget for Raw Water Infrastructure.

### **Social**

Local 2019 was notified of this agreement on March 25, 2021. Local 2019 issues were addressed at a meeting on April 6, 2021 and resolved.

### **Environmental**

Environmental documentation is not required for the inspection but will be prepared for future repairs, if required.

## **ALTERNATIVES**

**Perform the work with District forces.** This alternative is not recommended because staff does not possess the necessary expertise to perform tunnel inspection services and recommend repair solutions. In addition, the District does not have the experience planning for all safety requirements with tunnel inspections.

**Do not complete the project.** This alternative is not recommended because the tunnels have not been inspected since the 1980s. Knowledge of their current condition will enable the District to continue to safely and reliably operate the USL Supply Tunnel and to plan for the use of the San Pablo Supply Tunnel.





# CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

<b>TITLE</b> <b>Professional Services Agreement</b> Inspection Services for San Pablo and Upper San Leandro Supply Tunnels					<b>DATE:</b> September 2, 2021					
<b>CONTRACTOR:</b> Jacobs Associates, Inc. dba McMillen Jacobs Associates Walnut Creek, CA 94105					<b>PERCENTAGE OF CONTRACT DOLLARS</b>					
		<b>Local Business</b>		<b>Availability Group</b>	<b>Contracting Objectives</b>		<b>Participation</b>			
<b>BID/PROPOSER'S PRICE:</b> \$562,340 *	<b>FIRM'S OWNERSHIP</b>		<b>White Men</b>		<b>25%</b>		<b>98.1%</b>			
	<b>Ethnicity</b>	<b>Gender</b>	<b>White Women</b>		<b>6%</b>		<b>1.9%</b>			
	White	Men	<b>Ethnic Minorities</b>		<b>25%</b>		<b>0.0%</b>			
<b>CONTRACT EQUITY PARTICIPATION</b>										
<b>COMPANY NAME</b>	<b>ESTIMATED AMOUNT</b>	<b>ETHNICITY</b>	<b>GENDER</b>		<b>CONTRACTING PARTICIPATION</b>					
			<b>M</b>	<b>W</b>	<b>White-Men</b>	<b>White-Women</b>	<b>Ethnic Minorities</b>	<b>Unclassified</b>	<b>Publicly Held Corp.</b>	<b>Gov't/Non Profit</b>
<b>PRIME:</b> Jacobs Associates, Inc. dba McMillen Jacobs Associates	\$236,840	White	X		42.1%					
<b>SUBS:</b> Drill Tech Drilling & Shoring, Inc.	\$177,060	White	X		31.5%					
Capstone Fire and Safety Management	\$78,900	White	X		14.0%					
Lacamas Consulting	\$10,540	White		X		1.9%				
NORCAL Geophysical Consultants, Inc.	\$59,000	White	X		10.5%					
<b>TOTAL</b>	\$562,340				98.1%	1.9%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>										
		<b>White Men</b>	<b>White Women</b>		<b>Ethnic Minorities</b>		<b>Total Employees</b>			
<b>No. of Employees:</b>		12	4		7		23			
<b>Percent of Total Employees:</b>		52.2%	17.4%		30.4%					
<b>MSA Labor Market %:</b>		32.3%	27.8%		39.9%					
<b>MSA Labor Market Location:</b>		9 Bay Area Counties								
<b>COMMENTS</b>										
<b>Contract Equity Participation</b> - 98.1% White Men participation and 1.9% White Women participation.										
*Total not to exceed: \$562,340										
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>			<b>Good Faith Outreach Efforts Requirement Satisfied</b>			<b>Award Approval Recommended</b>				
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: <b>Inspection Services for San Pablo and Upper San Leandro Supply Tunnels</b>		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		
<b>Professional Services Agreement</b> DATE: 9/2/2021		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	1	3	0	0	4	17.4%	39.9%
Jacobs Associates, Inc. dba McMillen Jacobs Associates Greta Miller 1350 Treat Blvd., Suite 100 Walnut Creek, CA 94105 (Local Office) 781-852-0463		Manager/Prof	1	2	2	1	6	31.6%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	1	0	0	1	33.3%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	1	3	2	1	0	30.4%	39.9%
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide: 23		Bay Area: 23		
S	WM: LBE	Company Wide	14	192	13	2	221	44.1%	38.5%
Drill Tech Drilling & Shoring, Inc. Scott Preble 2200 Wymore Way Antioch, CA 94509 925-978-2060		Manager/Prof	0	2	0	0	2	50.0%	
		Technical/Sales	0	6	3	0	9	15.8%	
		Clerical/Skilled	11	146	8	1	166	51.2%	
		Semi/Unskilled	3	38	2	1	44	37.9%	
		Bay Area	12	153	13	2	180	52.6%	39.9%
		Co. Wide MSA:	Contra Costa		# Employees-Co. Wide: 501		Bay Area: 342		
S	WM	Company Wide	INFORMATION NOT PROVIDED						
Capstone Fire and Safety Management Kirsten Davis 2240 Auto Park Way Escondido, CA 92029 760-466-7221		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							
S	WW	Company Wide	INFORMATION NOT PROVIDED						
Lacamas Consulting Sue Bednarz P.O. Box 416 Winlock, WA 98596 503-881-9178		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							
S	WM	Company Wide	INFORMATION NOT PROVIDED						
NORCAL Geophysical Consultants, Inc. Don Kirker 321A Blodgett Street Cotati, CA 94931 707-978-7039		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							

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: <b>Inspection Services for San Pablo and Upper San Leandro Supply Tunnels</b>			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	
<b>Professional Services Agreement</b>		DATE: 9/2/2021	<b>9 Bay Area Counties</b>	5.5	16.2	14.2	0.4	39.9	
			<b>Alameda/CC Counties</b>	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	<b>WM: LBE</b>	<b>Company Wide</b>	3	8	43	0	54	49.1%	39.9%
WSP USA Inc. Juan Diaz-Carrera 1221 Broadway, Suite 800 Oakland, CA 94612  510-285-3320		Manager/Prof	2	7	40	0	49	48.5%	
		Technical/Sales	1	1	2	0	4	66.7%	
		Clerical/Skilled	0	0	1	0	1	33.3%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		<b>Bay Area</b>	3	8	43	0	54	49.1%	39.9%
		Co. Wide MSA:	<b>9 Bay Area Counties</b>		# Employees-Co. Wide:		<b>110</b>	Bay Area:	<b>110</b>
P	<b>PHC: LBE</b>	<b>Company Wide</b>	760	945	1,505	46	3,256	22.7%	27.3%
AECOM Technical Services, Inc. Jacklyn Cabantog 300 Lakeside Drive, Suite 400 Oakland, CA 94612  (Local Office) 646-974-7273		Manager/Prof	477	735	1,376	33	2,621	21.6%	
		Technical/Sales	243	162	95	13	513	27.5%	
		Clerical/Skilled	40	48	34	0	122	34.6%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		<b>Bay Area</b>	10	26	141	0	177	34.9%	39.9%
		Co. Wide MSA:	<b>Total USA</b>		# Employees-Co. Wide:		<b>14,334</b>	Bay Area:	<b>507</b>
P	<b>WM: LBE</b>	<b>Company Wide</b>	85	117	166	3	371	19.7%	53.9%
Mott MacDonald Group, Inc. Nicholas Denichilo 12647 Alcosta Blvd., Suite 275 San Ramon, CA 94583  (Local Office) 925-469-5372		Manager/Prof	35	66	124	1	226	19.9%	
		Technical/Sales	43	39	38	1	121	18.8%	
		Clerical/Skilled	5	11	4	1	21	22.3%	
		Semi/Unskilled	2	1	0	0	3	60.0%	
		<b>Bay Area</b>	0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA:	<b>New Jersey</b>		# Employees-Co. Wide:		<b>1,880</b>	Bay Area:	<b>0</b>

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)

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AGENDA NO. 6.  
MEETING DATE September 14, 2021

**TITLE** AMEND TRENCH SOILS MANAGEMENT AGREEMENT

<b>TYPE</b>	<input type="checkbox"/> Construction	<input checked="" type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
<b>ACTION</b>	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

Authorize an amendment to the agreement previously amended under Board Motion No. 077-19 with Pacific States Environmental Contractors, Inc. (PSEC) to increase the agreement amount by \$6,800,000 to a total amount not to exceed \$28,106,000 and extend the agreement term to October 3, 2023 for trench soils management and removal services.


**SUMMARY**

The District contracted with PSEC to sample, sort, load, and off-haul trench soils from District Owned Storage Site (DOSS) facilities – Briones in Orinda, Miller Road in Castro Valley, and Amador in San Ramon. Over 400,000 cubic yards (CY) of trench soils were off-hauled from Briones and Miller Road in 2018 and 2019 and reused at end-use sites identified by PSEC. Trench soils removal makes more space available in the DOSS facilities, which supports pipeline repair, replacement, and renewal projects. PSEC continues to provide opportunities for beneficial reuse of soils and trench soils management services at Briones and Miller Road per the recommendations of the Trench Soils Management Plan 2020 Update (TSMP) as trench soils continue to accumulate. Staff projects this amendment will allow for continued services from PSEC for two additional years.

**DISCUSSION**

The District generates approximately 40,000 CY of trench soils per year and places them at the three DOSS facilities. The original agreement with PSEC began in 2017 with a contract term of two years with two options to extend for one-year periods. The agreement is now in its fourth and final year and is scheduled to expire in October 2021. The District intends to advertise in Fiscal Year 2023 for future trench soils off-haul and DOSS management services. Meanwhile, trench soils continue to accumulate at the DOSS facilities, most rapidly at Briones and Miller Road. Until new agreements are in place, a two-year extension to the current agreement with PSEC will allow the District to maintain management of the DOSS facilities per the TSMP recommendations and provide additional off-haul opportunities for the District to pursue at its discretion.

The TSMP, completed in 2020, recommended strategies for managing all District trench soils and minimizing the District costs over a 10-year planning horizon. One strategy recommended modifying the

Funds Available: FY22/23, CIP#000652; Page #36	Budget Coding: 534/2011131/7999/5377	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Engineering and Construction	Olujimi O. Yoloye	 General Manager
Attachment(s): P-035, P-061		

management of the DOSS facilities to more efficiently handle the trench soils at the sites and to identify potential reuse or disposal opportunities at competitive market rates. Components of this strategy include:

- Screening and placing newly generated trench soils at the DOSS facilities per updated grading plans aimed at better management and tracking of the trench soils for reuse.
- Sampling and characterization of the trench soils on a more regular basis at the DOSS facilities.
- Frequent topographic survey of the DOSS facilities to evaluate storage volume and remaining capacity.
- More frequent and smaller off-haul events when reuse market rates are favorable.

Extension of the agreement with PSEC will allow the District to continue to pursue the recommendations of the TSMP until future agreements are in place. The work addresses an anticipated increase in trench soils generation associated with the growing Pipeline Rebuild Program. The improved management of trench soils at the DOSS facilities will also address stormwater runoff control at the sites. This work supports the District's Long-Term Infrastructure Investment and Water Quality and Environmental Protection Strategic Plan goals.

## **SERVICE PROVIDER SELECTION**

In May 2017, a request for proposals was posted on the District's website. The District received one proposal from PSEC in partnership with Terraphase Engineering and Engineering/Remediation Resources Group, Inc. The District's selection committee chose the PSEC team based on their ability to provide the requested range of services at a fair price compared to previous District agreements.

## **SUSTAINABILITY**

### **Economic**

Funding for this work is available in the FY22/23 adopted capital budget for Trench Soils Management.

### **Social**

Work under this agreement is subject to the payment of current prevailing wages according to determinations for each craft as established by the Director of Industrial Relations of the State of California.

Local 444 was notified of this amendment on July 28, 2021. Local 444 questions were addressed on August 5 and September 2, 2021. Local 444 raised some concerns related to the DOSS facilities management tasks included in this amendment. Over the next two years, for the duration of this amendment, the District will continue to evaluate what level of work and resources would be required to perform the work with staff, particularly considering the long term plans for the District's overall trench soils management program. District staff will meet with Local 444 in one year to provide an update on the DOSS facility management by PSEC and to discuss the approach to future work.

Social benefits of this agreement include the reuse of trench soils for improvements to local residential and commercial developments. Trench soils during the 2018 and 2019 off-hauls were used for grading at Mariner's Cove, a residential and commercial development site in Vallejo and as soil cover associated

with remediation at the Navy's Alameda Point Installation Restoration Site 32 in Alameda. District staff will work with the local communities prior to future off-haul events to minimize the impact of trucking and truck traffic.

### **Environmental**

A California Environmental Quality Act Notice of Exemption was filed with the Alameda County Clerk on August 9, 2017, and with the Contra Costa County Clerk on August 14, 2017, for off-haul work completed in 2018 and 2019.

### **ALTERNATIVES**

**Do not extend the agreement.** This alternative is not recommended because the current agreement with PSEC to manage the DOSS facilities will soon expire. If these facilities are not maintained, they risk reaching capacity sooner and eventual reuse of the trench soils could be more costly if off-haul becomes urgent or if the trench soils are not screened and characterized prior to reuse.

**Perform the work with District forces.** This alternative is not recommended because the District does not have the staff or equipment to manage the DOSS facilities per the TSMP recommendations or the ability to off-haul the volume of trench soils in the agreement.

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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)

<b>TITLE</b> <b>Construction Services Agreement - Amendment</b> <b>Amend Trench Soils Management Agreement</b>						<b>DATE:</b> <b>August 30, 2021</b>						
<b>CONTRACTOR:</b> Pacific States Environmental Contractors, Inc. Dublin, CA 94568					<b>Local Business/ Sole Proposer</b>					<b>PERCENTAGE OF CONTRACT DOLLARS</b>		
<b>BID/PROPOSER'S PRICE:</b>		<b>FIRM'S OWNERSHIP</b>			<b>Availability Group</b>		<b>Contracting Objectives</b>		<b>Participation</b>			
		<b>Ethnicity</b>		<b>Gender</b>	<b>White Men</b>		<b>25%</b>		<b>97.1%</b>			
					<b>White Women</b>		<b>9%</b>		<b>0.0%</b>			
<b>\$6,800,000 *</b>		<b>White</b>		<b>Men</b>	<b>Ethnic Minorities</b>		<b>25%</b>		<b>2.9%</b>			
<b>CONTRACT EQUITY PARTICIPATION</b>												
<b>COMPANY NAME</b>		<b>ESTIMATED AMOUNT</b>	<b>ETHNICITY</b>	<b>GENDER</b>		<b>CONTRACTING PARTICIPATION</b>						
				<b>M</b>	<b>W</b>	<b>White-Men</b>	<b>White-Women</b>	<b>Ethnic Minorities</b>	<b>Unclassified</b>	<b>Publicly Held Corp.</b>	<b>Gov't/Non Profit</b>	<b>Foreign</b>
<b>PRIME:</b> Pacific States Environmental Contractors, Inc.		<b>\$6,250,000</b>	<b>White</b>	<b>X</b>		<b>91.9%</b>						
<b>SUBS:</b> Engineering/Remediation Resources Group, Inc. (ERRG)		<b>\$200,000</b>	<b>A/PI</b>		<b>X</b>			<b>2.9%</b>				
Terraphase Engineering		<b>\$350,000</b>	<b>White</b>	<b>X</b>		<b>5.1%</b>						
<b>TOTAL</b>		<b>\$6,800,000</b>				<b>97.1%</b>	<b>0.0%</b>	<b>2.9%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>												
		<b>White Men</b>		<b>White Women</b>		<b>Ethnic Minorities</b>		<b>Total Employees</b>				
<b>No. of Employees:</b>		<b>39</b>		<b>5</b>		<b>50</b>		<b>94</b>				
<b>Percent of Total Employees:</b>		<b>41.5%</b>		<b>5.3%</b>		<b>53.2%</b>						
<b>MSA Labor Market %:</b>		<b>32.3%</b>		<b>27.8%</b>		<b>39.9%</b>						
<b>MSA Labor Market Location:</b>		<b>9 Bay Area Counties</b>										
<b>COMMENTS</b>												
<b>Contract Equity Participation:</b> 97.1% White Men participation and 2.9% Ethnic Minority participation.												
*Total not to exceed: \$28,106,000 = \$21,306,000 (Multiple previous amendments) + \$6,800,000 (Amendment)												
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>				<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>				
<b>NA</b>				<b>YES</b>								

## AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

[illegible]

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)



AGENDA NO. 7.  
MEETING DATE September 14, 2021

**TITLE    AMEND AGREEMENT FOR EQUAL EMPLOYMENT OPPORTUNITY  
          INVESTIGATIVE SERVICES**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input checked="" type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
<b>ACTION</b>	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

Authorize an amendment to the agreement previously authorized under Board Motion No. 073-21 with Oppenheimer Investigations Group to increase the agreement amount by \$30,000 to a total amount not to exceed \$140,000 and extend the agreement term to June 30, 2022, for Equal Employment Opportunity (EEO) investigative services.

**SUMMARY**


The District entered into an agreement with Oppenheimer Investigations Group to provide investigative services of EEO complaints. The initial agreement in February 2020, under Purchase Order No. 360-37824-BX, was for \$30,000 and the amount was increased in September 2020 under the General Manager's authority to \$80,000, then in April 2021 under Board Motion No. 073-21 the amount was increased to \$110,000. The request to increase the agreement amount to \$140,000 is needed to support continuing investigative services.

**DISCUSSION**

As part of EBMUD's obligations as an EEO employer, the District investigates claims of discrimination, harassment, and retaliation. This agreement supports District staff in the completion of EEO investigations in a timely manner. This work supports the District's Workforce Planning and Development Strategic Plan goal.

**CONSULTANT SELECTION**

In March 2020, a request for Statements of Qualifications was sent to one resource organization and 20 potential firms. Eighteen statements of qualifications were received to provide individualized EEO services as needed. Oppenheimer Investigations Group was selected based on their expertise in EEO investigations.

Funds Available: FY22	Budget Coding: WSO-141-8923-5231	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Office of Diversity, Equity and Culture	Derry L. Moten	 General Manager
Attachment(s): P-035; P-061		

## **SUSTAINABILITY**

### **Economic**

Funding for this work is available in the FY22 adopted operating budget.

## **ALTERNATIVE**

**Do not approve an amendment to the agreement.** This alternative is not recommended because Oppenheimer Investigations Group is a qualified consultant that is currently supporting active EEO investigations.



## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

<b>TITLE</b> <b>Professional Services Agreement - Amendment</b> Amend Agreement for Equal Employment Opportunity Investigative Services						<b>DATE:</b> August 10, 2021					
<b>CONTRACTOR:</b> Oppenheimer Investigations Group Berkeley, CA 94707			Small / Local Business		<b>PERCENTAGE OF CONTRACT DOLLARS</b>						
					<b>Availability Group</b>		<b>Contracting Objectives</b>		<b>Participation</b>		
<b>BID/PROPOSER'S PRICE:</b>			<b>FIRM'S OWNERSHIP</b>		<b>White Men</b>		<b>25%</b>		<b>0.0%</b>		
			<b>Ethnicity</b>		<b>Gender</b>		<b>White Women</b>		<b>6%</b>		
\$30,000 *			White		Women		<b>Ethnic Minorities</b>		<b>25%</b>		
<b>CONTRACT EQUITY PARTICIPATION</b>											
<b>COMPANY NAME</b>		<b>ESTIMATED AMOUNT</b>	<b>ETHNICITY</b>	<b>GENDER</b>		<b>CONTRACTING PARTICIPATION</b>					
				<b>M</b>	<b>W</b>	<b>White-Men</b>	<b>White-Women</b>	<b>Ethnic Minorities</b>	<b>Unclassified</b>	<b>Publicly Held Corp.</b>	<b>Gov't/Non Profit</b>
<b>PRIME:</b> Oppenheimer Investigations Group		\$30,000	White		X		100.0%				
<b>SUBS:</b> None											
<b>TOTAL</b>		\$30,000				0.0%	100.0%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>											
		<b>White Men</b>		<b>White Women</b>		<b>Ethnic Minorities</b>		<b>Total Employees</b>			
<b>No. of Employees:</b>		4		4		8		16			
<b>Percent of Total Employees:</b>		25.0%		25.0%		50.0%					
<b>MSA Labor Market %:</b>		24.5%		21.6%		53.9%					
<b>MSA Labor Market Location:</b>		Alameda									
<b>COMMENTS</b>											
<b>Contract Equity Participation - 100.0% White Women participation</b>											
*Total contract amount: \$140,000 = \$110,000 (Multiple previous amendments) + \$30,000 (Amendment)											
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>				<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>			
NA				NA							

## AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

[illegible]

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)



AGENDA NO. 8.  
MEETING DATE September 14, 2021

**TITLE LEASE FOR OFFICE SPACE IN ORINDA**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER
<b>ACTION</b>	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

Approve a 65-month lease agreement with 25 Orinda Way LLC (Landlord), for 4,461 square feet of office space located at 25 Orinda Way, Orinda to support the District's Orinda Water Treatment Plant's (WTP) Disinfection Improvements and Chemical Systems Safety Improvement Projects (Projects) construction management team. The term of the lease is March 2022 through July 2027. The base monthly rent is \$17,621 with a three percent annual escalation and pass-through costs.


**SUMMARY**

The District will construct a new 200 million gallons per day ultraviolet (UV) disinfection facility, chlorine contact basin (CCB), and various chemical system safety improvements at the Orinda WTP. The scheduled award for the Projects is in December 2021. The WTP site does not have adequate space to support construction staging and temporary office trailers; therefore, offsite office space is required. The leased office space will also serve as staging for contractor vanpools to encourage mass transit.

**DISCUSSION**

The leased office space is near the WTP site and is an ideal location for District and contractor staff supporting the Projects during construction. In addition, parking spaces included in the lease agreement will be used for contractor vanpools. The leased office space is close to the Orinda BART station, which offers the project team a commute alternative to the project site to reduce traffic. The lease agreement also allows for equipment and material storage at the site, which will free up space at the construction site and improve the constructability of the Projects. The lease rate includes all required tenant improvements and operating expenses.

The lease includes an indemnification provision that requires Board authorization. The provision requires the District to indemnify the Landlord for claims to the extent they arise from negligent or wrongful acts or omissions of the District, construction or other work undertaken by or on behalf of the District in the leased space, or any accident, injury, or damage, occurring in the leased space. The indemnity does not

Funds Available: FY22/23	Budget Coding: WSC/576/2012269:22/5316	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Customer and Community Services	Andrew L. Lee	 General Manager
Attachment(s): Orinda Office Property Map		

apply to the extent a claim arises from the Landlord's or Landlord representatives' negligence or willful misconduct. Staff worked with the Landlord and address the District's concerns with the level of liability allocated to the District. These negotiations significantly narrowed the scope of the District's indemnity. This agreement supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

## **SUSTAINABILITY**

### **Economic**

The proposed lease is in line with prevailing market rates for the area. Funding for this lease is available in the FY22/23 adopted capital budget for the Orinda WTP Disinfection Improvements and Orinda WTP Chemical Safety Improvements Projects.

### **Social**

The Projects provide significant water quality improvements, operational safety, and environmental regulatory compliance. Providing vanpool alternatives offers better access for tradespersons with limited transportation options while reducing overall traffic impacts to the community.

### **Environmental**

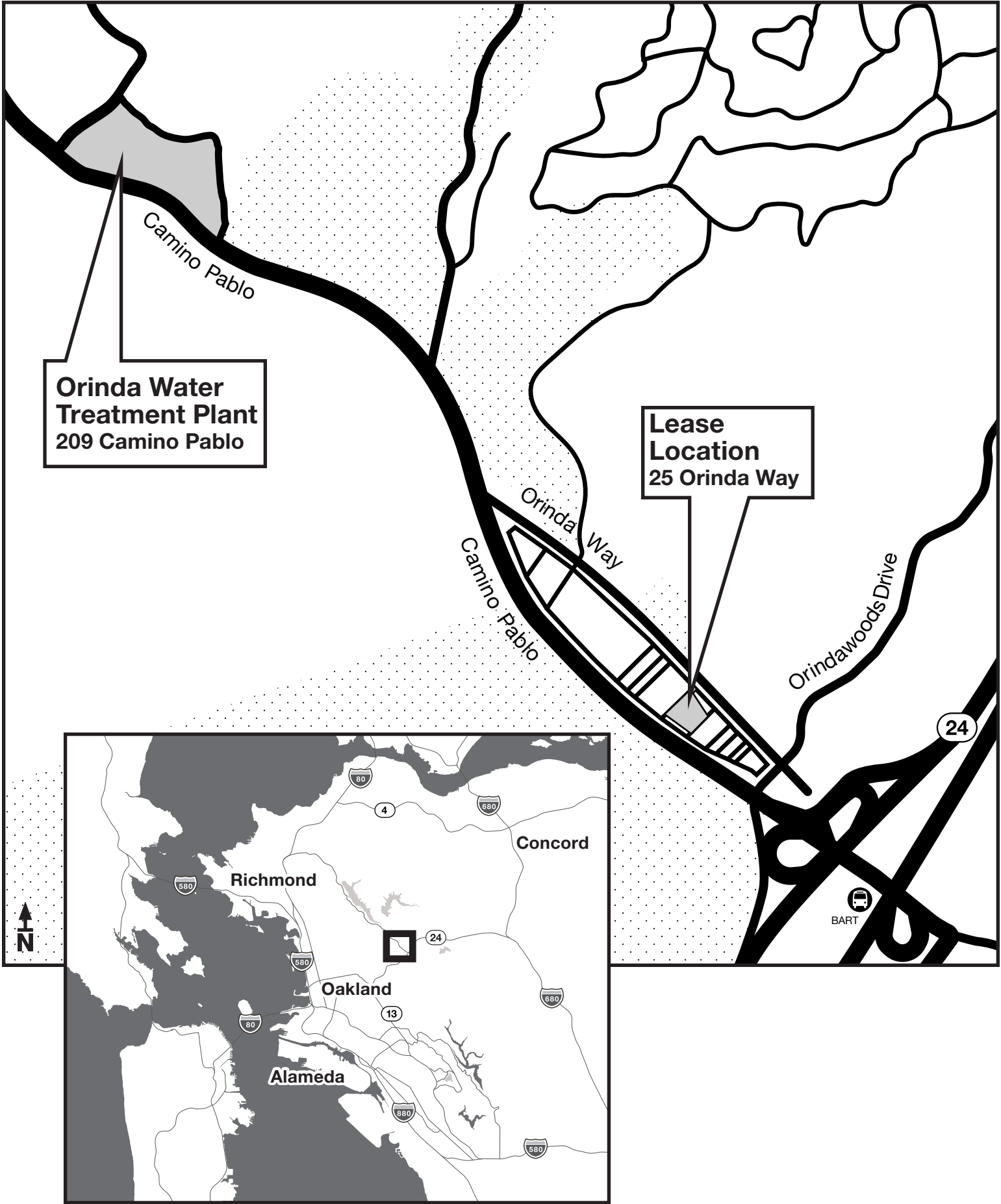
The Orinda WTP Disinfection Improvements Project's Supplemental Environmental Impact Report was certified by the Board under Resolution No. 35210-20. A California Environmental Quality Act Notice of Exemption for the Orinda WTP Chemical Systems Safety Improvements Project was filed with the Contra Costa County Clerk on March 8, 2021.

## **ALTERNATIVES**

**Do not approve this lease.** This alternative is not recommended because the construction project team and the contractor would have limited onsite space for both construction staging and office space, which would result in higher costs and additional construction traffic to and from the project site.

**Acquire an alternative office space location.** This alternative is not recommended because the office space location is situated near the site, reducing travel time, and improving staff efficiency. In addition, the location is ideal for use of the BART mass transit hub and provides staff and workers with more sustainable mass transit alternatives.





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AGENDA NO. 9.  
MEETING DATE September 14, 2021

**TITLE    AUTHORIZE CONTINUED EMPLOYMENT OF HANSON BRIDGETT, LLP, FOR  
SPECIALIZED LEGAL SERVICES**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input checked="" type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
<b>ACTION</b>	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

Authorize the Office of General Counsel (OGC) to continue the employment of the law firm of Hanson Bridgett LLP, for specialized legal services related to construction, public contracts and procurement, claims, intellectual property and technology matters, tax, public pension law, labor and employment, and litigation matters in an additional amount not to exceed \$175,000.

**DISCUSSION**


The firm of Hanson Bridgett, LLP, has been retained to assist OGC in matters related to construction, public contracts and procurement, claims, intellectual property and technology matters, tax, public pension law, labor and employment, and litigation matters. OGC is requesting authorization for additional funds for services described in a separate confidential attorney-client privileged memorandum to the Board.

**SUSTAINABILITY**

**Economic**

Funding for this item is included in the FY22/23 adopted operating budget.

I:\SEC\2021 Board Related Items\091421 Board Agenda Items\OGC – Hanson Bridgett LLP.docx

<b>Funds Available: FY22/23</b>	<b>Budget Coding: WSO 130 8511 5231</b>	<b>Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</b>
<b>Originating Department</b>	<b>Department Director or Manager</b>	<b>Approved</b>
Office of General Counsel	Derek McDonald	
		General Manager
<b>Attachment(s): P-035; P-061</b>		

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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)

<b>TITLE</b> <b>Professional Services Agreement - Amendment</b> Authorize Continued Employment of Hanson Bridgett, LLP for Specialized Legal Services						<b>DATE:</b> August 25, 2021						
<b>CONTRACTOR:</b> Hanson Bridgett LLP San Francisco, CA 94105						<b>PERCENTAGE OF CONTRACT DOLLARS</b>						
<b>BID/PROPOSER'S PRICE:</b> \$175,000 *		<b>FIRM'S OWNERSHIP</b>		<b>White Men</b>		<b>25%</b>		<b>100.0%</b>				
		<b>Ethnicity</b>	<b>Gender</b>	<b>White Women</b>		<b>6%</b>		<b>0.0%</b>				
		White	Men	<b>Ethnic Minorities</b>		<b>25%</b>		<b>0.0%</b>				
<b>CONTRACT EQUITY PARTICIPATION</b>												
<b>COMPANY NAME</b>		<b>ESTIMATED AMOUNT</b>	<b>ETHNICITY</b>	<b>GENDER</b>		<b>CONTRACTING PARTICIPATION</b>						
				<b>M</b>	<b>W</b>	<b>White-Men</b>	<b>White-Women</b>	<b>Ethnic Minorities</b>	<b>Unclassified</b>	<b>Publicly Held Corp.</b>	<b>Gov't/Non Profit</b>	<b>Foreign</b>
<b>PRIME:</b> Hanson Bridgett LLP		\$175,000	White	X		100.0%						
<b>SUBS:</b> None												
<b>TOTAL</b>		\$175,000				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>												
		<b>White Men</b>		<b>White Women</b>		<b>Ethnic Minorities</b>		<b>Total Employees</b>				
<b>No. of Employees:</b>		57		84		101		242				
<b>Percent of Total Employees:</b>		23.6%		34.7%		41.7%						
<b>MSA Labor Market %:</b>		28.0%		23.6%		48.4%						
<b>MSA Labor Market Location:</b>		California										
<b>COMMENTS</b>												
<b>Contract Equity Participation</b> - 100.0% White Men participation.												
*Total not to exceed: \$175,000												
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>				<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>				
NA				NA								

## AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

[illegible]

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)

**EAST BAY MUNICIPAL UTILITY DISTRICT**

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DATE: September 14, 2021

MEMO TO: Board of Directors

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

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Board of Directors Vacation Schedule

**SUMMARY**

The Board of Directors has traditionally canceled the Board Committee, Closed Session, and Regular meetings scheduled for the fourth Tuesday in August provided it did not adversely impact the operations of the District, to accommodate planned vacations of Directors and staff. At its May 26, 2020 meeting, the Board voted to cancel its meetings scheduled for the fourth Tuesday in July 2021 instead of the meetings scheduled for the fourth Tuesday in August, and to calendar a discussion on revising its summer vacation schedule after July 2021. The Board will discuss this item at its September 14, 2021 meeting.

**DISCUSSION**

In May 2020, to assist the Board with its vacation scheduling discussion, staff provided information on the Board's vacation scheduling history, vacation schedules at other agencies, and potential impacts to key District actions and activities if the Board revised its vacation schedule. At its May 26, 2020 meeting, the Board voted to revise its 2021 summer vacation schedule by canceling its meetings scheduled for the fourth Tuesday in July 2021 instead of the customary fourth Tuesday in August.

Staff reviewed key District actions and activities scheduled for 2022 to anticipate the potential impact of canceling a meeting in July or August.

**Canceling meetings scheduled for the fourth Tuesday in July**

The District must submit information regarding the Multi-Family Residential Lien Program and Wet Weather Facility Charge to the counties by August 10 for inclusion on the property tax rolls. Sufficient time is needed for public hearings for these two items and for staff to complete administrative actions in advance of the counties' August 10 deadline. If the Board cancels its meetings scheduled for the fourth Tuesday in July and needs to take additional actions on one or both of these items, a special meeting would need to be scheduled during its vacation period.

Canceling meetings scheduled for the fourth Tuesday in August

In 2022, the seats in Ward Nos. 2, 3, 4, and 7 will be up for election. Assembly Bill 408 (AB 408), codified as Section 11852.5 of the Municipal Utility District Act, permits the Board to appoint a candidate in lieu of holding an election if only one or no candidate runs for an open ward seat. The window for the Board to exercise its AB 408 authority is short (usually 7 days or less and after Board meetings held on the second Tuesday in August). In 2016, 2018, and 2020, the Board canceled its meetings scheduled for the fourth Tuesday in August and held special meetings to exercise its AB 408 authority. If the Board cancels its meetings scheduled for the fourth Tuesday in August 2022 and needs to take action to exercise its AB 408 authority, it will need to schedule a special meeting during its vacation period.

**FISCAL IMPACT**

There is no expected fiscal impact if the Board cancels its meetings scheduled for the fourth Tuesday in July or the fourth Tuesday in August.

**NEXT STEPS**

The Board will discuss revisions to its 2022 and future vacation schedules at its meeting on September 14, 2021.

CCC:RSC





AGENDA NO. 11.  
MEETING DATE September 14, 2021

**TITLE 2021-2022 REDISTRICTING GUIDELINES AND CRITERIA**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER
<b>ACTION</b>	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

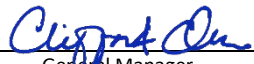
Approve guidelines and criteria for the District's 2021-2022 redistricting efforts.

**SUMMARY**

Section 11823 of the Municipal Utility District Act requires the Board of Directors by resolution or ordinance to fix the boundaries of the wards for the purpose of electing directors. Election Code sections 22000 and 22001 provides that a special district, such as the District, must adjust boundaries after each decennial census, and use the census data to adjust boundaries of divisions or wards so they are equal in population and comply with federal law. The Board will use the guidelines and criteria to complete EBMUD's redistricting efforts, and approve and submit legal ward boundaries and maps to Alameda and Contra Costa counties in advance of the counties' deadlines for the November 8, 2022 elections. This item was discussed with the Redistricting Ad Hoc Committee on June 22, 2021 and August 24, 2021.

**DISCUSSION**

On May 11, 2021, the Board appointed a Redistricting Ad Hoc Committee (Committee) to determine guidelines, criteria, and public outreach activities; review census information; and propose redistricting alternatives for Board consideration. On June 22, 2021, the Committee met and reviewed the redistricting guidelines and criteria from 2011-2012 as well as provisions of the FAIR MAPS Act (AB 849 – Bonta) to determine guidelines and criteria for 2021-2022. Based on Committee feedback, staff presented draft guidelines and criteria for the District's 2021-2022 redistricting efforts at the August 24, 2021 Redistricting Ad Hoc Committee meeting. The draft guidelines and criteria included information on how the Board will, to the extent possible, adopt provisions of the FAIR MAPS Act as best practices when establishing ward boundary lines; a reference to communities of interest; and updated criteria language to clarify actions to be completed by the Committee and meetings and hearings to be conducted by the full Board.

Funds Available: NA	Budget Coding: NA	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Office of the Secretary	Rischa S. Cole	 General Manager
Attachment(s): 2021-22 Redistricting Guidelines and Criteria		

During the August 24 meeting, the Committee directed staff to maintain transparency with redistricting efforts and adjust redistricting efforts based on the public's interest and costs; and make an additional revision to the guidelines and criteria to clarify the Board will "adhere to provisions of the FAIR MAPS Act as much as reasonable," before presenting the final guidelines and criteria (attached) for Board consideration. This item supports the District's Customer and Community Services Strategic Plan goal.

## **SUSTAINABILITY**

### **Economic**

There are no fiscal impacts associated with this action.

### **Social**

The Committee developed guidelines and criteria that will ensure the District's redistricting efforts are transparent and allow the public to participate in the process.

## **ALTERNATIVE**

**Do not approve guidelines and criteria for the District's 2021-2022 redistricting efforts.** This alternative is not recommended because the Board is required to complete redistricting efforts to provide updated ward boundaries and maps to Alameda and Contra Costa counties in advance of the counties' deadlines for the November 8, 2022 elections. The updated guidelines and criteria will ensure the Board is conducting its redistricting efforts in accordance with the Municipal Utility District Act and the Elections Code.

## **EBMUD 2021-2022 Redistricting Guidelines and Criteria**

The FAIR MAPS Act (AB 849) was enacted in 2019 and was intended to improve public engagement and communication regarding the process of redistricting for cities and counties. The EBMUD Board of Directors wishes to achieve the improved transparency and fairness provided for in the Act by, adopting some of its provisions as best practices as much as reasonable. As such, the EBMUD Board of Directors intends to establish ward boundary lines in accordance with the following guidelines and criteria.

### **Guidelines**

- To achieve as precise equality of population among wards as possible.
- Board members residences will be maintained within their current wards.
- City boundaries will be followed as closely as possible.
- Ethnic communities and/or communities of interest<sup>1</sup> will be kept whole as nearly as possible.
- County precincts will not be split.

### **Criteria**

- Establish an ad hoc committee comprised of three board members appointed by the Board of Directors to hold public meetings regarding the District's redistricting options. At least one public meeting of the ad hoc committee shall be held East of Hills<sup>2</sup> for public review and comment on options for redistricting. The ad hoc committee shall hold at least two public meetings prior to the first public hearing to be held by the Board of Directors to consider the proposal for redistricting.
- The ad hoc committee will propose alternative redistricting plans, which reflect the total and eligible voting populations, racial and ethnic composition, and maps delineating District, city, and county boundaries, to the extent this information is available. Options for redistricting plans shall be made available to the public at least 14 days prior to the first public hearing held by the Board of Directors to consider the proposal for redistricting.
- Documentation of the proposed redistricting plan to be adopted by the Board shall be made available to the public 14 days prior to the scheduled public hearing on the vote on the final configuration.
- No substantive amendments to the alternative plans or the final plan may occur during the 14-day review period prior to the final vote on the ultimate redistricting configuration.
- The Board of Directors will hold at least one public hearing to consider the proposal for redistricting prior to taking action on the boundaries.
- The Board of Directors will hold at least one public hearing to take final action on the ward boundaries.

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<sup>1</sup> The California Constitution defines a community of interest as a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation.

<sup>2</sup> This is contingent on the provisions in the Brown Act. As of this writing, the Governor's Executive Order N-08-21 suspends portion of the Brown Act and allows the Board of Directors to conduct its meetings by webinar or teleconference.

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AGENDA NO. 12.1.  
MEETING DATE September 14, 2021

**TITLE LOS VAQUEROS RESERVOIR JOINT EXERCISE OF POWERS AGREEMENT**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER
<b>ACTION</b>	<input type="checkbox"/> MOTION	<input checked="" type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

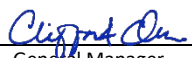
Adopt a resolution authorizing the General Manager to execute the Los Vaqueros Reservoir Joint Exercise of Powers Agreement.

**SUMMARY**

This resolution would authorize the General Manager to sign an agreement forming the Los Vaqueros Reservoir Joint Powers Authority (LVE JPA), a new public agency. If the Board adopts the proposed resolution, EBMUD will join the LVE JPA and continue to work with other participating water districts to negotiate a set of agreements to govern the proposed Los Vaqueros Reservoir Expansion Project (Project). Joining the LVE JPA will not irrevocably commit EBMUD to the Project. Rather, EBMUD may withdraw from the LVE JPA at any time before a Service Agreement is executed between the LVE JPA and EBMUD along with a Final Funding Agreement between the LVE JPA and the California Water Commission (CWC). The Board will have a future opportunity to consider the Service Agreement, which is expected to allocate a share of the Project's benefits and costs to EBMUD. Staff estimates negotiations of these two agreements will take over two years. This item was discussed with the Board at its meeting on August 24, 2021.

**DISCUSSION**

EBMUD is evaluating potential participation in the Project along with Alameda County Water District, Contra Costa Water District (CCWD), Grassland Water District, San Francisco Public Utilities Commission, San Luis & Delta-Mendota Water Authority, Santa Clara Valley Water District, and Zone 7 Water Agency. Once the LVE JPA is formed, these agencies would be known as LVE JPA Members (Members). The Project would expand Los Vaqueros Reservoir by 115 thousand acre-feet (TAF), from 160 TAF to 275 TAF, and would provide EBMUD 30 TAF of new storage. In addition to local storage, EBMUD's participation in the Project is expected to potentially include using Freeport Regional Water Project facilities to wheel water on behalf of the Members to the extent capacity is available and the use is consistent with EBMUD policy. The estimated total capital cost of the Project is \$900 million, and EBMUD's share is currently estimated to range from \$50 to \$100 million depending on whether CCWD is able to secure federal grants to supplement the existing \$470 million grant from the CWC. This action supports the District's Long-Term Water Supply Strategic Plan goal.

Funds Available: FY22/23; CIP# 000460; page 93	Budget Coding: WSC-455-2014330-7999-5231	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Water and Natural Resources	Michael T. Tognolini	 General Manager
Attachment(s): Resolution		

The LVE JPA agreement does not define each Member's respective share of the Project costs and benefits, and does not describe the rights of the LVE JPA and its members to use diversion, conveyance, and storage facilities including Freeport. Instead, these issues will be negotiated in several upcoming agreements, including a future Service Agreement between the LVE JPA and each Member, and two Facility Usage Agreements: one between the LVE JPA and CCWD, and another between the LVE JPA and EBMUD. Because the project is heavily subsidized by grant funding, agreements will also need to be negotiated between the LVE JPA and the CWC, the United States Bureau of Reclamation, and the California Department of Fish and Wildlife. Establishing a new LVE JPA is necessary to provide a formal governance structure for the Project that will grant the LVE JPA the power to negotiate and execute these agreements, to eventually issue bonds to construct facilities if and when the Service and Facility Usage Agreements have been executed, to oversee the Project's construction and operations, and to conduct normal business operations such as budgeting.

On October 20, 2021, the CWC is holding a feasibility hearing to determine whether the Project remains eligible to receive \$470 million in grant funding through the Water Storage Investment Program (WSIP). WSIP grant funding offsets approximately 57 percent of the estimated total capital cost of the Project. Forming the LVE JPA before the hearing will help CCWD demonstrate progress. After JPA formation, the Members will submit a letter of support to the Department of Water Resources and publish a joint press release to demonstrate continued commitment to advance the Project.

### **LVE JPA Key Terms**

The Board appointed an ad hoc committee in September 2020 to advise EBMUD staff on LVE JPA negotiations. The proposed final version of the JPA agreement satisfactorily addresses the issues reviewed by the ad hoc committee.

#### **Withdrawal from the LVE JPA (Off-Ramps)**

The LVE JPA allows a Member to withdraw from the JPA by:

- Declining to execute a Service Agreement;
- Declining to execute an agreement to provide additional funding;
- Determining that other Members' withdrawal has rendered the Project cost-prohibitive;
- Determining the Engineer's Estimate to build any capital component of the Project is too high;
- Determining that State or Federal grant funding has been revoked or unacceptably conditioned; or
- Determining that it cannot timely obtain a water supply for use in connection with the Project.

All withdrawal grounds listed above are no longer available after the execution of the Final Funding Agreement between the LVE JPA and the CWC. As a practical matter, the Final Funding Agreement will be among the final agreements to be executed. Staff believes it may take two or more years to negotiate all of the agreements to properly define costs and benefits and determine whether to continue participation in the Project. EBMUD can use that period of time to exercise its right to withdrawal if necessary.

#### **EBMUD Voting and Veto Rights**

The LVE JPA agreement provides each member with one equal vote. All actions will be taken by simple majority vote, except as follows:

- *Super-Majority (3/4ths)*: Amendment, Member Termination, LVE JPA Termination.
- *Unanimous*: Commencing litigation, requiring additional Member financial contributions, disbursing benefits in a non *pro rata* manner upon termination, joining a retirement system, hiring employees, any change to the agreement's "veto rights" provisions, and issuing debt for any activity in which not all Members will participate.

The final JPA Agreement allows new members to be admitted by a simple majority while also giving existing members the right to object on grounds that the proposed new member's admission would impact operational costs, facility capacity, or the quantity or quality of water available to the objector. Any objection to a proposed new member's admission would be resolved through a meet-and-confer process to be further developed in the JPA's future bylaws.

EBMUD would have the right to "veto" any LVE JPA decision which EBMUD believes will adversely and materially impact its facilities by causing significant impacts to operations or operational costs, the usefulness of a facility, or regulatory or water quality impacts. CCWD will have a similar right with respect to its own facilities. To invoke its veto right, EBMUD would need to provide a Board resolution and evidence of the impact, which would initiate a meet-and-confer process among the Members. However, any veto by the District or CCWD would be final.

### Indemnification

As a separate public entity, the LVE JPA will indemnify its Members, its Members' officers, directors, employees, and agents, and the persons serving on its own Board, against all liability arising out of any act or omission related to this Agreement, except liability caused by the negligence of willful misconduct a Member or that Member's agents. Each Member, including EBMUD, would be required to indemnify all other Members against any liability arising from the first Member's negligent or wrongful acts or omissions in the performance of the LVE JPA agreement. In the event liability results from the negligence of multiple Members, the negligent Members will provide indemnity in proportion to each's respective share of the fault. Finally, a subset of the Members of the LVE JPA may define and choose to pursue a "related activity" which does not involve all Members, in which case the Members participating in the activity would indemnify the non-participants against any liability arising from the activity.

## **SUSTAINABILITY**

### Economic

Funding for this item is available in the FY22/23 adopted capital budget for the Supplemental Supply and Regional Planning Project.

### Social

The agreement supports the development of long-term supplemental water supplies for EBMUD in dry years and promotes regional collaboration and partnerships.

### **Environmental**

This agreement supports the Project, which if implemented, would improve adaptability to climate change, result in additional environmental flows for the Mokelumne River through gainsharing under EBMUD's Joint Settlement Agreement, and make water supply available for wildlife refuges in California's Central Valley.

The LVE JPA agreement is not subject to the California Environmental Quality Act's (CEQA) environmental review requirements. It would not alter or affect the operations of EBMUD's water systems or facilities, nor would it constitute a commitment to construct, operate, participate in, or otherwise proceed with the Project. Instead, it would preserve EBMUD's discretion to determine whether and to what extent to participate in the Project. It would also create an organizational structure for EBMUD and other potential Project participants to negotiate future agreements regarding the Project's design, construction, operation, and administration, which would be subject to further discretionary approvals by those participants following compliance with any and all applicable CEQA requirements. Accordingly, the LVE JPA agreement is a type of "organizational or administrative activity that will not result in direct or indirect physical changes in the environment" and therefore is not a "project" under CEQA. (CEQA Guidelines section 15378(b)(5)).

### **ALTERNATIVE**

**Delay or do not proceed with the work.** This alternative is not recommended because the Project has the potential to help EBMUD meet its long-term water supply needs. Without executing the LVE JPA agreement, EBMUD will not be able to continue participation in the planning and development stages of the Project.



RESOLUTION NO. \_\_\_\_\_

AUTHORIZING THE GENERAL MANAGER TO EXECUTE THE  
LOS VAQUEROS RESERVOIR JOINT EXERCISE OF POWERS AGREEMENT

Introduced by Director

; Seconded by Director

WHEREAS, the Board of Directors of the East Bay Municipal Utility District (District) continues to proactively seek ways to enhance water supply, conveyance and storage operational flexibility and improve long-term water supply reliability for the District and its customers; and

WHEREAS, the District's 2020 Urban Water Management Plan identifies the District's current and future need for water supplies to enable the District to continue to meet water supply requirements within the District's service area; and

WHEREAS, participation by the District in the Los Vaqueros Reservoir Expansion Project (Project), through becoming a member of the Los Vaqueros Reservoir Joint Powers Authority (Authority), may facilitate the District's ability to maintain or enhance its conveyance and storage capability to ensure sufficient water supplies for its service area, as well as provide ecosystem uses for south-of-Delta wildlife refuges; and

WHEREAS, the District's Board of Directors understands that the District's General Manager, Office of General Counsel, and other staff have been involved in negotiations relating to the Joint Exercise of Powers Agreement (Agreement) that will establish the Authority as a new public agency for the design, construction, operation, maintenance and administration of the Project, and for related purposes; and

WHEREAS, the Agreement sets forth various rights and obligations of the Authority, its board of directors and the Authority's member agencies, including the District, and addresses various governance, financial and administrative issues; and

WHEREAS, the District possesses an exclusive right to use up to 100 million gallons per day of capacity in the shared facilities of the Freeport Regional Water Project (Freeport Facilities), and on January 10, 2017, the District's Board of Directors adopted a revised set of principles to guide decisions related to the use of unassigned District capacity in those facilities by other parties; and

WHEREAS, although the Agreement conceptually describes potential use by the Authority or its members of capacity in District facilities, possibly including a portion of the District's capacity rights in the Freeport Facilities, the Agreement (i) does not commit the District to allow such use, (ii) preserves the District's right to condition any use it does choose to allow, (iii) authorizes the District to veto any decision by the Authority's board of directors the District determines would

have an adverse and material effect on any facilities it may provide for Project use, (iv) would not alter or affect the District's operations of its water systems or facilities, and (v) is not inconsistent with the operative Board-adopted principles governing others' use of the Freeport Facilities; and

WHEREAS, essential aspects of the Project remain undetermined, and the Agreement does not define each member's respective share of the Project's costs and benefits, nor the rights of the Authority or its members to use diversion, conveyance, and storage facilities; and

WHEREAS, the Agreement would instead reserve such issues for future agreements to be negotiated regarding the Project's design, construction, operation, and administration, which future agreements would be subject to further discretionary approvals by the District and other participants, and additionally the Agreement would ensure the District's right to withdraw from the Authority should the District elect not to enter into such future agreements; and

WHEREAS, entering into the Agreement would therefore not constitute a commitment to carry out, approve, construct, operate, participate in, or otherwise proceed with the Project; and

WHEREAS, the District's Board of Directors finds and determines that it is in the best interest of the District to join the Authority as a member agency at this time to enable it to continue to participate in the planning, development, and negotiation of the Project;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that:

1. The Board of Directors hereby finds and determines:
  - a. The recitals set forth above are true and correct and are hereby incorporated as if fully set forth herein.
  - b. Entering into the Agreement and participating in the Authority's formation does not constitute a "project" under the California Environmental Quality Act (CEQA) pursuant to section 15378(b)(5) of the CEQA Guidelines because it is a type of "organizational or administrative activity that will not result in direct or indirect physical changes in the environment."
  - c. By forming the Authority, the Agreement would create an organizational structure for the District and other potential Project participants to negotiate potential future Project-related agreements. Those agreements are intended to describe the Project's design, construction, operation, and administration, the particulars of which remain undetermined. If such agreements are successfully negotiated, each would be subject to further discretionary approvals by the District and other participating agencies following compliance with any and all applicable CEQA requirements.
  - d. Entering into the Agreement would not alter or affect the operations of the District's water systems or facilities, nor would it constitute a commitment to construct, operate,

participate in, or otherwise proceed with the Project. Rather, the Agreement expressly preserves the District's discretion to determine whether and to what extent to participate in the Project.

2. The District's General Manager is authorized to execute the Agreement, including any necessary non-substantive revisions thereto, on behalf of the District in a form approved by the Office of General Counsel.

3. The District's General Manager or the General Manager's designee is authorized to take such additional actions as may be necessary to implement the Agreement consistent with this Resolution, provided that the District's Board of Directors shall retain exclusive authority to approve all agreements between the District and the Authority.

4. The Secretary of the District is authorized and directed to file a Notice of Exemption with the Clerks of the Counties of Alameda and Contra Costa forthwith.

ADOPTED this 14th day of September, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel

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AGENDA NO. 12.2.  
MEETING DATE September 14, 2021

**TITLE LOS VAQUEROS RESERVOIR JOINT POWERS AUTHORITY DIRECTOR  
APPOINTMENT**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER
<b>ACTION</b>	<input type="checkbox"/> MOTION	<input checked="" type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

Adopt a resolution appointing a representative and an alternate representative to the Board of Directors of the Los Vaqueros Reservoir Joint Powers Authority (LVE JPA).

**SUMMARY**

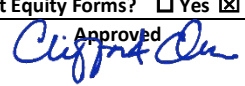
Within 30 days of the effective date of the LVE JPA agreement, each Member of the JPA must designate and appoint, by a formal action of its governing body, one representative to serve as a Director of the LVE JPA's Board of Directors and one alternate to that Director. The proposed resolution would make the District's initial appointments. The Board was last updated on LVE JPA appointments at its August 24, 2021 meeting.

**DISCUSSION**

Each Member's Director and alternate will serve without compensation from the LVE JPA. The appointees will serve at the pleasure of EBMUD, shall hold office until their successor is selected by EBMUD, and may be removed at any time by EBMUD, with or without cause. Each appointee may be a member of EBMUD's Board of Directors or a management-level employee. The primary Director must be designated by name. The alternate Director, if a management-level employee, may be designated by name or position title.

The JPA Board must meet at least quarterly. Monthly meetings will be held initially. Beginning a few weeks after LVE JPA formation, EBMUD's representatives will need to attend regular meetings on:

- Electing officers (e.g., chair) and approving bylaws
- Hiring consultants or individuals to serve key roles (e.g., Executive Director, Attorney)
- Overseeing negotiation of several forthcoming project-related agreements between and among the LVE JPA and its members and various regulatory agencies (e.g., California Water Commission, Contra Costa Water District, EBMUD, California Department of Fish and Wildlife), and eventually considering such agreements for approval

Funds Available: FY22/23; CIP# 000460; page 93	Budget Coding: WSC-455-2014330-7999-5231	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Water and Natural Resources	Michael T. Tognolini	
		General Manager
Attachment(s): Resolution		

- Establishing a budget and selecting an approach to finance project construction
- Voting on other LVE JPA business requiring a decision of its Board

The alternate representative is not required to attend JPA meetings if the primary representative is present but may do so in a non-voting capacity. All meetings of the JPA Board will be conducted as public meetings in accordance with the provisions of the Brown Act. The JPA Board may meet by teleconference or by video conference, and in joint sessions with other public agencies and advisory bodies in accordance with California law. The JPA Board may form committees for any purpose.

In addition to monthly LVE JPA meetings, the EBMUD representatives will also need to participate in separate briefings with EBMUD staff to support the EBMUD Board representatives in preparation for LVE JPA meetings.

The Board may revisit its appointments at any time. The proposed resolution states that appointments will be reviewed annually as part of the Board's existing committee assignment process. That process is currently used to review external appointments—including several other joint powers agencies in which EBMUD participates—in addition to appointments to EBMUD's own standing Board committees.

## **SUSTAINABILITY**

### **Economic**

There are no fiscal impacts associated with this action.

### **Social**

The resolution supports EBMUD's participation in the LVE JPA, which supports the development of long-term supplemental water supplies for EBMUD in dry years and promotes regional collaboration and partnerships.

### **Environmental**

The appointments support the expansion of Los Vaqueros Reservoir, which if implemented, would improve adaptability to climate change, result in additional environmental flows for the Mokelumne River through gainsharing under EBMUD's Joint Settlement Agreement, and make water supply available for wildlife refuges in California's Central Valley.

## **ALTERNATIVE**

**Delay or do not proceed with the appointment.** This alternative is not recommended, presuming the Board authorizes the LVE JPA agreement, because as a LVE JPA member, EBMUD would be required to appoint directors.

RESOLUTION NO. \_\_\_\_\_

APPOINTING A REPRESENTATIVE AND AN ALTERNATE REPRESENTATIVE  
TO THE BOARD OF DIRECTORS OF THE LOS VAQUEROS RESERVOIR  
JOINT POWERS AUTHORITY

Introduced by Director \_\_\_\_\_ ; Seconded by Director \_\_\_\_\_

WHEREAS, on September 14, 2021 the Board of Directors of the East Bay Municipal Utility District (District) adopted a resolution which authorized execution of the proposed Los Vaqueros Reservoir Joint Exercise of Powers Agreement (Agreement), to establish a new public agency to be known as the Los Vaqueros Reservoir Joint Powers Authority (Authority) that is separate and apart from each of the Member of the Authority for the design, construction, operation, and administration of the Los Vaqueros Reservoir Expansion Project, and for related purposes; and

WHEREAS, the Agreement requires that each Member of the Authority shall designate and appoint, by a formal action of its governing body, either one (1) member of its governing body, or a management-level employee of the Member, to act as its representative on the Authority Board of Directors; and one (1) other governing body member or Member employee, either by name or position title, to act as an alternate to that Director so appointed;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that:

1. The following representatives are hereby appointed to serve on the Board of Directors of the Los Vaqueros Reservoir Joint Powers Authority as Director and Alternate, respectively:

Director: \_\_\_\_\_

Alternate: \_\_\_\_\_

2. The District's appointed Director and Alternate shall serve at the pleasure of the District's Board of Directors, which may review the appointments annually as part of the Board's existing committee assignment process, or as frequently as desired, and make changes to the appointments from time to time by motion.

ADOPTED this 14th day of September, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel





AGENDA NO. 12.3.  
MEETING DATE September 14, 2021

**TITLE AMENDMENT TO THE LOS VAQUEROS RESERVOIR EXPANSION PROJECT  
COST-SHARING AGREEMENT**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER
<b>ACTION</b>	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

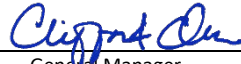
Authorize an amendment to the cost-sharing agreement previously authorized under Board Motion Nos. 039-19 and 203-20 with seven other water agencies to increase the agreement amount by \$897,120 to a total amount not to exceed \$2,264,910 and extend the agreement term to December 31, 2022 to fund planning and other pre-construction activities for the proposed Los Vaqueros Reservoir Expansion Project (Project).

**SUMMARY**

EBMUD is evaluating participation in the Project along with Alameda County Water District, Contra Costa Water District (CCWD), Grassland Water District, San Francisco Public Utilities Commission, San Luis & Delta-Mendota Water Authority, Santa Clara Valley Water District, and Zone 7 Water Agency. The Project would expand Los Vaqueros Reservoir from 160 thousand acre-feet (TAF) to 275 TAF and provide supplemental water supply to EBMUD during droughts and emergencies. Staff negotiated an amendment to the existing cost-sharing agreement (Multiparty Agreement) to fund continued public outreach, complete 100 percent dam design, secure local approvals and permits, and investigate water supply sources. The Board was last updated on this project at its August 24, 2021 meeting.

**DISCUSSION**

Under Board Motion No. 197-16, the "Principles of Agreement with CCWD for Potential Use of Freeport and Los Vaqueros Facilities" were approved and the initial contribution of \$100,000 was authorized toward environmental documentation and a Water Storage Investment Program grant application. Under Board Motion Nos. 039-19 and 203-20, additional contributions were authorized under the current Multiparty Agreement to a total amount not to exceed \$1,367,790 to pay for EBMUD's cost share of completing a portion of the dam design, forming a Joint Powers Authority, conducting public outreach, securing permits, and doing additional preliminary work necessary to maintain the Project's grant eligibility.

Funds Available: FY22/23; CIP# 000460; page 93	Budget Coding: WSC-455-2014330-7999-5231	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Water and Natural Resources	Michael T. Tognolini	 General Manager
Attachment(s): N/A		

The total capital costs of the Project are currently estimated at approximately \$900 million, of which \$470 million (57%) is funded by a California Water Commission grant awarded to CCWD. Although the details of cost allocation are still being negotiated, staff estimates that EBMUD's portion of capital costs for 30 TAF of storage is approximately \$50 to \$100 million depending on whether federal grant funding is secured. The current Multiparty Agreement expires on December 31, 2021, and is being amended to:

- Fund the administration of the Joint Powers Authority
- Extend the agreement through December 31, 2022
- Continue public outreach and communication
- Complete 100 percent design of the dam and start design of other facilities
- Secure regulatory permits
- Investigate water supply sources for certain JPA members, including for EBMUD

Although the total cost of the additional work in the amended Multiparty Agreement is \$22,831,798, EBMUD's share of the cost is \$897,120. Grant funding will contribute approximately 60 percent to the work covered under the agreement. Neither the existing Multiparty Agreement nor the proposed amendments would commit EBMUD or any other party to construct, operate, or otherwise carry out the Project. Rather, it would continue to preserve EBMUD's discretion to determine whether and to what extent to participate in the Project. This Agreement supports the District's Long-Term Water Supply Strategic Plan goal.

## **SUSTAINABILITY**

### **Economic**

Funding for this item is available in the FY22/23 adopted capital budget for the Supplemental Supply and Regional Planning Project.

### **Social**

The agreement and associated amendment supports the development of long-term supplemental water supplies for EBMUD in dry years and promotes regional collaboration and partnerships.

### **Environmental**

The Project, if implemented, would improve adaptability to climate change, result in additional environmental flows for the Mokelumne River through gainsharing under EBMUD's Joint Settlement Agreement, and make water supply available for wildlife refuges in California's Central Valley.

Authorization of the proposed amendment is not subject to the California Environmental Quality Act (CEQA) because it is a government funding mechanism or other government fiscal, organizational, or administrative activity of the type that is not a project as defined by CEQA Guidelines 15378(b)(4) and (b)(5).

**ALTERNATIVE**

**Delay or do not proceed with the work.** This alternative is not recommended because the Project has the potential to help EBMUD meet its long-term water supply needs. Without the amendment, EBMUD will not be able to continue participation in the Project.

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AGENDA NO. 13.  
MEETING DATE September 14, 2021

**TITLE FIRST READING OF AMENDMENTS TO THE EXCESSIVE WATER USE  
PENALTY ORDINANCE**

<b>TYPE</b>	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER
<b>ACTION</b>	<input type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input checked="" type="checkbox"/> ORDINANCE	

**RECOMMENDED ACTION**

Introduction and first reading of the new Excessive Water Use Penalty Ordinance, which repeals Ordinance No. 364-15 entitled "Excessive Water Use Penalty Ordinance for Drought Stages 3 and 4" and reenacts its provisions as amended to (i) conform the Ordinance to the requirements of Chapter 3.3 of Division 1 of the California Water Code by prohibiting and penalizing excessive water use during a declared Stage 2 drought while mandatory water use restrictions are in effect and/or when the District is affected by a Governor-declared drought emergency based on local conditions, (ii) modify the definition of excessive water use in certain circumstances, (iii) fix the penalty amount, and (iv) make other changes necessary or appropriate for the effective implementation of the Ordinance.

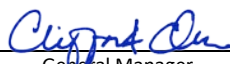
**SUMMARY**

The District is proposing amendments to the Excessive Water Use Penalty Ordinance, Ordinance No. 364-15 (Ordinance), originally enacted in 2015. The amendments would prohibit and authorize penalties for excessive water use during a declared Stage 2 drought while mandatory rationing is in effect and/or when the District is affected by a drought emergency declared by the Governor based on local conditions. The amendments would also adjust the existing excessive water use thresholds for Stage 3 drought, provide customers an opportunity to correct an apparent violation before a penalty is imposed, fix a penalty amount which applies whenever the Ordinance's prohibitions take effect, and make other changes to conform to State law or to improve the effective implementation of the Ordinance. This item was presented at the July 13, 2021 Planning Committee meeting and the August 10, 2021 Board meeting.

**DISCUSSION**

In response to the 2015 drought, the Board enacted the Ordinance on April 28, 2015. The Ordinance allowed the District to levy a financial penalty for single-family residential (SFR) customers and individually metered customers in multi-family dwellings that use excessive amounts of water during Stage 3 or 4 droughts.

On August 30, 2016, the Governor signed into law Senate Bill (SB) 814, adding language to the Water Code (commencing with section 365) that prohibits "excessive water use" by SFR customers and

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Customer and Community Services	Andrew L. Lee	 General Manager
Attachment(s): Ordinance		

individually metered customers in multi-family dwellings whenever mandatory rationing is in effect, or when the Governor declares a drought emergency based on local conditions. Each urban retail water supplier is required to define “excessive water use” within its boundaries and establish a method of identifying and discouraging such excessive water use.

The District’s existing Ordinance predates SB 814 but complies with its requirements in most respects, particularly during Stage 3 and 4 droughts. However, the updated Water Shortage Contingency Plan adopted by the Board on June 22, 2021, revised the District’s Drought Management Program guidelines to include mandatory rationing in a Stage 2 drought, whereas rationing at this stage was previously voluntary. To comply with state law, the Ordinance must be amended to define and prohibit excessive water use and provide for an associated penalty during Stage 2 droughts when mandatory rationing is in effect. In addition, the Ordinance must prohibit and penalize excessive water use when the District is affected by a Governor-declared drought emergency based on local conditions.

### Thresholds

Staff evaluated the penalty thresholds for the various stages of droughts and presented recommendations to the Board at the July 13, 2021 Planning Committee meeting and at the August 10, 2021 Board meeting. Based on a review of 2020 customer billing data and Board feedback, staff is recommending the thresholds shown in Table 1 below.

Under the existing Ordinance, the excessive water use thresholds are 60 hundred cubic feet (CCF)/month for Stage 3 and 40 CCF/month for Stage 4. Staff is recommending that the Stage 3 threshold be lowered to 59 CCF/month. This represents about 6.5 times the average 2020 SFR water use of 225 gallons per day (gpd). Approximately two percent of SFR customers would be affected by this threshold based on 2020 billing data. The Stage 4 thresholds would remain unchanged.

For Stage 2 droughts, staff is recommending a threshold of 66 CCF/month, or approximately 1,646 gallons per day (gpd). This represents approximately 7.3 times the average 2020 SFR water use of 225 gpd. In 2020, approximately 1.5 percent of SFR customers had at least one billing cycle that exceeded this threshold.

<b>Table 1 – Recommended Stages 2-4 Thresholds</b>			
	<b>Stage 2</b>	<b>Stage 3</b>	<b>Stage 4</b>
Penalty Threshold, 55-day to 68-day billing cycle	132 CCF	118 CCF	80 CCF
Penalty Threshold, 25-day to 38-day billing cycle	66 CCF	59 CCF	40 CCF
(Approximate gpd)	1,646	1,471	997
Percentage of customers affected (based on 2020 billing data)	1.5%	2%	5%

In accordance with SB 814, the District has considered multiple factors in developing these thresholds, including average daily use, varying household sizes, amount of landscaped land on a property, and rate of evapotranspiration. Specifically, these thresholds are sufficient to provide an adequate supply of water for any SFR customer to meet its reasonable indoor needs based on varying household sizes, while maintaining substantial outdoor irrigation giving considerations to evapotranspiration and seasonal weather changes. For example, the Stage 4 drought threshold of 40 CCF/month is expected to

provide sufficient water to irrigate 7,500 square feet of landscaping, after reasonable indoor needs are met, based on the typical rate of evapotranspiration within the warmer inland portions of the service area where single-family customers' irrigation needs tend to be more intensive.

In cases of a Governor-declared drought that affects the District, if the District has already declared a Stage 2-4 drought when that occurs, then the thresholds described above would apply. Otherwise, the Ordinance establishes a process for the Board to set an excessive water use threshold that is appropriate for the current conditions.

### Penalty

Water Code section 366 authorizes the District to impose a maximum administrative civil penalty of up to \$500 per CCF of excessive water use. The Ordinance's existing penalty of \$2 per CCF was established in 2015. The proposed Ordinance retains the \$2 per CCF penalty for Stages 3 and 4, and would impose the same penalty during Stage 2, and during any Governor-declared local drought which the Board has found affects the District. The Board may change the penalty or set the penalty at a different amount at each drought stage, through future ordinance amendments, or may direct staff at the first reading to make changes as part of the current amendment process.

### Process

The amendments to the Ordinance provide for a warning on the first exceedance, which would not be deemed a violation of the Ordinance. The customer would be in violation of the Ordinance only if, after receiving the warning, the excessive water use reoccurs during a subsequent billing cycle during the same drought cycle. At this point customers who violate the Ordinance would be subject to disclosure of their name, water usage data, and home address in response to any request made under the California Public Records Act. Only after a customer commits a violation upon a second or subsequent exceedance would the customer become subject to financial penalties or Public Records Act disclosure.

### Schedule

This is the first reading of the amended Ordinance. The second reading and final action are currently set for the September 28, 2021 Board meeting. The Ordinance will take effect on the 31<sup>st</sup> day after its adoption, but the excessive water use prohibitions and associated penalties will not be implemented unless and until the Board does one of the following: (i) declares a Stage 2 or higher drought and adopts mandatory water use reductions, or (ii) determines the District is affected by a Governor's drought proclamation based on local drought conditions. In addition, the Public Utilities Code requires that within 15 days of its adoption, a summary of the Ordinance be published in a newspaper of general circulation in the District's service area.

## **SUSTAINABILITY**

### Economic

Revenues from penalties are unrestricted funds and may be used for any purpose of the District, including recovering a portion of the administrative costs associated with the enforcement of the program and towards future water conservation initiatives.

**Environmental**

This Ordinance will help to reduce excessive water use during droughts and help the District to achieve its drought water conservation goals.

**ALTERNATIVES**

**Do not approve the amended Ordinance.** This alternative is not recommended because the proposed amendments are required to comply with State law.

**Select different penalty thresholds.** This alternative is not recommended because the proposed thresholds represent excessive SFR water use which escalates based on the severity of the drought.



ORDINANCE NO. \_\_\_\_\_

EXCESSIVE WATER USE PENALTY ORDINANCE

Introduced by Director

; Seconded by Director

WHEREAS, California Constitution article X, section 2 and California Water Code section 100 provide that because of conditions prevailing in the state of California (the "State"), it is the declared policy of the State that the general welfare requires that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable, the waste or unreasonable use or unreasonable method of use of water shall be prevented, and the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and the public welfare; and

WHEREAS, pursuant to California Water Code section 106, it is the declared policy of the State that the use of water for domestic use is the highest use of water and that the next highest use is for irrigation; and

WHEREAS, Chapter 3.3 of Division 1 of the California Water Code ("the Excessive Water Use Law") prohibits excessive water use by a residential customer in a single-family residence or by a customer in a multiunit housing complex in which each unit is individually metered or submetered by the urban retail water supplier during time periods specified in that statute; and

WHEREAS, the Excessive Water Use Law requires the East Bay Municipal Utility District ("District") to establish a method to identify and discourage excessive water use, which method may include establishing or amending an excessive water use ordinance, and further requires that any such ordinance (i) identify excessive water use by those subject to the Excessive Water Use Law's prohibition on excessive water use based on volumetric thresholds to be established by the District in the exercise of its discretion based upon consideration of factors which may include average daily use and rate of evapotranspiration, among others, (ii) penalize persons who use water excessively in violation of such ordinance, and (iii) conform to the requirements of the Excessive Water Use Law in other respects; and

WHEREAS, in compliance with the requirements of the Excessive Water Use Law and because of the declared policy of the State, the District hereby finds and determines that it is necessary and appropriate for the District to adopt, implement, and enforce this Ordinance defining, prohibiting, and penalizing excessive water use to reduce the quantity of discretionary water use within the District to ensure that there is sufficient water for non-discretionary needs; and

WHEREAS, it has been estimated that more than half of residential water use in many parts of California is used to irrigate lawns and outdoor landscaping; and

WHEREAS, the District has determined that during water shortages, the use of outdoor water for irrigating lawns and outdoor landscaping is not essential to public health and safety, and may be an unreasonable use, an unreasonable method of use, or a waste of water; and

WHEREAS, during a water shortage the greatest reductions in water usage may best be achieved by single-family residential customers by reducing the amount of discretionary, nonessential use of potable water to irrigate lawns and landscaping; and

WHEREAS, water use by commercial and industrial customers is generally non-discretionary in that water is almost exclusively used for purposes such as product development, production processes and other market conditions, and as such, penalties are not likely to result in increased conservation; and

WHEREAS, commercial and industrial customers are not as homogenous in their water use as single-family residential customers; rather their water use varies across all business types and industries; and

WHEREAS, water use by commercial customers and multi-family customers without individual meters is not homogeneous or discretionary, and

WHEREAS, irrigation and mixed use customers participate in other programs that have resulted, and continue to result, in reductions in their use of potable water, including, but not limited to the option of using lower-cost recycled water; and

WHEREAS, the current Statewide statutory standard for indoor residential water use is 55 gallons per person per day, equivalent to approximately nine hundred cubic feet per month for a four-person household and said standard is expected to become more stringent over time; and

WHEREAS, outdoor water use accounts for approximately one-third of total single-family residential water use within the District's service area based upon 2010-2019 metered consumption data as described in the District's 2020 Urban Water Management Plan; and

WHEREAS, based on historical average daily use within the District's service area, each volumetric threshold of excessive water use defined in this Ordinance is many times higher than the average volume of water used by single-family customers in the District's service area, only a small percentage of whom would be at risk of violation of this Ordinance; and

WHEREAS, based on the typical rate of evapotranspiration within the warmer inland portions of the service area where single-family customers' irrigation needs tend to be more intensive, each volumetric threshold of excessive water use defined in this Ordinance will provide an adequate supply of water for any single-family customer to meet its reasonable indoor needs and irrigate, at minimum, several thousand square feet of landscaping with minimal plant stress and without risk of violation of this Ordinance; and

WHEREAS, the District's water shortage contingency plan ("Contingency Plan") provides for a staged system of planned water shortage response actions and includes guidelines which recommend mandatory water use reductions during a Stage 2, Stage 3, or Stage 4 drought; and

WHEREAS, the Governor of the State of California may from time to time issue a proclamation of a state of emergency under the California Emergency Services Act based on local drought conditions; and

WHEREAS, because the Excessive Water Use Law applies when either (i) the District has moved to a stage of action under its Contingency Plan that requires mandatory water use reductions, or (ii) the District is affected during a period for which the Governor has issued a proclamation of a state of emergency based on local drought conditions, it is necessary and appropriate that this Ordinance's prohibitions, requirements, and penalties be enforceable when the Board finds either condition to exist; and

WHEREAS, it is appropriate for this Ordinance to quantify excessive water use thresholds for each drought stage because the District, informed by the Contingency Plan, ordinarily selects a drought stage to implement based on the severity of water supply conditions and therefore it is feasible to predict the conditions likely to prevail during each drought stage and, consequently, the maximum reasonable amount of use for each drought stage in such conditions; and

WHEREAS, it is infeasible to predict the water supply conditions likely to prevail during a State-proclaimed local drought emergency, as such proclamations are not within the District's control and may be made based on factors other than the District's water supply conditions, and accordingly it is appropriate to defer quantification of excessive water use thresholds applicable during such a proclamation until the Board has an opportunity to assess the District's water supply conditions and other relevant information; and

WHEREAS, because it is the District's experience that a customer's first exceedance of an excessive water use threshold sometimes results from a previously undetected leak rather than willfully excessive water use, and because the purposes of this Ordinance are better served by allowing a reasonable opportunity to address leaks rather than penalizing non-willful water use, and to avoid incurring unnecessarily transactional costs to handle potentially meritorious penalty appeals, it is appropriate to deem a single-family residential customer to be in violation of this Ordinance and subject to penalties only upon the second or subsequent exceedance during a drought cycle; and

WHEREAS, for the reasons stated above, the District has not established in this Ordinance any mandatory water use restrictions or associated penalties on any commercial or industrial customers, or multi-family customers without individual meters; and

WHEREAS, to achieve District compliance with the Excessive Water Use Law, and to secure the public's compliance with the excessive water use prohibition imposed by that statute and by this Ordinance, and to assure important public policy objectives are achieved for the reduction of water usage during significant water shortages, the District shall establish and impose thresholds and penalties for excessive water usage by single-family residential customers as provided by this Ordinance when the above-described circumstances exist;

BE IT ENACTED by the Board of Directors of the East Bay Municipal Utility District:

**Section 1.     Recitals.** The District hereby finds and determines that the above recitals are true and correct and are incorporated herein.

**Section 2.     Findings.** The Board of Directors finds and determines that because of the prevailing conditions in the State, and the declared policy of the State, it is necessary and appropriate for the District to adopt, implement, and enforce mandatory water use restrictions under certain conditions specified herein. The Board further finds and determines that this Ordinance furthers important State and District policies of encouraging water conservation and protecting water resources in the interest of the people and for the public welfare. The Board further finds and determines that during periods of drought, water shortages, and water shortage emergencies, the general welfare requires that the District maximize the beneficial use of its available water resources to the extent that it is capable, and that the waste or unreasonable use, or unreasonable method of use of water shall be prevented and the conservation of water is to be extended with the view to the reasonable and beneficial use thereof in the interests of the people of the District and for the public health, safety, and welfare.

**Section 3.     Water Use Restrictions and Regulations.** The Board of Directors hereby adopts and authorizes the following water conservation and water shortage rules and regulations governing the use of water by single-family residential customers:

**A.     DEFINITIONS**

For the purposes of this Ordinance, the following words, terms, and phrases shall have the following meanings:

“Appellant” means the person appealing the imposition of a penalty imposed by the District for a violation of this Ordinance.

“Billing cycle” means the billing period in which a single-family residential customer’s water use is measured for purposes of calculating the amount of the water service fees that shall be collected for the water service provided.

“Board” or “Board of Directors” means the Board of Directors of the District.

“CCF” means one hundred cubic feet. The District bills for water use are based on units, with each unit equaling one (1) CCF. Each unit equals 748 gallons.

“Contingency Plan” means the District’s water shortage contingency plan, including any supplement or amendment thereto.

“District” means the East Bay Municipal Utility District.



“Drought cycle” means any continuous and uninterrupted time period during which this Ordinance authorizes mandatory water use restrictions to be imposed, whether based on Stage 2, Stage 3, Stage 4, State-mandated local drought, or any combination or sequence thereof.

“Excessive Water Use Law” means Chapter 3.3 of Division 1 of the California Water Code, including any amendments thereto.

“General Manager” means the General Manager of the District or the General Manager’s authorized designee.

“Ordinance” means this Excessive Water Use Penalty Ordinance, including any amendments hereto.

“Person” means any natural person, firm, joint venture, joint stock company, partnership, public or private association, club, company, corporation, business trust, organization, public or private agency, government agency or institution, school district, college, university, any other user of water provided by the District, or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties.

“Potable water” means that water furnished to the single-family residential customer that complies with federal and State drinking water regulations and standards, or any other applicable standards, for human consumption.

“Rules and regulations” means the rules and regulations governing the amount of water that may be used by a single-family residential customer during an applicable water shortage stage, and any terms and conditions respecting restrictions on the use, method of use, and consumption of water in effect during an applicable water shortage stage as set forth in this Ordinance.

“Single-family residential customer” means a person who, according to the District’s records, has a single-family residential account or a multi-family residential account with a business classification code 8800, and receives water service or recycled water service to a single-family residence or a multi-family residence that is individually metered or submetered by the District.

“Stage 2” means the stage at which the District has determined that a significant water supply shortage exists and mandatory reductions in water use are required to achieve a reduction in water usage by amounts as set forth herein and declared by the Board of Directors, or as may be established from time-to-time in accordance with the Contingency Plan.

“Stage 3” means the stage at which the District has determined that a severe water supply shortage exists and mandatory reductions in water use are required to achieve a reduction in water usage by amounts as set forth herein and declared by the Board of Directors, or as may be established from time-to-time in accordance with the Contingency Plan.

“Stage 4” means the stage at which the District has determined that a critical water supply shortage exists and mandatory reductions in water use are required to achieve a reduction in water usage by amounts as set forth herein and declared by the Board of Directors, or as may be established from time-to-time in accordance with the Contingency Plan.

“State” means the state of California, including any department or regulatory agency thereof.

“State-proclaimed local drought” means a condition that commences upon occurrence of both of the following events: (i) the Governor of the State has issued a proclamation of a state of emergency under the California Emergency Services Act based on local drought conditions, and (ii) the District’s Board has determined the District is affected by the proclaimed emergency. A State-proclaimed local drought may exist regardless of whether a Stage 2, Stage 3, or Stage 4 drought exists. A State-proclaimed local drought will cease to exist upon the first occurring of the following events; (i) the Governor terminates the relevant state of emergency, or (ii) the District’s Board determines the District is no longer affected by the proclaimed emergency.

“Water shortage stage” or “stage” means Stage 2, Stage 3, or Stage 4.

## **B. REDUCTIONS IN WATER SUPPLY**

1. **Reductions in Water Supply.** If the rules and regulations set forth in this Ordinance are inadequate to protect the District’s potable water supply, the Board of Directors reserves the right to implement further mandatory rules and regulations to reduce the amount of water used within the District. The rules and regulations are necessary to respond to any significant reductions to the District’s water supply as a result of drought, natural disasters, regulatory action, and planned or unplanned potable water shortages.

2. **Application.** The provisions of this Ordinance shall apply to all single-family residential customers using potable water within the District.

## **C. DECLARATION AND NOTICE OF WATER SHORTAGE STAGES**

1. **District Water Supply.** The General Manager shall monitor the projected supply and demand for water by the District’s customers during periods of a water shortage or drought and shall recommend to the Board of Directors the extent of the conservation measures, including rules and regulations, required through the implementation and/or termination of particular water shortage stages to prudently plan for supplying water to its customers. The General Manager will recommend the appropriate water shortage stage of response to a water shortage based on the best information available at the time.

2. **Declaration of Water Shortage Stages.** The declaration of any water shortage stage and applicable rules and regulations shall be made by the Board of Directors.

a. The declaration shall become effective immediately upon adoption by the Board of Directors.

b. Any penalties authorized to be imposed during the declared water shortage stage may be imposed on any single-family residential customer as authorized by Section 3.F.1 or other applicable legal authority.

3. **Due and Proper Notice.** Upon the adoption of this Ordinance, due and proper notice shall be deemed to have been given each and every single-family residential customer supplied water within the District of the rules and regulations governing the water shortage stages as described herein, the applicable rules and regulations that will be in effect during the specified stages, and any penalties that may be imposed for violations of such rules and regulations.

#### **D. IMPLEMENTATION OF WATER SHORTAGE STAGES**

1. **Recommendations by the General Manager.** As water supply conditions change, the General Manager may return to the Board of Directors to recommend, as appropriate, revising or terminating the appropriate water shortage stage, and any applicable rules and regulations.

2. **Order of Stages.** It shall not be necessary to implement any water shortage stage prior to another; the water shortage stages may be implemented in any reasonable order and shall continue to be in effect until the Board makes a determination to terminate the applicable water shortage stage.

3. **Water Supply Conditions.** The District will implement an appropriate water shortage stage and rules and regulations based on current and projected water conditions. Higher stages and/or additional rules and regulations may be implemented as water shortages continue and/or if single-family residential customers' responses to the rules and regulations then in effect do not bring about desired water savings.

4. **Cumulative Impacts.** Rules and regulations, penalties and enforcement will build on each other as water shortage stages advance.

5. **Actions or Restrictions by the State.** If the State, through executive action, emergency legislation or other actions, imposes conditions, requirements, or procedures that are not included in this Ordinance, the General Manager is authorized to implement such rules and regulations as are reasonably required to bring the District's actions in each stage into functional conformity with such conditions, requirements, or procedures.

6. **Public Outreach.** When the Board of Directors declares a water shortage stage, any or all of the following public outreach measures may be implemented:

a. The District may notify the general public, stakeholders, elected officials, and other key decision-makers regarding the water shortage stage, actions to be taken, and customer demand reduction goals.

b. The public at large will be informed of the water shortage stage, customer demand reduction rules and regulations, and other actions the District will be taking to reduce the demand for water within the District. Communications may occur through, but are not limited to, any of the following: billing inserts; special mailings; telephone contact; e-mail; roadway signage; billboards; home water reports; telephone on hold messages; water conservation booths and other communication venues in the community; workshops; community association meetings; newsletters; and education programs, etc. Literature appropriate to the water shortage condition and stage, conservation methods, and water-savings devices may be made available to the public.

c. The use of all forms of media may be employed by the District. This includes public service announcements on radio and cable television, social media and earned media, and advertisements in local newspapers.

d. The District's web site, [www.ebmud.com](http://www.ebmud.com), will be the central location for messaging and communications with single-family residential customers regarding the applicable water shortage stage and the rules and regulations governing the use of water then in effect.

## **E. RULES AND REGULATIONS**

1. **Rules and Regulations are Mandatory.** Any rules and regulations adopted during a water shortage stage are mandatory.

2. **Violations of Rules and Regulations.** Violations of any rules and regulations are subject to civil and administrative penalties and remedies as provided for in this Ordinance.

3. **Stage 2 Mandatory Water Use Restrictions.** After a Stage 2 has been declared, each single-family residential customer who has had a potable water account with the District shall be limited to using potable water as follows:

a. If the customer's billing cycle is fifty-five (55) to sixty-eight (68) days, the customer shall be limited to using one hundred thirty-two (132) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.

b. If the customer's billing cycle is twenty-five (25) to thirty-eight (38) days, the customer shall be limited to using sixty-six (66) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.

4. **Stage 3 Mandatory Water Use Restrictions.** After a Stage 3 has been declared, each single-family residential customer who has had a potable water account with the District shall be limited to using potable water as follows:

a. If the customer's billing cycle is fifty-five (55) to sixty-eight (68) days, the customer shall be limited to using one hundred eighteen (118) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.



b. If the customer's billing cycle is twenty-five (25) to thirty-eight (38) days, the customer shall be limited to using fifty-nine (59) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.

5. **Stage 4 Mandatory Water Use Restrictions.** After a Stage 4 has been declared, each single-family residential customer who has had a potable water account with the District shall be limited to using potable water as follows:

a. If the customer's billing cycle is fifty-five (55) to sixty-eight (68) days, the customer shall be limited to using eighty (80) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.

b. If the customer's billing cycle is twenty-five (25) to thirty-eight (38) days, the customer shall be limited to using forty (40) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.

6. **State-Proclaimed Local Drought Mandatory Water Use Restrictions.** If the Governor issues a proclamation of a state of emergency under the California Emergency Services Act based on local drought conditions, the District's Board may, in the reasonable exercise of its discretion, adopt a resolution determining that the District is affected by the proclaimed emergency. If the Board adopts such a resolution, it shall in that resolution establish a definition of excessive water use. The Board may revise the definition from time to time by subsequent resolution. The definition of excessive water use shall be expressed in CCF and may distinguish between longer and shorter billing cycles. The Board may consider any or all relevant facts and circumstances when defining excessive water use, including but not limited to: (i) average daily use, rate of evapotranspiration, and other factors set forth in the Excessive Water Use Law, and (ii) water supply conditions which do or may apply to the District during the State-proclaimed local drought emergency. Each single-family residential customer who has had a potable water account with the District shall be limited to using potable water in the applicable amount set forth in the adopted resolution while the State-proclaimed local drought emergency is in effect.

7. **Exception—Implementation of Alternative Actions.** Notwithstanding any other provision of this Ordinance, the mandatory water use restrictions of Section 3.E.3, 3.E.4, and 3.E.5 shall not apply if the Board of Directors, in connection with a drought stage declaration, implements an alternative action in lieu of requiring mandatory reductions in water use as may be authorized by law.

## **F. VIOLATIONS, PENALTIES, AND OTHER REMEDIES**

1. **Administrative Penalties for Exceeding Mandatory Water Use Restrictions .** Except as provided in Section 3.F.2, any potable water used by a single-family residential customer in excess of the mandatory rules and regulations then in effect during a billing cycle and described in Section 3.E.3, 3.E.4, 3.E.5, or 3.E.6 shall be:

a. deemed a waste of water;

- b. a violation of the District's rules and regulations; and
- c. subject to a civil administrative penalty of two dollars (\$2.00) per CCF, or portion thereof, of water delivered to the property in excess of the mandatory rules and regulations.

2. **Exception—No Violation for First Exceedance During Drought Cycle.**

a. Notwithstanding any other provision of this Ordinance, a customer neither violates this Ordinance nor is subject to penalties hereunder upon the customer's first instance during a drought cycle of exceeding an applicable mandatory water use restriction during a billing cycle. In such event the District shall notify the customer in writing of the exceedance and disclose that further exceedances will violate this Ordinance and subject the customer to penalties.

b. The Board hereby finds and determines that a customer's first exceedance of an applicable mandatory water use restriction during a drought cycle does not constitute a use of water in a manner inconsistent with District water usage policies for the purposes of California Government Code section 6254.16(d).

3. **Payment of Penalties.** Any penalty imposed pursuant to Section 3.F.1 shall be:

- a. applicable to all potable water used in excess of the water use restrictions imposed by the mandatory rules and regulations after the declaration of the applicable water shortage stage;
- b. collected on the single-family residential customer's water bill;
- c. due and payable as part of the water bill charges;
- d. the responsibility of the single-family residential customer of record for the property where the violation occurred; and
- e. paid in addition to the water service fees the District imposes for the potable water delivered to the property where the violation occurred.

4. **Non-payment of Penalty.** Non-payment of any penalty imposed pursuant to this Ordinance shall be subject to the same remedies available to the District as for non-payment of basic water rates and shall afford the customer the same due process rights.

5. **Notice of Violation.** The receipt of a water bill with any applicable penalty shall serve as notice of violation of the District's rules and regulations herein.

6. **Other Remedies.** In addition to any other remedies provided in this Ordinance or available under applicable law, the District may, to the extent allowed by law, alternatively seek injunctive relief in the Superior Court or take enforcement action, including discontinuing or

appropriately limiting water service to any single-family residential customer, locking a service, or installing a flow restricting device, for violations of this Ordinance and applicable charges. All remedies provided herein shall be cumulative and not exclusive.

7. **Non-liability for Damage.** A single-family residential customer who violates this Ordinance assumes responsibility for injury to the single-family residential customer and/or other residents/occupants receiving service, including emotional distress and/or damage to the single-family residential customer's private water system and/or to other real or personal property owned by the single-family residential customer or by a third party resulting from the installation and operation of a flow restricting device or from termination of service. The single-family residential customer shall thereby be deemed to have:

a. waived any claim for injury or for damage to the single-family residential customer's property which the single-family residential customer may have otherwise have against the District; and

b. agreed to indemnify, defend, and hold the District harmless from claims by third parties for injury or property damage arising or claimed to arise out of the District's installation and/or operation of a flow restricting device or termination of water service.

8. **Suspension.** To the extent allowed by law, the Board may suspend or resume enforcement of this Ordinance, and/or the imposition of penalties hereunder, whenever it determines doing so is in the best interests of the District and its customers.

## **G. APPEAL PROCEDURES**

1. **Filing an Appeal.** Any person who wishes to contest the imposition of an administrative penalty imposed by the District pursuant to this Ordinance shall comply with the following procedures:

a. The appellant shall pay all amounts due and owing on the appellant's water bill, except for any disputed penalty(ies) imposed by the District pursuant to this Ordinance.

b. The appellant shall submit an appeal request form to the designated representative of the District's Customer and Community Services Department no later than fifteen (15) calendar days from the date of the appellant's water bill for the billing cycle in which any penalty(ies) are imposed.

2. **Basis for Granting an Appeal.** As part of the appeal process, the appellant shall be provided with an opportunity to provide evidence that a basis exists to grant the appeal, and the District shall provide documentation demonstrating the excessive water use. An appeal may be granted under the following limited circumstances:

a. The amount of water delivered to the appellant's property did not violate the rules and regulations, as evidenced by a demonstrable malfunction in the meter serving the appellant's property or a billing error by the District.

b. The appellant demonstrates the water use is needed for a medical reason.

c. The appellant demonstrates a water leak occurred at the appellant's property during the billing cycle in which the penalty was imposed, resulting in water loss that did not benefit the appellant.

3. **Additional Documentation.** Additional documentation may be requested at the discretion of the District.

4. **District Response.** A response to the appeal request shall be provided by the District within thirty (30) calendar days from receipt of the appeal request form.

5. **Review or Denial of Appeal Request.** If an appeal request is denied, the appellant may resubmit the appeal request form for review by the District's Manager of Customer and Community Services or the Manager's designee.

a. Any request for further review shall be submitted no later than fifteen (15) calendar days from the denial of the appeal. The appellant may request to provide evidence in writing or in person in support of an appeal.

b. The decision by the District's Manager of Customer and Community Services, or the Manager's authorized designee, shall be final.

c. Within ten (10) days after the denial of an appeal is deemed final, the appellant shall pay any disputed penalty(ies) imposed by the District.

d. The provisions of Section 1094.6 of the Code of Civil Procedure of the State of California shall be applicable to judicial review of the decision.

**Section 4. Repeal of Prior Ordinance.** Ordinance No. 364-15, entitled "Excessive Water Use Penalty Ordinance for Drought Stages 3 and 4," is repealed effective 12:01 a.m. on the thirty-first day after the passage of this Ordinance, and at that time and thereafter it shall be of no further force or effect.

**Section 5. Conflicting Provisions.** If provisions of this Ordinance are in conflict with each other, other provisions of the District's regulations or policies, any other resolution or ordinance of the District, or any State law or regulation, the more restrictive provisions shall apply.

**Section 6. Severability.** If any provision, section, subsection, sentence, clause or phrase or sections of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the

remaining portions of this Ordinance shall not be affected, it being the intent of the Board of Directors in adopting this Ordinance that no portions, provisions, or regulations contained herein shall become inoperative, or fail by reason of the unconstitutionality of any other provision hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 7. Effective Date.** This Ordinance shall become effective and in full force at 12:01 a.m. on the thirty-first day after its passage.

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President

I HEREBY CERTIFY that the foregoing Ordinance was duly and regularly introduced at a regular meeting of EAST BAY MUNICIPAL UTILITY DISTRICT held on September 14, 2021, held by webinar and teleconference due to the COVID-19 pandemic and in accordance with Governor's Executive Order N-08-21, and thereupon, after being read, further action was scheduled for the regular meeting of said Board of Directors held at the same place on September 28, 2021, at which time the same was finally adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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Secretary

APPROVED AS TO FORM AND PROCEDURE:

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General Counsel

{00065386;1}

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ORDINANCE NO. 364-15

EXCESSIVE WATER USE PENALTY ORDINANCE ~~FOR DROUGHT STAGES 3 AND 4~~

Introduced by Director

; Seconded by Director

WHEREAS, California Constitution article X, section 2 and California Water Code section 100 provide that because of conditions prevailing in the state of California (the “State”), it is the declared policy of the State that the general welfare requires that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable, the waste or unreasonable use or unreasonable method of use of water shall be prevented, and the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and the public welfare; and

WHEREAS, pursuant to California Water Code section 106, it is the declared policy of the State that the use of water for domestic use is the highest use of water and that the next highest use is for irrigation; and

~~WHEREAS, pursuant to California Water Code section 375, the East Bay Municipal Utility District (the “District”) is authorized to adopt and enforce a water conservation program to reduce the quantity of water used by persons within its jurisdiction for the purpose of conserving the water supplies of the District; and~~

WHEREAS, Chapter 3.3 of Division 1 of the California Water Code (“the Excessive Water Use Law”) prohibits excessive water use by a residential customer in a single-family residence or by a customer in a multiunit housing complex in which each unit is individually metered or submetered by the urban retail water supplier during time periods specified in that statute; and

WHEREAS, the Excessive Water Use Law requires the East Bay Municipal Utility District (“District”) to establish a method to identify and discourage excessive water use, which method may include establishing or amending an excessive water use ordinance, and further requires that any such ordinance (i) identify excessive water use by those subject to the Excessive Water Use Law’s prohibition on excessive water use based on volumetric thresholds to be established by the District in the exercise of its discretion based upon consideration of factors which may include average daily use and rate of evapotranspiration, among others, (ii) penalize persons who use water excessively in violation of such ordinance, and (iii) conform to the requirements of the Excessive Water Use Law in other respects; and

WHEREAS, in compliance with the requirements of the Excessive Water Use Law and because of the declared policy of the State, the District hereby finds and determines that it is necessary and appropriate for the District to adopt, implement, and enforce a water conservation program this Ordinance defining, prohibiting, and penalizing excessive water use to reduce the quantity of ~~water used by consumers~~ discretionary water use within the District to ensure that there is sufficient water for ~~human consumption, sanitation, and fire protection~~ non-discretionary needs; and

~~WHEREAS, pursuant to California Water Code section 350, the Board of Directors is authorized to declare a water shortage emergency to prevail within its jurisdiction when it finds and determines that the District will not be able to or cannot satisfy the ordinary demands and requirements of water consumers without depleting the water supply of the District to the extent that there would be insufficient water for human consumption, sanitation, and fire protection; and~~

~~WHEREAS, in the event the District determines that it is necessary to declare that a water shortage exists, the District will be authorized pursuant to this Ordinance to implement certain water shortage response measures and a water conservation and regulatory program to regulate water consumption activities within the District and ensure that the water delivered in the District is put to beneficial use for the greatest public benefit, with particular regard to domestic use, including human consumption, sanitation, and fire protection, and that the waste or unreasonable use of water is prevented; and~~

~~WHEREAS, the District is authorized to prescribe and define by ordinance restrictions, prohibitions, and exclusions for the use of water during a threatened or existing water shortage and adopt and enforce a water conservation and regulatory program to: (i) prohibit the waste or the unreasonable use of District water during such periods; (ii) prohibit the use of water during such periods for specific uses which the District may from time to time find to be nonessential, an unreasonable use, an unreasonable method of use, or a waste of water; and (iii) reduce and restrict the quantity of water used by those persons within the District for the purpose of conserving the water supplies of the District; and~~

WHEREAS, it has been estimated that more than half of residential water use in many parts of California is used to irrigate lawns and outdoor landscaping; and

WHEREAS, the District has determined that during water shortages, the use of outdoor water for irrigating lawns and outdoor landscaping is not essential to public health and safety, and may be an unreasonable use, an unreasonable method of use, or a waste of water; and

WHEREAS, during a water shortage the greatest reductions in water usage may best be achieved by single-family residential customers by reducing the amount of discretionary, nonessential use of potable water to irrigate lawns and landscaping; and

WHEREAS, water use by commercial and industrial customers is generally non-discretionary in that water is almost exclusively used for purposes such as product development, production processes and other market conditions, and as such, penalties are not likely to result in increased conservation ~~for non-essential uses~~; and

WHEREAS, commercial and industrial customers are not as homogenous in their water use as single-family residential customers; rather their water use varies across all business types and industries; and

WHEREAS, water use by commercial customers and multi-family customers without individual meters is not homogeneous or discretionary, and



WHEREAS, irrigation and mixed use customers participate in other programs that have resulted, and continue to result, in reductions in their use of potable water, including, but not limited to the option of using lower-cost recycled water; and

WHEREAS, the current Statewide statutory standard for indoor residential water use is 55 gallons per person per day, equivalent to approximately nine hundred cubic feet per month for a four-person household and said standard is expected to become more stringent over time; and

WHEREAS, outdoor water use accounts for approximately one-third of total single-family residential water use within the District's service area based upon 2010-2019 metered consumption data as described in the District's 2020 Urban Water Management Plan; and

WHEREAS, based on historical average daily use within the District's service area, each volumetric threshold of excessive water use defined in this Ordinance is many times higher than the average volume of water used by single-family customers in the District's service area, only a small percentage of whom would be at risk of violation of this Ordinance; and

WHEREAS, based on the typical rate of evapotranspiration within the warmer inland portions of the service area where single-family customers' irrigation needs tend to be more intensive, each volumetric threshold of excessive water use defined in this Ordinance will provide an adequate supply of water for any single-family customer to meet its reasonable indoor needs and irrigate, at minimum, several thousand square feet of landscaping with minimal plant stress and without risk of violation of this Ordinance; and

WHEREAS, the District's water shortage contingency plan ("Contingency Plan") provides for a staged system of planned water shortage response actions and includes guidelines which recommend mandatory water use reductions during a Stage 2, Stage 3, or Stage 4 drought; and

WHEREAS, the Governor of the State of California may from time to time issue a proclamation of a state of emergency under the California Emergency Services Act based on local drought conditions; and

WHEREAS, because the Excessive Water Use Law applies when either (i) the District has moved to a stage of action under its Contingency Plan that requires mandatory water use reductions, or (ii) the District is affected during a period for which the Governor has issued a proclamation of a state of emergency based on local drought conditions, it is necessary and appropriate that this Ordinance's prohibitions, requirements, and penalties be enforceable when the Board finds either condition to exist; and

WHEREAS, it is appropriate for this Ordinance to quantify excessive water use thresholds for each drought stage because the District, informed by the Contingency Plan, ordinarily selects a drought stage to implement based on the severity of water supply conditions and therefore it is feasible to predict the conditions likely to prevail during each drought stage and, consequently, the maximum reasonable amount of use for each drought stage in such conditions; and



WHEREAS, it is infeasible to predict the water supply conditions likely to prevail during a State-proclaimed local drought emergency, as such proclamations are not within the District's control and may be made based on factors other than the District's water supply conditions, and accordingly it is appropriate to defer quantification of excessive water use thresholds applicable during such a proclamation until the Board has an opportunity to assess the District's water supply conditions and other relevant information; and

WHEREAS, because it is the District's experience that a customer's first exceedance of an excessive water use threshold sometimes results from a previously undetected leak rather than willfully excessive water use, and because the purposes of this Ordinance are better served by allowing a reasonable opportunity to address leaks rather than penalizing non-willful water use, and to avoid incurring unnecessarily transactional costs to handle potentially meritorious penalty appeals, it is appropriate to deem a single-family residential customer to be in violation of this Ordinance and subject to penalties only upon the second or subsequent exceedance during a drought cycle; and

~~WHEREAS, to secure compliance with the rules and regulations established during Stages 3 and 4, as such terms are defined herein, and assure important public policy objectives are achieved for the reduction of water usage during severe and critical water shortages, the District is proposing to establish and impose penalties for excessive water usage by single-family residential customers when the District has declared a Stage 3 or a Stage 4 water shortage; and~~

WHEREAS, for the reasons stated above, the District ~~is not proposing to establish~~ has not established in this Ordinance any mandatory water use restrictions or associated penalties on any commercial or industrial customers, or multi-family customers without individual meters ~~when the District has declared a Stage 3 or a Stage 4 water shortage; and~~

WHEREAS, to achieve District compliance with the Excessive Water Use Law, and to secure the public's compliance with the excessive water use prohibition imposed by that statute and by this Ordinance, and to assure important public policy objectives are achieved for the reduction of water usage during significant water shortages, the District shall establish and impose thresholds and penalties for excessive water usage by single-family residential customers as provided by this Ordinance when the above-described circumstances exist;

~~WHEREAS, pursuant to California Government Code section 53069.4, the District may, by ordinance, make the violation of any ordinance enacted by its Board of Directors subject to a civil administrative fine or penalty; and~~

~~WHEREAS, the Board of Directors hereby finds and determines that it is desirable to codify the rules and regulations governing its actions, and the actions of persons using and consuming water within the District, particularly during declared Stage 3 or Stage 4 water shortages to protect the general welfare and the District's water supplies, and to reduce water consumption in accordance with the declared policies and laws of the State; and~~

~~WHEREAS, the Board of Directors hereby finds and determines that when the District implements Stage 3 and Stage 4 rules and regulations to conserve and protect the District's water~~

~~supplies, reduce the quantity of water consumed, and deter and prevent the waste or unreasonable use or unreasonable method of use of valuable water resources, administrative penalties may be imposed upon any person who willfully uses water in excess of the water use restrictions set forth herein;~~

BE IT ENACTED by the Board of Directors of the East Bay Municipal Utility District ~~as follows:~~

**Section 1. Recitals.** The District hereby finds and determines that the above recitals are true and correct and are incorporated herein.

**Section 2. Findings.** The Board of Directors finds and determines that because of the prevailing conditions in the State, and the declared policy of the State, it is necessary and appropriate for the District to adopt, implement, and enforce ~~a water conservation program to reduce the quantity of water used by single-family residential customers within the District to ensure that there is sufficient water for human consumption, sanitation, and fire protection~~ mandatory water use restrictions under certain conditions specified herein. The Board further finds and determines that this Ordinance furthers important State and District policies of encouraging water conservation and protecting water resources in the interest of the people and for the public welfare. The ~~District~~ Board further finds and determines that during periods of drought, water shortages, and water shortage emergencies, the general welfare requires that the District maximize the beneficial use of its available water resources to the extent that it is capable, and that the waste or unreasonable use, or unreasonable method of use of water shall be prevented and the conservation of water is to be extended with the view to the reasonable and beneficial use thereof in the interests of the people of the District and for the public health, safety, and welfare.

**Section 3. Water Use Restrictions and Regulations** ~~During Stage 3 and Stage 4.~~ The Board of Directors hereby adopts and authorizes the following water conservation and water shortage rules and regulations governing the use of water by single-family residential customers:

#### **A. DEFINITIONS**

For the purposes of this Ordinance, the following words, terms, and phrases shall have the following meanings:

“Appellant” means the person appealing the imposition of a penalty imposed by the District for a violation of this Ordinance.

“Billing cycle” means the billing period in which a single-family residential customer’s water use is measured for purposes of calculating the amount of the water service fees that shall be collected for the water service provided.

“Board” or “Board of Directors” means the Board of Directors of the District.



“CCF” means one hundred cubic feet. ~~EBMUD-~~The District bills for water use are based on units, with each unit equaling one (1) CCF. Each unit equals 748 gallons.

“Contingency Plan” means the District’s water shortage contingency plan, including any supplement or amendment thereto.

“District” means the East Bay Municipal Utility District.

“Drought cycle” means any continuous and uninterrupted time period during which this Ordinance authorizes mandatory water use restrictions to be imposed, whether based on Stage 2, Stage 3, Stage 4, State-mandated local drought, or any combination or sequence thereof.

“Excessive Water Use Law” means Chapter 3.3 of Division 1 of the California Water Code, including any amendments thereto.

“General Manager” means the General Manager of the District or ~~his or her~~ the General Manager’s authorized designee.

~~“Disaster” means a catastrophic, naturally occurring or man-made event, including, but not limited to, an earthquake, flood, fire, riot, or storm, for which a state of emergency has been declared by the President of the United States, the Governor of California, or the executive officer or legislative body of a local agency that is within the District’s service area.~~

“Ordinance” means this Excessive Water Use Penalty Ordinance, including any amendments hereto.

“Person” means any natural person, firm, joint venture, joint stock company, partnership, public or private association, club, company, corporation, business trust, organization, public or private agency, government agency or institution, school district, college, university, any other user of water provided by the District, or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties.

“Potable water” means that water furnished to the single-family residential customer that complies with federal and State drinking water regulations and standards, or any other applicable standards, for human consumption.

“Rules and regulations” means the rules and regulations governing the amount of water that may be used by a single-family residential customer during an applicable water shortage stage, and any terms and conditions respecting restrictions on the use, method of use, and consumption of water in effect during an applicable water shortage stage as set forth in this Ordinance.

“Single-family residential customer” means a person who, according to the District’s records, has a single-family residential account or a multi-family residential account with a business classification code 8800, and receives water service or recycled water service to a

single-family residence or a multi-family residence that is individually metered or submetered by the District.

“Stage 2” means the stage at which the District has determined that a significant water supply shortage exists and mandatory reductions in water use are required to achieve a reduction in water usage by amounts as set forth herein and declared by the Board of Directors, or as may be established from time-to-time in accordance with the Contingency Plan.

“Stage 3” means the stage at which the District has determined that a severe water supply shortage exists and mandatory reductions in water use are required to achieve a reduction in water usage by amounts as set forth herein and declared by the Board of Directors, or as may be established from time-to-time in accordance with the Contingency Plan.

“Stage 4” means the stage at which the District has determined that a critical water supply shortage exists and mandatory reductions in water use are required to achieve a reduction in water usage by amounts as set forth herein and declared by the Board of Directors, or as may be established from time-to-time in accordance with the Contingency Plan.

“State” means the state of California, including any department or regulatory agency thereof.

“State-proclaimed local drought” means a condition that commences upon occurrence of both of the following events: (i) the Governor of the State has issued a proclamation of a state of emergency under the California Emergency Services Act based on local drought conditions, and (ii) the District’s Board has determined the District is affected by the proclaimed emergency. A State-proclaimed local drought may exist regardless of whether a Stage 2, Stage 3, or Stage 4 drought exists. A State-proclaimed local drought will cease to exist upon the first occurring of the following events: (i) the Governor terminates the relevant state of emergency, or (ii) the District’s Board determines the District is no longer affected by the proclaimed emergency.

“Water shortage stage” or “stage” means ~~a~~ Stage 2, Stage 3, or Stage 4.

## **B. REDUCTIONS IN WATER SUPPLY**

1. **Reductions in Water Supply.** If the rules and regulations set forth in this Ordinance are inadequate to protect the District’s potable water supply, the Board of Directors reserves the right to implement further mandatory rules and regulations to reduce the amount of water used within the District. The rules and regulations are necessary to respond to any significant reductions to the District’s water supply as a result of drought, natural disasters, regulatory action, and planned or unplanned potable water shortages.

2. **Application.** The provisions of this Ordinance shall apply to all single-family residential customers using potable water within the District.



## C. DECLARATION AND NOTICE OF WATER SHORTAGE STAGES

1. **District Water Supply.** The General Manager shall monitor the projected supply and demand for water by the District's customers during periods of a water shortage or drought and shall recommend to the Board of Directors the extent of the conservation measures, including rules and regulations, required through the implementation and/or termination of particular water shortage stages to prudently plan for supplying water to its customers. The General Manager will recommend the appropriate water shortage stage of response to a water shortage based on the best information available at the time.

2. **Declaration of Water Shortage Stages.** The declaration of any water shortage stage and applicable rules and regulations shall be made by the Board of Directors.

a. The declaration shall become effective immediately upon adoption by the Board of Directors.

b. Any penalties authorized to be imposed during the declared water shortage stage, ~~however, shall not~~ may be imposed on any single-family residential customer ~~until a declaration of a Stage 3 or Stage 4 water shortage has been made by the Board.~~ as authorized by Section 3.F.1 or other applicable legal authority.

3. **Due and Proper Notice.** Upon the adoption of this Ordinance, due and proper notice shall be deemed to have been given each and every single-family residential customer supplied water within the District of the rules and regulations governing the water shortage stages as described herein, the applicable rules and regulations that will be in effect during the specified stages, and any penalties that may be imposed for violations of such rules and regulations.

## D. IMPLEMENTATION OF WATER SHORTAGE STAGES

1. **Recommendations by the General Manager.** As water supply conditions change, the General Manager may return to the Board of Directors to recommend, as appropriate, revising or terminating the appropriate water shortage stage, and any applicable rules and regulations.

2. **Order of Stages.** It shall not be necessary to implement any water shortage stage prior to another; the water shortage stages may be implemented in any reasonable order and shall continue to be in effect until the Board makes a determination to terminate the applicable water shortage stage.

3. **Water Supply Conditions.** The District will implement an appropriate water shortage stage and rules and regulations based on current and projected water conditions. Higher stages and/or additional rules and regulations may be implemented as water shortages continue and/or if single-family residential customers' responses to the rules and regulations then in effect do not bring about desired water savings.

4. **Cumulative Impacts.** Rules and regulations, penalties and enforcement will build on each other as water shortage stages advance.

5. **Actions or Restrictions by the State.** If the State, through executive action, emergency legislation or other actions, imposes conditions, requirements, or procedures that are not included in this Ordinance, the General Manager is authorized to implement such rules and regulations as are reasonably required to bring the District's actions in each stage into functional conformity with such conditions, requirements, or procedures.

6. **Public Outreach.** When the Board of Directors declares a water shortage stage, any or all of the following public outreach measures may be implemented:

a. The District may notify the general public, stakeholders, elected officials, and other key decision-makers regarding the water shortage stage, actions to be taken, and customer demand reduction goals.

b. The public at large will be informed of the water shortage stage, customer demand reduction rules and regulations, and other actions the District will be taking to reduce the demand for water within the District. Communications may occur through, but are not limited to, any of the following: billing inserts; special mailings; telephone contact; e-mail; roadway signage; billboards; home water reports; telephone on hold messages; water conservation booths and other communication venues in the community; workshops; community association meetings; newsletters; and education programs, etc. Literature appropriate to the water shortage condition and stage, conservation methods, and water-savings devices may be made available to the public.

c. The use of all forms of media may be employed by the District. This includes public service announcements on radio and cable television, social media and earned media, and advertisements in local newspapers.

d. The District's web site, [www.ebmud.com](http://www.ebmud.com), will be the central location for messaging and communications with single-family residential customers regarding the applicable water shortage stage and the rules and regulations governing the use of water then in effect.

## **E. RULES AND REGULATIONS**

1. **Rules and Regulations are Mandatory.** Any rules and regulations adopted during a water shortage stage are mandatory.

2. **Violations of Rules and Regulations.** Violations of any rules and regulations are subject to ~~criminal, civil, and~~ civil and administrative penalties and remedies as provided for in this Ordinance.



3. **Stage 2 Mandatory Water Use Restrictions.** After a Stage 2 has been declared, each single-family residential customer who has had a potable water account with the District shall be limited to using potable water as follows:

a. If the customer's billing cycle is fifty-five (55) to sixty-eight (68) days, the customer shall be limited to using one hundred thirty-two (132) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.

b. If the customer's billing cycle is twenty-five (25) to thirty-eight (38) days, the customer shall be limited to using sixty-six (66) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.

3.4. **Stage 3 Mandatory Water Use Restrictions.** After a Stage 3 has been declared and the District has completed the notice requirements set forth in Section 3.C. of this Ordinance, each single-family residential customer who has had a potable water account with the District shall be limited to using potable water as follows:

a. If the customer's billing cycle is fifty-five (55) to sixty-eight (68) days, the customer shall be limited to using ~~one hundred twenty (120)~~ one hundred eighteen (118) CCF of potable water per billing cycle for indoor and outdoor water purposes for ~~his or her~~ the customer's property.

b. If the customer's billing cycle is twenty-five (25) to thirty-eight (38) days, the customer shall be limited to using ~~sixty (60)~~ fifty-nine (59) CCF of potable water per billing cycle for indoor and outdoor water purposes for ~~his or her~~ the customer's property.

4.5. **Stage 4 Mandatory Water Use Restrictions.** After a Stage 4 has been declared and the District has completed the notice requirements set forth in Section 3.C. of this Ordinance, each single-family residential customer who has had a potable water account with the District shall be limited to using potable water as follows:

a. If the customer's billing cycle is fifty-five (55) to sixty-eight (68) days, the customer shall be limited to using eighty (80) CCF of potable water per billing cycle for indoor and outdoor water purposes for ~~his or her~~ the customer's property.

b. If the customer's billing cycle is twenty-five (25) to thirty-eight (38) days, the customer shall be limited to using forty (40) CCF of potable water per billing cycle for indoor and outdoor water purposes for ~~his or her~~ the customer's property.

6. **State-Proclaimed Local Drought Mandatory Water Use Restrictions.** If the Governor issues a proclamation of a state of emergency under the California Emergency Services Act based on local drought conditions, the District's Board may, in the reasonable exercise of its discretion, adopt a resolution determining that the District is affected by the proclaimed emergency. If the Board adopts such a resolution, it shall in that resolution establish a definition of excessive water use. The Board may revise the definition from time to time by subsequent resolution. The definition of excessive water use shall be expressed in CCF and may



distinguish between longer and shorter billing cycles. The Board may consider any or all relevant facts and circumstances when defining excessive water use, including but not limited to: (i) average daily use, rate of evapotranspiration, and other factors set forth in the Excessive Water Use Law, and (ii) water supply conditions which do or may apply to the District during the State-proclaimed local drought emergency. Each single-family residential customer who has had a potable water account with the District shall be limited to using potable water in the applicable amount set forth in the adopted resolution while the State-proclaimed local drought emergency is in effect.

7. **Exception—Implementation of Alternative Actions.** Notwithstanding any other provision of this Ordinance, the mandatory water use restrictions of Section 3.E.3, 3.E.4, and 3.E.5 shall not apply if the Board of Directors, in connection with a drought stage declaration, implements an alternative action in lieu of requiring mandatory reductions in water use as may be authorized by law.

## **F. VIOLATIONS, PENALTIES, AND OTHER REMEDIES**

1. **Administrative Penalties for Exceeding Mandatory Water Use Restrictions**  
~~**During Stage 3.** After a Stage 3 or a Stage 4 has been declared, and the District has completed the notice requirements set forth in Section 3.C. of this Ordinance,~~ Except as provided in Section 3.E.2, any potable water used by a single-family residential customer in excess of the mandatory rules and regulations then in effect during a billing cycle ~~as provided~~ and described in Section 3.E.3, ~~or 3.E.4, 3.E.5, or 3.E.6~~ shall be:

- a. deemed a waste of water;
- b. a violation of the District's rules and regulations; and
- c. subject to a civil administrative penalty of two dollars (\$2.00) per CCF, or portion thereof, of water delivered to the property in excess of the mandatory rules and regulations.

### 2. **Exception—No Violation for First Exceedance During Drought Cycle.**

a. Notwithstanding any other provision of this Ordinance, a customer neither violates this Ordinance nor is subject to penalties hereunder upon the customer's first instance during a drought cycle of exceeding an applicable mandatory water use restriction during a billing cycle. In such event the District shall notify the customer in writing of the exceedance and disclose that further exceedances will violate this Ordinance and subject the customer to penalties.

b. The Board hereby finds and determines that a customer's first exceedance of an applicable mandatory water use restriction during a drought cycle does not constitute a use of water in a manner inconsistent with District water usage policies for the purposes of California Government Code section 6254.16(d).

~~2.3.~~ **Payment of Penalties.** Any penalty imposed pursuant to Section 3.F.1 shall be:

- a. applicable to all potable water used in excess of the water use restrictions imposed by the mandatory rules and regulations after the declaration of the applicable water shortage stage;
- b. collected on the single-family residential customer's water bill;
- c. due and payable as part of the water bill charges;
- d. the responsibility of the single-family residential customer of record for the property where the violation occurred; and
- e. paid in addition to the water service fees the District imposes for the potable water delivered to the property where the violation occurred.

~~3.4.~~ **Non-payment of Penalty.** Non-payment of any penalty imposed pursuant to this Ordinance shall be subject to the same remedies available to the District as for non-payment of basic water rates and shall afford the customer the same due process rights.

~~4.5.~~ **Notice of Violation.** The receipt of a water bill with any applicable penalty shall serve as notice of violation of the District's rules and regulations herein.

~~5. — Misdemeanor Violations. It shall be unlawful for any person to willfully violate any provisions of this Ordinance. A violation of any of these provisions is a misdemeanor in accordance with California Water Code section 377.~~

6. **Other Remedies.** In addition to any other remedies provided in this Ordinance or available under applicable law, the District may, to the extent allowed by law, alternatively seek injunctive relief in the Superior Court or take enforcement action, including discontinuing or appropriately limiting water service to any single-family residential customer, locking a service, or installing a flow restricting device, for violations of this Ordinance and applicable charges. All remedies provided herein shall be cumulative and not exclusive.

7. **Non-liability for Damage.** A single-family residential customer who violates this Ordinance assumes responsibility for injury to the single-family residential customer and/or other residents/occupants receiving service, including emotional distress and/or damage to the single-family residential customer's private water system and/or to other real or personal property owned by the single-family residential customer or by a third party resulting from the installation and operation of a flow restricting device or from termination of service. The single-family residential customer shall thereby be deemed to have:

- a. waived any claim for injury or for damage to the single-family residential customer's property which the single-family residential customer may have otherwise have against the District; and



b. agreed to indemnify, defend, and hold the District harmless from claims by third parties for injury or property damage arising or claimed to arise out of the District's installation and/or operation of a flow restricting device or termination of water service.

8. **Suspension.** To the extent allowed by law, the Board may suspend or resume enforcement of this Ordinance, and/or the imposition of penalties hereunder, whenever it determines doing so is in the best interests of the District and its customers.

## **G. APPEAL PROCEDURES**

1. **Filing an Appeal.** Any person (~~an "appellant"~~) who wishes to ~~appeal~~ contest the imposition of an administrative penalty imposed by the District pursuant to this Ordinance shall comply with the following procedures:

a. The appellant shall pay all amounts due and owing on ~~his or her the~~ appellant's water bill, except for any disputed penalty(ies) imposed by the District pursuant to this Ordinance.

b. The appellant shall submit an appeal request form to the designated representative of the District's Customer ~~Service Division~~ and Community Services Department no later than fifteen (15) calendar days from the date of the appellant's water bill for the billing cycle in which any penalty(ies) are imposed.

2. **Basis for Granting an Appeal.** As part of the appeal process, the appellant shall be provided with an opportunity to provide evidence that a basis exists to grant the appeal, and the District shall provide documentation demonstrating the excessive water use. An appeal may be granted under the following limited circumstances:

a. The amount of water delivered to the appellant's property did not violate the rules and regulations, as evidenced by a demonstrable malfunction in the meter serving the appellant's property or a billing error by the District.

b. The appellant demonstrates the water use is needed for ~~health and/or safety reasons~~ a medical reason.

c. The appellant demonstrates a water leak occurred at ~~his or her the~~ appellant's property during the billing cycle in which the penalty was imposed, resulting in water loss that did not benefit the appellant.

3. **Additional Documentation.** Additional documentation may be requested at the discretion of the District's ~~Customer Service Division~~.

4. **District Response.** A response to the appeal request shall be provided by the District within thirty (30) calendar days from receipt of the appeal request form.

5. **Review or Denial of Appeal Request.** If an appeal request is denied, the appellant may resubmit the appeal request form for review by the District's ~~designated Manager of Customer and Community Service representative~~ Services or the Manager's designee.

a. ~~Any denial of an appeal may be submitted for further review by the Customer Services Manager, or his or her authorized designee.~~ Any request for further review shall be submitted no later than fifteen (15) calendar days from the denial of the appeal. The appellant may request to provide evidence in writing or in person in support of ~~his or her an~~ appeal to the Manager of Customer and Community Services Department, or his or her authorized designee.

b. The decision by the District's Manager of Customer and Community ~~Service~~ Services, or ~~his or her the Manager's~~ authorized designee, shall be final.

c. Within ten (10) days after the denial of an appeal is deemed final, the appellant shall pay any disputed penalty(ies) imposed by the District.

d. The provisions of Section 1094.6 of the Code of Civil Procedure of the State of California shall be applicable to judicial review of the decision.

**Section 4. Repeal of Prior Ordinance.** Ordinance No. 364-15, entitled "Excessive Water Use Penalty Ordinance for Drought Stages 3 and 4," is repealed effective 12:01 a.m. on the thirty-first day after the passage of this Ordinance, and at that time and thereafter it shall be of no further force or effect.

**Section 45. Conflicting Provisions.** If provisions of this Ordinance are in conflict with each other, other provisions of the District's regulations or policies, any other resolution or ordinance of the District, or any State law or regulation, the more restrictive provisions shall apply.

**Section 56. Severability.** If any provision, section, subsection, sentence, clause or phrase or sections of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance shall not be affected, it being the intent of the Board of Directors in adopting this Ordinance that no portions, provisions, or regulations contained herein shall become inoperative, or fail by reason of the unconstitutionality of any other provision hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 67. Effective Date.** This Ordinance shall become effective and in full force at 12:01 a.m. on the thirty-first day after its passage. ~~However, to allow sufficient time for customer education and outreach, any applicable penalty charges will be reflected on customer bills beginning September 1, 2015 and will apply to water use in July and August of 2015.~~

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President

I HEREBY CERTIFY that the foregoing Ordinance was duly and regularly introduced at a regular meeting of EAST BAY MUNICIPAL UTILITY DISTRICT held on ~~April 14, 2015~~ September 14, 2021, ~~at the offices of said District, 375 – 11th Street, Oakland, California,~~ held by webinar and teleconference due to the COVID-19 pandemic and in accordance with Governor's Executive Order N-08-21, and thereupon, after being read, further action was scheduled for the regular meeting of said Board of Directors held at the same place on ~~April 28, 2015~~ September 28, 2021, at which time the same was finally adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

---

Secretary

APPROVED AS TO FORM AND PROCEDURE:

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General Counsel

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ITEM 14

CORONAVIRUS UPDATE

WILL BE PROVIDED  
AS AN ORAL REPORT

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**EAST BAY MUNICIPAL UTILITY DISTRICT**

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DATE: September 14, 2021

MEMO TO: Board of Directors

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

FROM: Kelly A. Zito, Special Assistant to the General Manager *KZito*

SUBJECT: 2021 Drought Update

**SUMMARY**

This memo highlights recent actions in response to the Board's April 27, 2021 drought declaration, including drought-related operations, efforts to help customers understand the status of water supplies, the District's plans to augment its water portfolio, and steps residential and commercial customers can take to conserve water.

**DISCUSSION****District Operations**Water Supply Status and Projections

Projected October 1, total system storage has increased slightly, to approximately 435,000 acre-feet (AF). Total storage in Pardee and Camanche reservoirs is currently 73 percent of average and 56 percent of capacity, and total storage in the East Bay reservoirs is currently 85 percent of average and 68 percent of capacity.

Water production in July 2021 was 193 million gallons per day (mgd), about 8.5 percent lower than July 2020. Water production in August 2021 was 193 mgd, about 9 percent lower than August 2020.

Supplemental Supply Operations

The District is planning to begin diversion of Central Valley Project (CVP) water on or after September 15 to accommodate U.S. Bureau of Reclamation (USBR) operational issues related to the American River and Sacramento River. Approximately 33,250 AF of CVP water will be diverted over five months. Operations of the water system will be balanced to minimize taste and odor issues and manage temperatures in the lower Mokelumne River.

When the diversion begins, the Freeport Regional Water Authority (FRWA) facilities will be operated to deliver CVP water only on Mokelumne Aqueduct No. 1 (MOK1) at a rate of 40 mgd while Mokelumne Aqueduct No. 2 (MOK2) is offline and unavailable due to the emergency repair. For up to two weeks, CVP water will be delivered to the San Pablo Reservoir. MOK2 is expected to be repaired and returned to service at the end of September and will be configured to deliver CVP water increasing the total CVP flow to 90 mgd. At this time, CVP water will begin to be delivered to San Pablo and Upper San Leandro (USL) Reservoirs.

The District is also working with the USBR and Contra Costa Water District (CCWD) to obtain 2,000 AF of previously stored water in Los Vaqueros Reservoir based on a prior agreement with CCWD. The water will be delivered to the District via FRWA by dedicating 2,000 AF of CCWD's CVP contract allocation to the District in exchange for the water stored in Los Vaqueros Reservoir. In addition, FRWA and the District will divert and wheel another 3,200 AF of CCWD's CVP allocation for CCWD pursuant to existing agreements.

The District is developing the 2022 water transfers supply strategy if conditions remain dry next year. Staff initiated discussions with potential sellers and is developing a plan to secure up to 50,000 AF of supplemental supply for next year if needed. Transfer water would be delivered through FRWA.

#### Treated Water Quality

CVP water will be diverted to the San Pablo and USL Reservoirs and will be treated at the Sobrante and USL Water Treatment Plants (WTPs). These WTPs will be operated at higher-than-normal rates during the drought. The WTPs are capable of treating Sacramento River water. Both plants have flocculation and sedimentation basins and ozonation systems that have been upgraded with new, more efficient equipment.

These WTPs are not typically operated through the winter months; however, during the delivery of CVP water, they will remain in service longer than usual. Water from these plants has a higher mineral content compared to water from Pardee Reservoir, and therefore customers served by these plants may notice a change in taste. In addition, water from these plants tends to have shorter-lasting chlorine residual in the distribution system. Distribution system water quality is monitored regularly, and staff responds quickly to any water quality issues.

Wildfire in the Mokelumne watershed from the Caldor and Tamarack fires is limited so far and is not expected to affect raw water quality in Pardee Reservoir.

#### Cold-Water Pool Management

Staff is coordinating the management of the cold-water pool in Pardee and Camanche Reservoirs to benefit downstream fisheries including support for steelhead in the hatchery over the summer and up-migrating Chinook salmon in the fall. Hydropower operations are being coordinated to improve cold-water transfer efficiency from Pardee to Camanche. Pardee Reservoir is being

operated to optimize cold water reserves in Pardee Reservoir while minimizing diversion of elevated algae into the Mokelumne Aqueducts and the service area.

### State Drought Response Actions

Following the State Water Resources Control Board's (SWRCB) adoption of emergency curtailment and reporting regulations, on August 19, the Office of Administrative Law enacted the regulations, and the SWRCB sent notices to the District to cease diversions under its water rights. These curtailment orders will have minimal impact on the District because of existing storage limitations on the District's water rights during the summer and fall. The District is in the process of complying with the new reporting requirements of the regulations, documenting water use, both current and projected. This data was submitted on September 3.

In compliance with state regulations, the District continues to report monthly water use data with an expanded submittal during the drought period that describes the implementation of the Water Shortage Contingency Plan, response actions taken, and activities related to water waste.

### Regional Drought Assistance

Marin Municipal Water District (MMWD) continues to pursue a variety of agreements with multiple parties, including EBMUD, that would potentially convey and provide supplemental water supply to their service area next year if the drought continues. MMWD is attempting to purchase water from a third party (while not competing with EBMUD's purchase efforts) and convey water to MMWD via FRWA and EBMUD's system. MMWD and EBMUD are currently working on a planning-level agreement to reimburse EBMUD for costs incurred to analyze improvements needed and the capacity available to potentially wheel water to MMWD. If determined to be feasible, the parties will enter into subsequent agreements for implementation. MMWD would be responsible for all associated capital, operations and maintenance, and administrative costs. MMWD desires to take delivery of water in the summer of 2022 if conditions remain dry.

### **Customer Outreach and Activity**

A Water Supply Fact Sheet (Attachment 1) was developed and highlights the District's commitment to diversify and increase water supplies. It describes efforts taken since 1970 that have helped the District weather continued cycles of drought. The second page of the fact sheet is a fold-out timeline that follows three key water supply programs over time: water conservation, Freeport and supplemental supply, and recycled water. The fact sheet will be posted at [ebmud.com/watersupply](http://ebmud.com/watersupply) and hardcopies can be provided upon request.

The District's "Make Every Drop Count" advertising campaign continues. Staff developed email signature graphics for District employees to include in their email communication, which were shared in Splashes and are stored on Splashpad (Attachment 2). Banners featuring the graphics have been hung at the San Pablo and Lafayette Reservoirs. The billboards and transit shelter ads

were installed in mid-August, which included EBMUD's Oakport facility, two digital boards near the base of the Bay bridge, and 81 transit shelters throughout the East Bay. Pandora ads are also running, featuring 5-minutes shower songs, and a new set of songs will be developed in September.

Although some in-person events have been canceled due to COVID-19, staff is continuing outreach through webinars and online presentations. This year's Fall Webinar Series, scheduled for September and October, will cover topics such as "Fall Garden Maintenance" and "Save Our Water and Save Our Trees." The Fall Webinar Series will also include a new offering, called "Office Hours," wherein staff will be available virtually to provide in-depth information to customers with specific issues. The first two Office Hours will focus on the landscape rebate program and home leak detection; if successful, the program may be offered again or expanded to cover additional topics. Customers may register for the events at [ebmud.com/watersmart](http://ebmud.com/watersmart).

Beginning in July, staff began tracking virtual audits and phone consultations with customers in addition to standard audits; these numbers are reflected in the table in Attachment 3. The flowmeter rebate program continues to be popular, and staff is seeing increased interest in the new landscape "Super Rebate" program. Water waste reports have also increased since the drought declaration. See Attachment 3 for a summary of water conservation activities for the month of July and for the 2021 calendar year to date.

To date, staff has given 50 presentations (Attachment 4). This includes presentations at a number of classrooms and community groups. In August, staff made presentations to the Contra Costa County Sustainability Commission and the West County Forum updating attendees on the status of the District's water supply and plans to address climate change.

Drought coverage continues in the media, with stories providing readers an overview of Bay Area water supplies, a look back at the historic 1970s drought, and coverage of MMWD's exploration of a pipeline across the Richmond Bridge and the District's cooperation, and a summary of free water-conserving devices from Bay Area water agencies including the District. Media interviews and informational responses were conducted with the following outlets: KQED, ABC7, and Mercury News.

In August, the District began a series of Drought Mythbusters on Twitter, Facebook, and Nextdoor. So far, topics have included the challenges of desalination and the District's diverse options for long-term water supply.

CCC:KZ:db

Attachments

# 50 Years of Water Supply Reliability



## Making EBMUD's Water Supply Resilient

**D**rought is nothing new in California. During the harsh drought of 1976-77, East Bay residents and businesses felt the pain of severe water rationing. To limit future hardship, EBMUD has invested nearly \$900 million over 50 years to diversify and increase water supplies. While the Pardee Reservoir in the Sierra Nevada foothills remains the East Bay's primary water source, EBMUD's diverse portfolio now includes conservation, supplemental supplies, and recycled water.

### Water Conservation

Saving water is an efficient and cost effective alternative to finding new sources. Since the late 70s, water conservation has been a key aspect of EBMUD's water supply portfolio. EBMUD customers have embraced conservation measures such as water-wise landscaping, low water use fixtures and appliances, fixing leaks, and water smart habits. And we practice what we preach: EBMUD has employed a wide range of tools to reduce leaks and breaks within our own pipelines to make sure our precious water goes to good use.

### Supplemental Water Supplies

The Freeport Regional Water Project can provide up to 100 million gallons of water per day (MGD) from the Sacramento River in drought years, depending on an annual allocation of Central Valley Project water from the US Bureau of Reclamation. Freeport can also bring in water from other sellers. Supplemental supplies lessen the need for mandatory drought restrictions and rationing.

*EBMUD has invested nearly \$900 million over 50 years to diversify and increase water supplies.*

### Recycled Water

EBMUD has also developed recycled water programs which offset the need for 9 MGD in dry and wet years alike.

These and other programs give us the flexibility we need to weather multi-year droughts.

## Saving Our Supply



1976



2021

---

*Despite another severe drought in 2021, diversified water supplies have helped to prevent critically low water levels in Pardee Reservoir.*

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# 50 Years of Water Supply Reliability

EBMUD has worked consistently over the years to diversify our water supply and chart a path forward to an uncertain future. This timeline represents key milestones in a few of the programs in our diverse water supply portfolio.

1970s

1980s

1990s

2000s

2010s

2020s



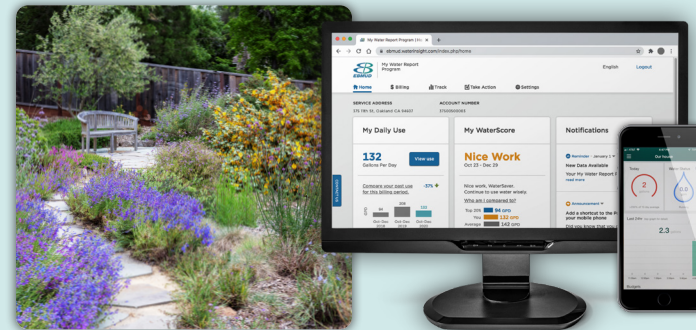
1977

To deal with the severe drought, EBMUD implements the first mandatory drought rationing in 54 years of operation.

**MANDATORY CONSERVATION:**  
**35%**

1990s

EBMUD begins to expand our commitment to water conservation, adding programs and incentives for residential customers, irrigators and businesses.



2014-2015

Another drought hits the Bay Area.

**MANDATORY CONSERVATION:**  
**20%**

2021

Severe drought returns to the Bay Area.

**VOLUNTARY CONSERVATION:**  
**10%**

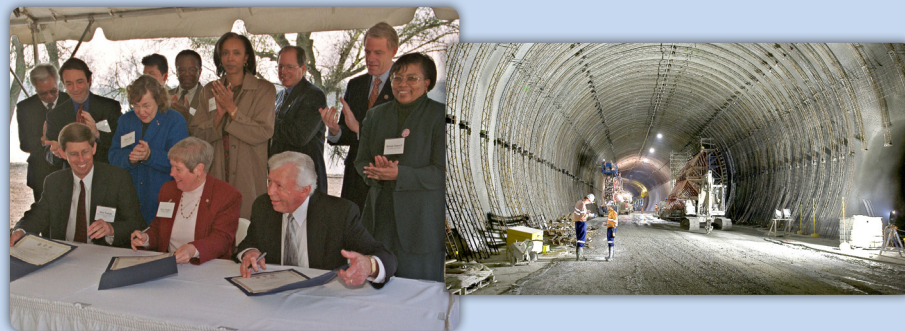
TODAY

The East Bay's water usage is at or below 1970's levels, even though our population has increased by around 20%.



1970

EBMUD secures approval from the federal government to divert water from the American River during dry years.



2002

EBMUD and Sacramento County Water Agency sign an agreement to work together on The Freeport Project.

2011

The Freeport Project is completed.

2014

Freeport is used for the first time, minimizing EBMUD's mandatory drought restrictions.



TODAY

EBMUD can use water from the Sacramento River in dry years.

**FREEPORT CAPABILITY:**  
**100 MGD**



1982

EBMUD begins delivering recycled water to irrigation customers.



1996

EBMUD begins using recycled water to offset industrial use at a large refinery. The first project starts by offsetting up to 4 MGD.

2006-2010

EBMUD launches additional recycled water systems serving large irrigators and businesses in Oakland and San Ramon. These programs serve up to 5 MGD. EBMUD adds another 3.5 MGD of capability to offset water use at a refinery.



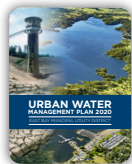
TODAY

These programs will reach six more cities by 2040.

**RECYCLED WATER CAPABILITY:**  
**9 MGD**

# 50 Years of Water Supply Reliability

## What's to Come



EBMUD's Urban Water Management Plan 2020 details our continued commitment to expanding and diversifying water supplies and preparing for worsening cycles of drought, meeting customer needs until 2050 and beyond.

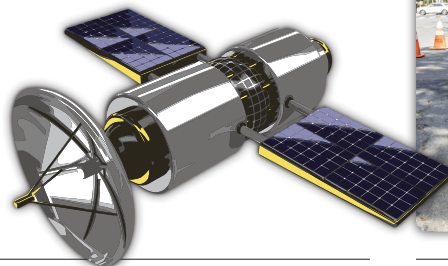
*Water conservation from 1995 through 2018 resulted in 46 MGD of water savings.*



### Water Conservation

EBMUD will continue innovation, customer partnerships and informational services for saving water. EBMUD will focus on programs including leak notifications, outdoor water budgeting and meters that provide real-time data on water use.

Leak detection is another way EBMUD saves water. Satellite imaging, monitors that detect pressure spikes and acoustic leak detectors all save water by preventing or catching leaks early.



*EBMUD was the first utility in the US to use satellites to detect underground pipe leaks.*



*EBMUD crews deploy acoustic leak detectors to identify and locate leaks in our system.*



### Supplemental Water Supplies

The Freeport project opens doors for EBMUD to access supplemental water sources via the Sacramento river. EBMUD is exploring partnerships to expand our options in future droughts.



### Recycled Water

EBMUD's goal is to increase recycled water program capability from 9 MGD to 20 MGD by 2040. EBMUD continues to build on partnerships with regional wastewater agencies as well as industrial and irrigation customers to expand water recycling.



### Groundwater

EBMUD is the Groundwater Sustainability Agency for our local ground-water basin, and is gathering data to make science-based decisions about groundwater use in the East Bay. EBMUD is also pursuing a pilot program in San Joaquin County to share groundwater storage benefits.



### Reservoir Expansion

With multi-agency partners, the Los Vaqueros Reservoir Expansion could provide EBMUD with 30,000 acre-feet of added storage.



### Desalination

A possible long-term alternative, with other supply options currently prioritized that are lower in cost, energy use and/or carbon emissions.

## The East Bay Municipal Utility District

has a proud history of providing high-quality drinking water for 1.4 million customers in Alameda and Contra Costa counties.

EBMUD's wastewater system serves 740,000 customers and helps protect the ecosystem of San Francisco Bay.

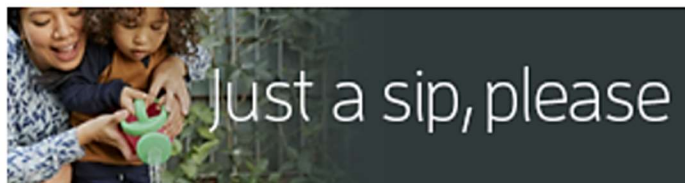
EBMUD is a not-for-profit public agency established in 1923.

**East Bay Municipal Utility District**

866-403-2683 • [ebmud.com](http://ebmud.com)

Learn more about EBMUD's water supply plans at: [ebmud.com/UWMP](http://ebmud.com/UWMP).

Staff Email Signatures





Summary of Water Conservation Activities		
July Data		
Activity	July 2021	Calendar Year 2021 Total
<b><i>Rebates</i></b>		
Flowmeter Rebates	106	487
Lawn Conversion Rebates	17	77
Square Footage of Lawn Replaced	22,261	107,703
Smart Irrigation Controllers	41	235
Home Water Survey Kits	325	1,916
<b><i>Water Waste</i></b>		
Water Waste Reports Estimate <sup>1</sup>	91	358
<b><i>Water Reports Delivered</i></b>		
Residential (SFR and MFR)	94,839	596,028
Non-residential	4,032	24,957
Open Rate Average Estimate (last bi-monthly period)	53%	52%
<b><i>Leak Alerts<sup>2</sup></i></b>		
Leak Events Detected	5,029	43,344
Leak Events Alerted	3,213	22,813
Unique Accounts Alerted Estimate <sup>3</sup>	1,640	12,423
Percent Opened	50%	51%
Percent Emails Clicked	15%	17%
Percent Digitally Resolved	7%	8%
<b><i>Customer Outreach</i></b>		
Events	4	23
Audits and Consultations <sup>4</sup>	65	96
Customer Conversations via Web Portal	675	3,409

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SPEAKERS' BUREAU and OUTREACH RECORD CY21					
9/2/21 6:30pm	Contra Costa Mayors' Conference	1, 2, 3, 4, 7	TBD	Virtual Meeting	No EBMUD speaker; attendance for networking and community updates.
9/7/21 7am - 9am	Rotary Club of Livermore Valley	NA	Vice President Coleman	Presentation	EBMUD update
9/7/21 7:00pm - 8:30pm	Orinda City Council	3	Director Young, Dave Briggs, Mike Hartlaub, Scott Hill	Virtual Presentation	Drought and water supply, investments in infrastructure, and fuel reduction
9/8/21 11:30am - 1:00pm	Exchange Club of San Ramon Valley (Danville)	2	Kathryn Horn	Virtual Meeting	No EBMUD speaker; attendance for networking and community updates.
9/8/21 12:15pm - 1:30pm	San Pablo Rotary Club	1	Ben Bray and Charles Bohlig	Virtual Presentation	Drought update
9/10/21 10am - 11am	MWWTP Virtual Tour	District-wide	TBD	Virtual Tour	Main Wastewater Treatment Plant
9/13/21 7:00pm - 8:30pm	Pleasant Hill City Council	2	Vice President Coleman	Presentation	Drought, water supply and infrastructure update
9/14/21 9am - 10:30am	Walnut Creek Chamber of Commerce	2	Vice President Coleman	Presentation	Drought and water supply update
9/14/21	Mt. Diablo Daughters of the American Revolution	2, 3	Ben Glickstein	TBD	Water supply and drought
9/14/21 6:00pm - 7:30pm	MWWTP Virtual Tour	District-wide	Julie Cohen and James Hake	Virtual Tour	Pollution Prevention
9/15/21 6pm	Water Wednesday Speaker Series	District-wide	Greg Francek, Nelsy Rodriguez, and Mona Favorite-Hill	Virtual Presentation	A mastodon drank my water and I can prove it

**ATTACHMENT 4**

9/17/21 11am - 12pm	MWWTP Virtual Tour - Grant Elementary 5th grade	District-wide	Jennifer Ku and Sarah Plummer	Virtual Tour	Main Wastewater Treatment Plant
9/20/21 2:00pm - 3:30pm	Landscape Advisory Committee	District-wide	Kristin Bowman	Virtual Presentation	Lawn conversion and regenerative landscapes
9/22/21 2pm - 3pm	MWWTP Virtual Tour	District-wide	Miles Mok	Virtual Tour	Main Wastewater Treatment Plant
9/22/21 5pm - 6pm	Office Hours: Lawn-to-Garden rebates	District-wide	TBD	Virtual Presentation	Lawn conversion rebates
9/23/21 8:30am	West County Mayors' and Supervisors Association	1, 4	TBD	Virtual Meeting	No EBMUD speaker; attendance for networking and community updates.
9/23/21 12pm - 2pm	Pleasant Hill Rotary Club	1, 3, 4	Vice President Coleman	Presentation	Drought and water supply update
9/22/21 5pm - 6pm	Office Hours: Lawn-to-Garden rebates en Español	District-wide	TBD	Virtual Presentation	Lawn conversion rebates
9/29/21 4pm - 5pm	Peralta Hacienda Historical Park "Water Keepers" class	6	Ben Glickstein	Virtual Presentation	Creeks, drought, wastewater, water conservation, and careers
9/30/21 1pm - 2pm	Fall Garden Maintenance Webinar (English and Español)	District-wide	Jolene Bertetto	Virtual Presentation	Water-wise gardening
9/30/21 2pm - 3pm	MWWTP Virtual Tour - Crocker Highland Elementary (Oakland)	6	Jennifer Ku and Sarah Plummer	Virtual Tour	Main Wastewater Treatment Plant

## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: September 14, 2021

MEMO TO: Board of Directors

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

SUBJECT: Monthly Report – August 2021

### HIGHLIGHT

**In August, a Proposition 68 project for the lower Mokelumne River habitat restoration was completed in the Mokelumne River Day Use Area.** Approximately 1.2 acres of floodplain habitat was created or enhanced and approximately 1,000 cubic yards of gravel was harvested from the floodplain excavation and used to improve salmonid spawning habitat.

### WATER SUPPLY

**East Bayshore Recycled Water Project update.** In August, recycled water service was activated for the City of Emeryville's South Bayfront Pedestrian/Bicycle Bridge Project. Recycled water supplies the new landscaping east of the railroad tracks across from Bay Street Plaza and proceed northerly along Stanford Avenue to near Hollis Street and the existing streetscape.

**On August 3, the State Water Resources Control Board unanimously adopted emergency regulations to curtail water rights holders in the Sacramento-San Joaquin River watersheds.** The District's Mokelumne River municipal water rights and Bixler water rights are some of the over 5,700 water rights holders who are subject to the curtailment, which went into effect on August 19 and will remain in effect until significant rainfall occurs.

**Precipitation.** There was no East Bay precipitation for August and the season total was 0.00 inches (0 percent of average). The Mokelumne precipitation for August was 0.02 inches (7 percent of average) and the season total was 0.42 inches (82 percent of average).

### Water Releases

**Camanche Reservoir.** The average rate of Camanche release for August was 217 cfs (0 cfs generation, 184 cfs sluice, and 33 cfs through the hatchery), and the average flow below Woodbridge Dam was 29 cfs, both in accordance with the Joint Settlement Agreement "Dry" water year criteria.

**East Bay Reservoirs.** There were no East Bay reservoir releases in August.

### **Water Storage**

**Mokelumne reservoirs storage is 73 percent of average.** As of August 31, 2021, Pardee was at 552.9 feet or 89 percent of average, and Camanche was at 196.1 feet or 62 percent of average. Combined Pardee and Camanche reservoir storage was 347,000 acre-feet (AF) compared to 469,000 AF last year.

**East Bay reservoirs storage is 85 percent of average.** As of August 31, 2021, USL was at 434.9 feet or 81 percent of average, San Pablo was at 284.0 feet or 64 percent of average, and Briones was at 566.6 feet or 100 percent of average. Total terminal reservoir storage was 103,000 AF compared to 116,000 AF last year.

**Mokelumne Aqueducts and Raw Water Pumping Plants (RWPPs).** The average rate of Mokelumne Aqueduct draft for August 2021 was 148 MGD. Walnut Creek, Moraga, and Briones RWPPs remained out of service for the month.

**Water Production.** Average rate of gross water production for August:

	<b>August 2021</b>	<b>August 2020</b>	<b>August 2013</b>	<b>Average of FY 2005-2007</b>
East of Hills	67 MGD	74 MGD	83 MGD	99 MGD
West of Hills	126 MGD	138 MGD	148 MGD	181 MGD
<b>Total</b>	<b>193 MGD</b>	<b>212 MGD</b>	<b>231 MGD</b>	<b>280 MGD</b>
Max Day Production	205 MGD (8/27/2021)	234 MGD (8/14/2020)	248 MGD (8/19/2013)	

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

### **WATER QUALITY AND ENVIRONMENTAL PROTECTION**

**Mokelumne River Riparian Diversion Screening Project update.** On August 23, work began to cover the installation of fish protection screens on three private irrigation diversions within the lower Mokelumne River. The project is part of a cooperative agreement entered into with the U.S. Fish and Wildlife Service in 2018. The project is expected to be completed in early September.

**On August 2, Princeton University and the University of California, Riverside collected air samples from the District's Main Wastewater Treatment Plant to determine greenhouse gas emissions levels.** The universities are measuring emissions from more than 30 wastewater treatment plants along the U.S. East Coast and California. The District and the universities' are exploring collaborative opportunities to investigate process modifications to reduce nitrous oxide generation from biological nutrient removal processes in wastewater treatment plants.

**On August 16, the District submitted the annual biological monitoring report for the Oursan Ridge Conservation Bank to the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service.** The report documents biological resources management, security/fire/safety/public access management, infrastructure and facilities management, and administration of the bank.

**On August 31, the District submitted the annual Dam Safety Surveillance Reports for the terminal and open-cut reservoirs to the California Division of Safety of Dams (DSOD).** The reports summarize the District's dam safety monitoring efforts taken place over the year. The reports are required by DSOD regulations and include field observations, instrumentation evaluations, maintenance summaries, and a statement finding that the facilities are considered safe for continued operations.

**All authorized discharges from the Main Wastewater Treatment Plant (MWWTP) were in compliance with the permit limits for the month of August. This is the 264<sup>th</sup> consecutive month that the MWWTP experienced no exceedances.**

**The District received no odor complaints from the public in August.**

## **INFRASTRUCTURE INVESTMENT**

**Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Project update.** On August 1, the District prequalified seven prime contractors, nine electrical, and seven excavation/shoring contractors who have the required experience and qualifications to successfully complete projects of similar size and complexity. The estimated project cost is \$220 million. The prequalified candidate list will be used to advertise the project for construction in September 2021.

**Administration Building Carpet Replacement Project update.** The project has reached the halfway mark with new carpet installed on floors 5 through 8 and most of floor 2. The project is expected to be completed in December 2021.

**In August, staff completed a pipeline replacement project in the Merle Court area in San Leandro.** This project replaced cast iron pipe with approximately 7,350 feet of 6-inch structurally-enhanced polyvinyl chloride pipe.

**In August, staff began a pipeline replacement project in the Dover Avenue and 23<sup>rd</sup> Street area in San Pablo.** This project will replace cast iron pipe with approximately 1,940 feet of 6-, 8-, and 12-inch mortar-lined zinc-coated ductile iron pipe. This project is expected to be completed in September 2021.

**In August, staff began a pipeline replacement project in the 94<sup>th</sup> Avenue area in Oakland.** This project will replace cast iron pipe with approximately 4,335 feet of 6- and 8-inch structurally-enhanced polyvinyl chloride pipe and 6-inch mortar-lined zinc-coated ductile iron pipe. This project is expected to be completed in October 2021.

**In August, staff began a pipeline replacement project in the Pleasant Hill Road area in Pleasant Hill.** This project will replace cast iron pipe and asbestos cement pipe with approximately 1,430 feet of 4-, 6-, and 8-inch mortar-lined zinc-coated ductile iron pipe. This project is expected to be completed in October 2021.

**In August, the new Laboratory Information Management System (LIMS) went live.** The new LIMS, replaced a 30-year-old system for tracking samples from collection through analysis, review, reporting, and disposal stages. The new LIMS will allow the District to keep up with the requirements of current regulations and improve the way the Laboratory tracks and manages analyses in support of the District.

**Staff completed the design of the South Interceptor Level Monitoring Stations Project under SD-358.** This \$1.6 million project will add four new level-monitoring stations and relocate one station to improve wastewater level-monitoring in the South Interceptor located in Oakland. Construction is expected to be completed in fall 2022.

**Mains repaired in August totaled 101.** The attached table lists the mains repaired by staff in August, 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**

**Fatality at an upcountry reservoir.** On August 8, the body of a 30-year-old man from Stockton was recovered in Camanche Reservoir.

**East Bay watershed trailhead sign update.** During the first week of August, staff completed the installation of QR codes on all East Bay watershed trailhead signs. The QR codes can be scanned with a cell phone, which then takes the user directly to the ebmud.com website page where they can purchase a trail use permit.

**On August 2, staff met with the Contra Costa County Fire Protection District to discuss the District's water system.** Staff provided information on the District's water supply, water distribution system, hydrants, and facilities in the Hill Mutual/Crest Pressure Zone (PZ) and Hink PZ.

**On August 2, staff presented at the Wildcat Canyon Fire Group meeting.** The presentation highlighted the drought and Public Safety Power Shutoff preparedness. Approximately 20 people attended.

**On August 4, staff met with the Central Contra Costa Sanitary District to coordinate construction activities.** The two agencies shared information on current and upcoming work.



**On August 9, staff met with the City of Pleasant Hill to coordinate construction activities.** The two agencies shared information on current and upcoming work.

**On August 10, staff participated on a panel at the 2021 Water Finance Conference.** Staff and other panelists discussed enhancing the messaging around revenue, cost of service, and affordability. Approximately 80 people attended.

**On August 11, staff presented at the California Association of Sanitation Agencies Annual Conference.** The presentation highlighted how agencies are adjusting to remote working, virtual meetings, community engagement, and other changes that have occurred due to the pandemic. Approximately 200 people attended.

**On August 11, staff met with the City of El Cerrito to coordinate construction activities.** The two agencies shared information on current and upcoming work.

**On August 12, staff presented at the West County Forum meeting.** The presentation highlighted water supply and drought. Approximately 20 people attended.

**On August 13, staff removed several large fallen trees on the Mokelumne Coast to Crest Trail.**

**On August 16, the District held a virtual public meeting for the East Bay Plain Subbasin Groundwater Sustainability Plan.** The District's consultant presented the future groundwater scenario results, discussed the sustainable management criteria evaluation for each of the six sustainability indicators and the proposed implementation activities and costs, and responded to stakeholders' questions.

**On August 18, the District hosted a virtual Water Wednesday Speaker Series Event.** The presentation highlighted the District's fire prevention activities in the watershed and preparation for Public Safety Power Shutoffs. Approximately 50 people attended.

**On August 19, the District held a virtual public meeting regarding the Redwood Pumping Plant in Oakland.** The topics highlighted improvements to facility security and grounds. Approximately 25 people attended.

**On August 23, staff presented at the Contra Costa County Sustainability Commission meeting.** The presentation highlighted drought, conservation, recycled water, and the District's perspective on desalination. Approximately 30 people attended.

**On August 25, staff met with the City of San Pablo to coordinate construction activities.** The two agencies shared information on current and upcoming work.

**On August 25, staff met with the City of Berkeley to coordinate construction activities.** The two agencies shared information on current and upcoming work.

**Media.** Coverage included EBMUD’s stance on the Tassajara Parks development in the San Francisco Business Times and Mercury News; the summary of how customers can get free water-saving devices in Mercury News; a gun battle that took place at a District pumping plant in Oakland and our efforts to work with neighbors by KPIX5.

KQED and Patch featured a City of San Ramon briefing about water supplies; San Francisco Chronicle and MSN News highlighted President Biden’s infrastructure plan with a photo of District crews laying pipe; the San Francisco Chronicle included an article on water supply status and drought restrictions for various water agencies including the District; Lamorinda Weekly wrote part two of a history story on Valle Vista in Moraga; Lamorinda Weekly, KQED and SF Gate included an update on an evacuation drill which included Lafayette Reservoir.

Lamorinda Weekly reported on local girls’ drawing of hopscotch squares on pavement that was damaged due to a main break; KQED, Engineering News Record, and Marin IJ on Marin’s exploration of desalination and a water pipeline over the Richmond Bridge; Berkeleyside included the District as a resource in a guide on preparing for wildfires and Berkeley Daily Planet included the District’s Water Wednesday in the calendar. Upcountry, MyMotherlode, and Calaveras Enterprise covered a drowning at Camanche Reservoir and the Amador Ledger Dispatch ran an obituary for a District retiree.

**Social Media:**

Social Platform	Popular Topic	Impression Generation	# Followers	Change Over Last Month
Twitter	EBMUD Leak Detection	1,273	3,508	16
Facebook	Five Minute Showers Message	932	1,659	463
LinkedIn	Virtual Junior Engineer Open House	883	6,588	39
Nextdoor	Make Every Drop Count	Distribution to entire service area.		

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

- Orinda Water Treatment Plant Disinfection Improvements Project (Orinda)
- Pleasant Hill Road pipeline replacement Project (Pleasant Hill)
- San Pablo Clearwell & Rate Control Station Replacement Project (Kensington)
- Upper San Leandro Treatment Plant Project (Oakland)
- Welle Reservoir dewatering (Crockett)
- Westside Pumping Plant Replacement Project (Orinda)

### **Contract Equity**

**On August 11, the Western Region Minority Supplier Development Council hosted "*Back in Time*" Supplier Diversity Expo Series.** Staff provided information on EBMUD, the Contract Equity Program, contracting processes, and upcoming contracting opportunities. Approximately 25 people attended.

Contract Equity staff participated in the following customer events and outreach activities:

- August 3 - Women Business Enterprise Council, Corporate Best Practices Forum (Business Case) – 29 attended
- August 10 - Women Business Enterprise Council, Corporate Best Practices Forum (Measuring Success) – 25 attended
- August 12 - National Association of Minority Contractors Northern California Membership Prep Meeting – 7 attended
- August 16 - National Veteran-Owned Business Association, Monday Corporate Engagement Hour – 32 attended
- August 17 - Women Business Enterprise Council, Corporate Best Practices Forum (Economic Impact) – 25 attended
- August 18 - Asian Business League, Gateway to Professional Development – 30 attended
- August 19 - Western Region Minority Supplier Development Council, Multi-Industry Supplier Diversity Expo – 75 attended
- August 24 - Women Business Enterprise Council, Corporate Best Practices Forum (Measuring Success Sub-Tier Level) – 20 attended
- August 24 - National Association of Minority Contractors Northern California Membership Prep Meeting – 5 Attended

### **Water Conservation**

**On August 3, staff participated in Shores Homeowners Association's National Night Out in Richmond.** Staff provided information on water use efficiency and the drought, distributed toilet dye tabs, and provided water conservation resources. Approximately 100 people attended.

**On August 5, staff presented at the San Leandro Public Library virtual meeting.** The presentation highlighted the drought, water conservation tips for both commercial and residential customers, and available rebates. Approximately five people attended.

**On August 12, staff presented at the West County Forum group meeting in San Pablo.** The presentation highlighted water supply planning, current water supply status, water conservation measures, what customers can do to help, and the Sobrante Water Treatment Plant upgrades to the ozone system. Approximately 20 people attended.

**On August 18, staff presented at the San Leandro Rotary Club meeting.** The presentation highlighted the drought, the District's investments in diverse water supplies, and water conservation for both commercial and residential customers. Approximately 15 people attended.

## WORKFORCE PLANNING AND DEVELOPMENT

**In August, the District began a pilot program for interns for the upcountry and East Bay watershed locations.** On August 9, two ranger interns began at Lafayette Reservoir. On August 11, two ranger interns began working in the Mokelumne Recreation area. On August 24, two environmental management interns began a work-based program rotating through Watershed, Facilities, and Wastewater Controls. All interns are assigned to work through the end of summer 2021.

**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:**

- **August 4, the District hosted a virtual open house in support of the Junior Engineer recruitment.** The event was advertised on the District's job announcement and website, LinkedIn, Twitter, and sent to over 31 student organizations at 12 universities. Staff provided information on water industry careers, the District and the District's application and recruiting process, and encouraged attendees to consider a career in the water industry. Approximately 45 people attended.

### Tuition Reimbursement

	August 2021	FY22 Total
# of Employees	14	39
# of Classes	21	71
Total Reimbursed	\$20,187	\$61,806

### Employment Information

	August 2021	FY22 Total
Retirements – Regular	9	14
Retirements – Vested	1	2
Hires/Rehires	20	32
Other Separations	6	15

## FINANCIAL STABILITY

**In August, the Oursan Ridge Conservation Bank sold 1.51 combined Alameda Whipsnake / California Red-Legged Frog credits for \$72,740.** These were the eleventh through fifteenth credit sales. Total credits sold to date are 33.56 out of 429.90. A total of \$903,670 has been raised for the conservation bank endowment fund.

**In August, an additional qualified vendor was added to the agreements for striping services.** Diablo Striping meets District standards and has been added to increase flexibility and ensure vendor availability.

**The estimated earned revenue from the Main Wastewater Treatment Plant Power Generation Station’s surplus power sales for August is \$55,188.** The District sold renewable power and related Renewable Energy Credits (RECs) to the Port of Oakland. The sale of RECs generated \$12,408 from the Port of Oakland. Earned revenue for FY22 to date is estimated at \$112,922 or 15 percent of the total FY22 budget of \$750,000.

**The estimated earned revenue from Mokelumne power sales for August is \$422,220.** The District sold renewable power and related Renewable Energy Credits (RECs) to Marin Clean Energy (MCE). A total of \$29,840 was generated from REC sales – all from MCE. Resource Adequacy (RA) capacity sales to 3 Phases Renewables, Inc. and East Bay Community Energy (EBCE) collectively earned \$124,686. Earned revenue to date through August is estimated at \$703,019 or 14.1 percent of the FY22 budgeted \$5.0 million. Forecasted revenue for FY22 is \$4.85 million.

**Liens Transfers.** On August 10, 2021, a total of \$1,110,464.02 in liens were transferred to the Alameda and Contra Costa Counties tax rolls as summarized in the table below:

County	No. of Parcels	Total Dollars
Alameda County	277	\$1,000,434.68
Contra Costa County	36	\$110,029.34
<b>TOTAL:</b>	<b>313</b>	<b>\$1,110,464.02</b>

**Vehicle Purchases.** The table below provides information on vehicle purchases and payments for the last five fiscal years.

Vehicle Purchases and Payments		
Fiscal Year	Vehicles Ordered	Payments*
2021	86	\$6,397,418
2020	58	\$2,798,409
2019	121	\$10,876,350
2018	92	\$5,290,378
2017	54	\$3,185,487

*\*Due to order dates, date of receipt, and date of payment falling into different fiscal years, the number of vehicles ordered in a fiscal year does not correspond, in full, to the amount paid.*

**There were no material, supply, or construction contracts from \$80,001 to \$100,000 approved by the General Manager in August 2021. There were four general and professional service agreements from \$30,001 up to \$80,000 approved by the General Manager in August 2021.**

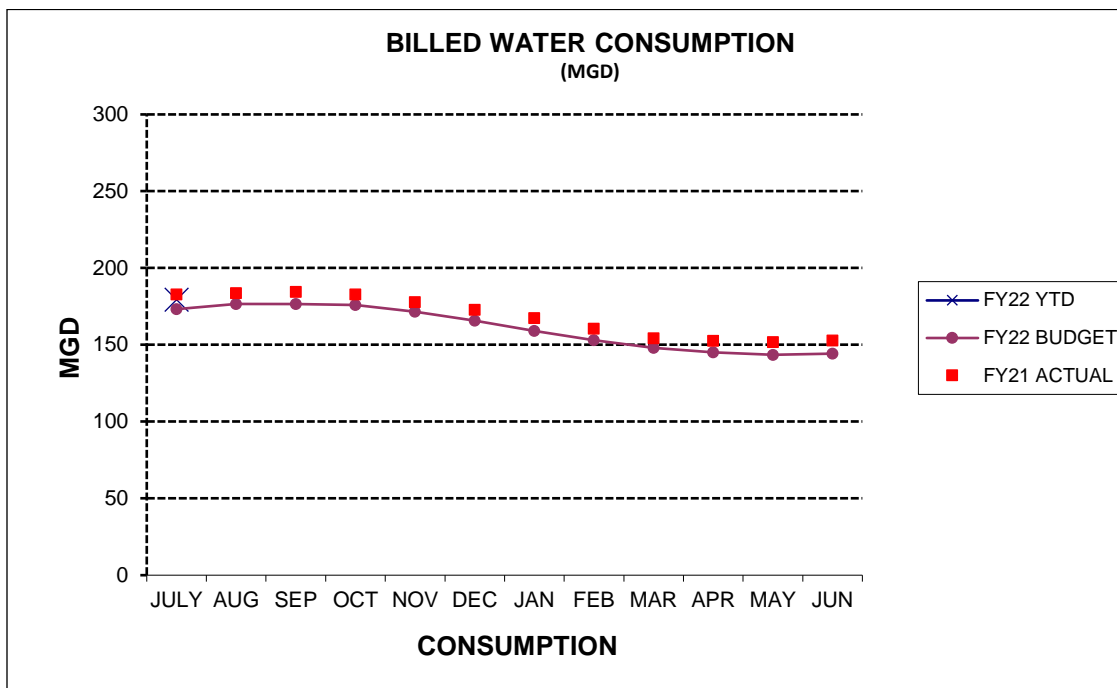
VENDOR NAME	DATE AWARDED	CEP STATUS	ITEM (S) PURCHASED	PROJECT	CONTRACT TERM	VALUE
Engineering Innovations, LLC	08/16/21	White Female	Evaluate the performance of the Pardee Dam South Spillway post-tensioned anchors and provide a report to document the findings.	N/A	09/01/21 - 12/31/21	\$80,000
General Datatech LP	08/17/21	White Male	Extension of maintenance and support for NetApp data storage systems and related hardware located at the Administration Building in Oakland.	N/A	One year	\$56,184
Geomorph Design Group	08/26/21	White Male	Develop the hydrology record and hydraulic model for Moraga Creek.	N/A	September 2021 to November 2022	\$69,070
Niricson Software, Inc.	08/26/21	Foreign-Owned	Perform rapid spillway condition assessments of Camanche Spillway and Upper San Leandro Spillway using unmanned aerial system-based data collection and analytics.	N/A	September 2021 to June 2022	\$69,750

### Water Sales (Consumption)

The following consumption information is the average water consumption in millions of gallons per day (MGD) for the first month of FY22. The budgeted average daily water consumption for FY22 is 144.3 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 FY21 data for the same period of time.

Due to projections of low water supply in FY22, the Board declared a Stage 1 drought on April 27, 2021, asking customers to voluntarily conserve 10 percent.

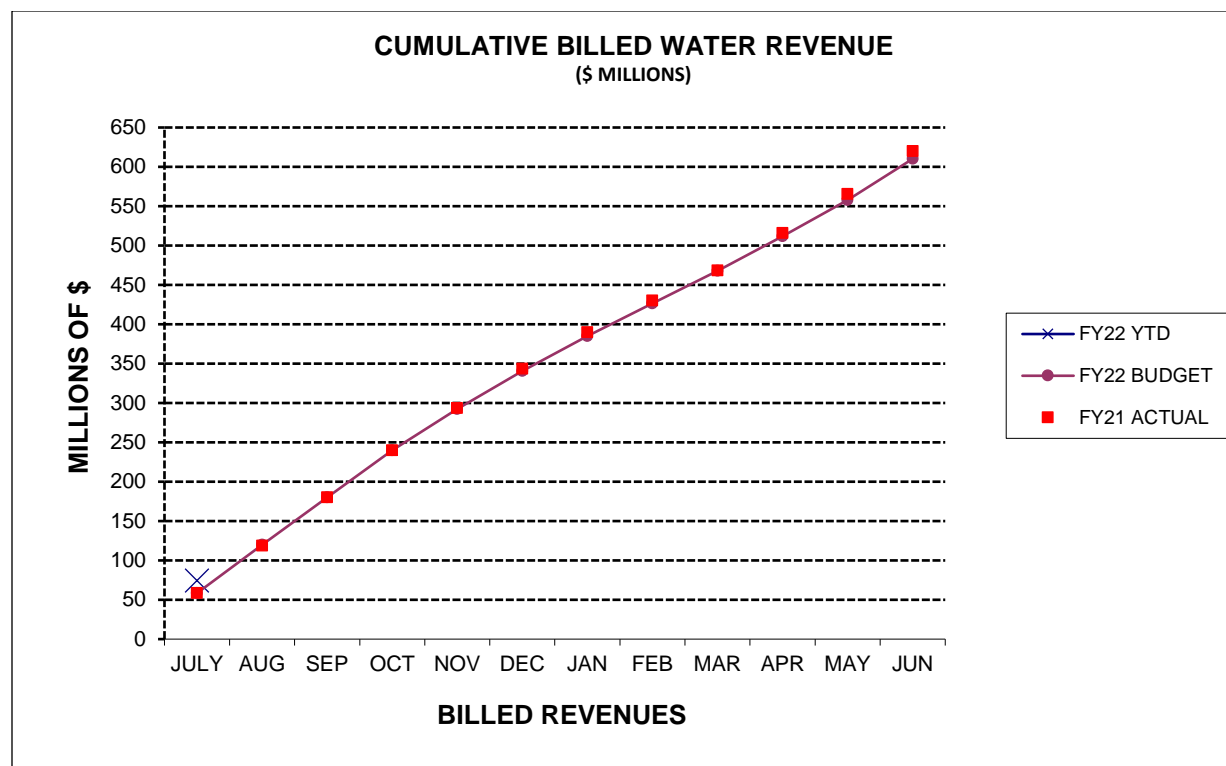
<b>Fiscal Year-to-Date Billed Water Consumption</b>			
<b>Usage Type</b>	<b>FY22 (MGD)</b>	<b>FY21 (MGD)</b>	<b>Year-over-Year (% change)</b>
Residential	88.5	95.2	-7.0%
Commercial	62.4	59.8	4.3%
Industrial	19.9	18.8	5.9%
Public Authority	8.6	9.0	-4.4%
	<b>179.4</b>	<b>182.8</b>	<b>-1.9%</b>



Source: Customer Information System

### **Water Sales (Revenue)**

Water revenues billed through July were \$60.5 million or 3.6% more than the FY21 revenue through July of \$58.4 million. This increase reflects the 4.0% FY22 rate increase and slightly lower July 2021 water sales. Total FY22 water revenues through July are \$2.1 million, or 3.6%, greater than the budgeted water revenue of \$58.4 million. Due to two meters serving the Chevron Richmond Refinery that were found to be under-registering, approximately \$13.8 million was billed to Chevron in July 2021 bringing the total water revenues billed in FY22 to \$74.3 million. The backbill period started 3 years from the original date of discovery which was December 18, 2015 to when the two meters were replaced on December 16, 2018 and May 5, 2020.



Source: Customer Information System



August 2021 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
ALAMO		NINA	CT	ASBESTOS CEMENT	6.00	1972	1,800	8/23/2021	8/23/2021	Y
ALBANY		PERALTA	AVE	CAST IRON	6.00	1934	8,640	7/28/2021	8/2/2021	Y
ALBANY		SAN PABLO	AVE	CAST IRON	4.00	1934	0	7/29/2021	8/4/2021	Y
BERKELEY		7TH	ST	CAST IRON	6.00	1930	10,080	8/3/2021	8/9/2021	Y
BERKELEY		CURTIS	ST	CAST IRON	6.00	1936	0	7/23/2021	8/4/2021	Y
BERKELEY		DELAWARE	ST	CAST IRON	6.00	1927	5,760	8/9/2021	8/12/2021	Y
BERKELEY		ELMWOOD	AVE	CAST IRON	6.00	1933	17,280	8/22/2021	8/25/2021	Y
BERKELEY		FRANCISCO	ST	CAST IRON	4.00	1927	0	8/1/2021	8/5/2021	Y
BERKELEY		LE CONTE	AVE	CAST IRON	4.00	1926	18,000	8/22/2021	8/22/2021	Y
BERKELEY		SHASTA	RD	CAST IRON	6.00	1937	18,000	8/23/2021	8/23/2021	Y
CASTRO VALLEY		COLUMBIA	DR	ASBESTOS CEMENT	6.00	1980	10,080	7/28/2021	8/3/2021	Y
CASTRO VALLEY		COREY	WAY	CAST IRON	4.00	1947	0	6/3/2021	8/16/2021	N
CASTRO VALLEY		ELAINE	CT	CAST IRON	6.00	1955	5,760	8/9/2021	8/12/2021	Y
CASTRO VALLEY		MORELAND	DR	CAST IRON	6.00	1952	5,760	8/9/2021	8/12/2021	Y
CASTRO VALLEY		SEVEN HILLS	RD	CAST IRON	8.00	1954	27,360	8/12/2021	8/30/2021	Y
DANVILLE		AMIGO	RD	ASBESTOS CEMENT	6.00	1959	900	8/18/2021	8/18/2021	Y
DANVILLE		BENT OAK	CT	ASBESTOS CEMENT	6.00	1984	3,600	8/19/2021	8/20/2021	Y
DANVILLE		FREITAS	RD	ASBESTOS CEMENT	6.00	1980	900	8/5/2021	8/5/2021	Y
DANVILLE		FREITAS	RD	ASBESTOS CEMENT	6.00	1980	0	8/5/2021	8/9/2021	Y
DANVILLE		MONTANA	DR	ASBESTOS CEMENT	6.00	1961	900	8/21/2021	8/21/2021	Y
DANVILLE		MORRIS RANCH	CT	ASBESTOS CEMENT	6.00	1978	9,000	8/18/2021	8/18/2021	Y
DANVILLE		OAKRIDGE	DR	ASBESTOS CEMENT	8.00	1979	1,080	8/4/2021	8/5/2021	Y
DANVILLE		PRINCETON	CT	ASBESTOS CEMENT	6.00	1971	9,000	8/9/2021	8/10/2021	Y
DANVILLE		ROLLING HILLS	LN	ASBESTOS CEMENT	16.00	1977	9,000	8/22/2021	8/23/2021	Y
DANVILLE		ST HELENA	DR	ASBESTOS CEMENT	6.00	1978	720	8/14/2021	8/14/2021	Y
EL CERRITO		ARLINGTON	BL	CAST IRON	8.00	1950	22,500	8/3/2021	8/4/2021	Y
EL CERRITO		ERROL	DR	ASBESTOS CEMENT	6.00	1947	1,800	8/21/2021	8/21/2021	Y
EL CERRITO		KEY	BL	CAST IRON	6.00	1934	1,350	8/1/2021	8/1/2021	Y
EL SOBRANTE		GARDEN	LN	CAST IRON	4.00	1938	1,800	8/3/2021	8/3/2021	Y

*\*KPI = turn around time to repair the leak*

August 2021 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
EL SOBRANTE		SAN PABLO DAM	RD	CAST IRON	8.00	1932	8,640	8/1/2021	8/2/2021	Y
HAYWARD		VALLEY BROOK	WAY	ASBESTOS CEMENT	6.00	1979	8,640	8/4/2021	8/4/2021	Y
LAFAYETTE		ATTRI	CT	CAST IRON	6.00	1941	0	7/29/2021	8/4/2021	Y
LAFAYETTE		BROOK	ST	CAST IRON	4.00	1931	13,500	8/28/2021	8/28/2021	Y
LAFAYETTE		CREST	RD	CAST IRON	8.00	1940	4,500	8/18/2021	8/18/2021	Y
LAFAYETTE		DIANNE	CT	ASBESTOS CEMENT	6.00	1975	900	8/28/2021	8/29/2021	Y
LAFAYETTE		HUSTON	RD	ASBESTOS CEMENT	6.00	1977	34,560	8/14/2021	8/17/2021	Y
LAFAYETTE		JUNIPER	DR	ASBESTOS CEMENT	6.00	1958	1,440	8/12/2021	8/12/2021	Y
LAFAYETTE		LA CAMINITA		ASBESTOS CEMENT	8.00	1972	900	8/12/2021	8/12/2021	Y
LAFAYETTE		MT DIABLO	BL	ASBESTOS CEMENT	6.00	1968	900	8/25/2021	8/26/2021	Y
OAKLAND		21ST	ST	CAST IRON	6.00	1931	10,080	8/24/2021	8/30/2021	Y
OAKLAND		30TH	ST	CAST IRON	4.00	1888	2,250	8/2/2021	8/3/2021	Y
OAKLAND		34TH	AVE	CAST IRON	4.00	1932	12,960	7/26/2021	8/3/2021	Y
OAKLAND		61ST	ST	CAST IRON	2.00	1932	7,200	8/24/2021	8/25/2021	Y
OAKLAND		68TH	AVE	CAST IRON	6.00	1937	18,000	8/19/2021	8/19/2021	Y
OAKLAND		90TH	AVE	CAST IRON	8.00	1911	450	8/20/2021	8/20/2021	Y
OAKLAND		17TH	AVE	ASBESTOS CEMENT	6.00	1930	18,000	8/14/2021	8/15/2021	Y
OAKLAND		7TH	AVE	CAST IRON	20.00	1916	9,000	8/11/2021	8/11/2021	Y
OAKLAND		ALTAMONT	AVE	CAST IRON	6.00	1940	0	8/20/2021	8/24/2021	Y
OAKLAND		BENEVIDES	AVE	STEEL	2.00	1924	8,640	8/26/2021	8/31/2021	Y
OAKLAND		BERLIN	WAY	CAST IRON	6.00	1937	18,720	7/22/2021	8/3/2021	Y
OAKLAND		BERLIN	WAY	CAST IRON	6.00	1937	450	8/16/2021	8/16/2021	Y
OAKLAND		BROADWAY		CAST IRON	12.00	1932	36,000	8/16/2021	8/17/2021	Y
OAKLAND		ELYSIAN FIELDS	DR	ASBESTOS CEMENT	12.00	1956	3,600	8/13/2021	8/13/2021	Y
OAKLAND		ESTATES	DR	CAST IRON	8.00	1936	18,000	8/17/2021	8/17/2021	Y
OAKLAND		FERNWOOD	DR	CAST IRON	6.00	1923	2,700	8/24/2021	8/24/2021	Y
OAKLAND		FOOTHILL	BL	CAST IRON	4.00	1936	13,500	8/20/2021	8/20/2021	Y
OAKLAND		GARDEN	ST	CAST IRON	6.00	1929	900	8/11/2021	8/12/2021	Y
OAKLAND		HAMILTON	ST	CAST IRON	6.00	1924	9,000	8/18/2021	8/19/2021	Y

*\*KPI = turn around time to repair the leak*

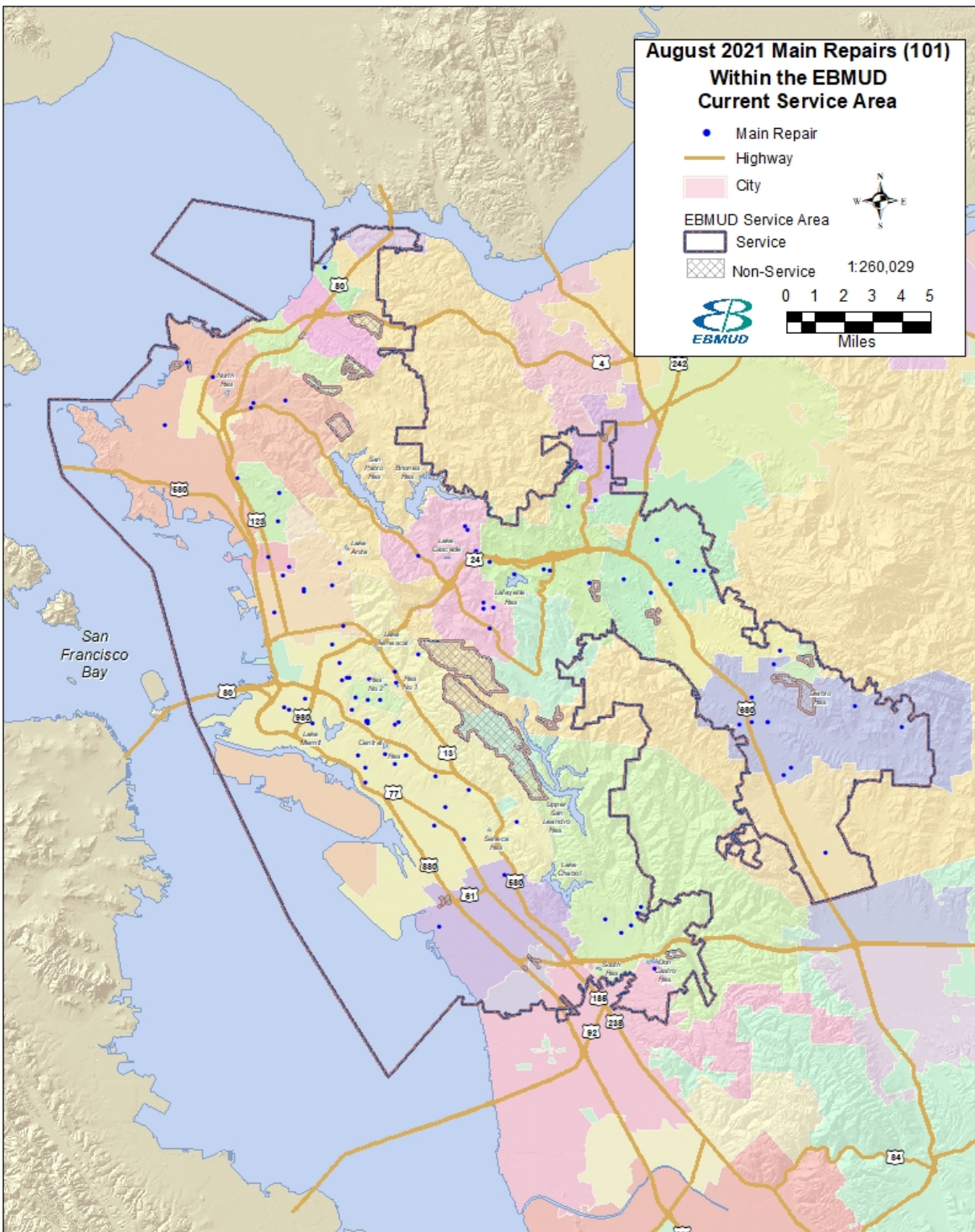
August 2021 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
OAKLAND		HOWE	ST	CAST IRON	6.00	1901	18,000	8/24/2021	8/24/2021	Y
OAKLAND		MANILA	AVE	ASBESTOS CEMENT	6.00	1962	18,000	8/16/2021	8/16/2021	Y
OAKLAND		MONTGOMERY	ST	CAST IRON	6.00	1940	900	8/23/2021	8/23/2021	Y
OAKLAND		OAKMORE	RD	CAST IRON	6.00	1926	1,350	8/20/2021	8/20/2021	Y
OAKLAND		PIEDMONT	AVE	CAST IRON	6.00	1939	10,080	8/13/2021	8/19/2021	Y
OAKLAND		PIERSON	ST	ASBESTOS CEMENT	6.00	1981	9,000	8/24/2021	8/24/2021	Y
OAKLAND		POPLAR	ST	ASBESTOS CEMENT	8.00	1943	4,500	8/2/2021	8/2/2021	Y
OAKLAND		ROSEMOUNT	RD	CAST IRON	6.00	1921	8,640	8/13/2021	8/18/2021	Y
OAKLAND		ROSEMOUNT	RD	CAST IRON	6.00	1921	900	8/18/2021	8/18/2021	Y
OAKLAND		ROSEMOUNT	RD	CAST IRON	6.00	1921	900	8/18/2021	8/18/2021	Y
OAKLAND		ROSEMOUNT	RD	CAST IRON	6.00	1921	18,000	8/20/2021	8/20/2021	Y
OAKLAND		SOBRANTE	RD	CAST IRON	6.00	1946	13,500	8/22/2021	8/23/2021	Y
OAKLAND		SUNNYHILLS	RD	CAST IRON	4.00	1925	2,700	8/23/2021	8/23/2021	Y
OAKLAND		VERMONT	ST	CAST IRON	4.00	1909	9,000	8/1/2021	8/2/2021	Y
ORINDA		CAMINO PABLO		CAST IRON	4.00	1968	0	8/3/2021	8/3/2021	Y
ORINDA		CHARLES HILL	CIR	CAST IRON	4.00	1937	86,400	8/19/2021	8/24/2021	Y
ORINDA		DIABLO VIEW	DR	CAST IRON	6.00	1945	450	8/16/2021	8/16/2021	Y
ORINDA		GLORIETTA	BL	ASBESTOS CEMENT	6.00	1956	9,000	8/10/2021	8/10/2021	Y
ORINDA		HALL	DR	CAST IRON	8.00	1949	28,800	8/27/2021	8/30/2021	Y
ORINDA		MINER	RD	CAST IRON	4.00	1938	720	8/31/2021	8/31/2021	Y
ORINDA		MORAGA VIA		CAST IRON	6.00	1945	11,520	8/9/2021	8/16/2021	Y
ORINDA		VALLEY VIEW	DR	CAST IRON	6.00	1938	12,960	8/2/2021	8/10/2021	Y
PIEDMONT		FAIRVIEW	AVE	CAST IRON	2.00	1933	3,150	8/19/2021	8/19/2021	Y
PIEDMONT		MESA	AVE	CAST IRON	6.00	1926	9,000	8/7/2021	8/8/2021	Y
PIEDMONT		WILDWOOD	AVE	STEEL	6.00	1921	2,250	8/3/2021	8/3/2021	Y
PIEDMONT		WILDWOOD	AVE	CAST IRON	4.00	1936	900	8/9/2021	8/9/2021	Y
PLEASANT HILL		VALLEY	DR	ASBESTOS CEMENT	6.00	1960	5,760	8/2/2021	8/5/2021	Y
RICHMOND		DE ANZA	DR	ASBESTOS CEMENT	6.00	1957	900	8/17/2021	8/17/2021	Y
RICHMOND		GROVE	AVE	ASBESTOS CEMENT	6.00	1973	9,000	8/3/2021	8/3/2021	Y

*\*KPI = turn around time to repair the leak*

August 2021 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
RICHMOND		MCGLOTHEN	WAY	ASBESTOS CEMENT	6.00	1950	11,520	7/27/2021	8/3/2021	Y
RICHMOND		RIDGEWOOD	WAY	ASBESTOS CEMENT	8.00	1982	34,560	8/27/2021	8/29/2021	Y
RODEO		JOHN	ST	ASBESTOS CEMENT	6.00	1955	1,800	8/10/2021	8/10/2021	Y
SAN LEANDRO		BEGIER	AVE	CAST IRON	6.00	1939	11,520	8/16/2021	8/23/2021	Y
SAN LEANDRO		SITKA	ST	CAST IRON	6.00	1951	0	7/1/2021	8/25/2021	N
SAN RAMON		MANGOS	DR	ASBESTOS CEMENT	8.00	1974	900	8/14/2021	8/15/2021	Y
WALNUT CREEK		AMIGO	LN	ASBESTOS CEMENT	8.00	1967	1,800	8/26/2021	8/27/2021	Y
WALNUT CREEK		BELLFLOWER	PL	ASBESTOS CEMENT	6.00	1978	7,200	8/10/2021	8/11/2021	Y
WALNUT CREEK		GRANDVIEW	PL	CAST IRON	4.00	1932	1,800	8/27/2021	8/27/2021	Y
WALNUT CREEK		RUDGEAR	RD	ASBESTOS CEMENT	6.00	1954	720	8/3/2021	8/4/2021	Y
WALNUT CREEK		SCOTS	LN	ASBESTOS CEMENT	6.00	1963	900	8/23/2021	8/23/2021	Y
WALNUT CREEK		TICE VALLEY	BL	ASBESTOS CEMENT	8.00	1956	13,500	8/12/2021	8/12/2021	Y
WALNUT CREEK		WALNUT	BL	ASBESTOS CEMENT	8.00	1956	10,080	8/4/2021	8/10/2021	Y
<b>Total</b>							<b>848,880</b>			

Non-surfacing leaks discovered by leak detection technologies	0
Breaks caused by contractors or other agencies	1
Other main breaks	100
<b>Total water main repairs</b>	<b>101</b>

*\*KPI = turn around time to repair the leak*



Customer Account Delinquency Information											
AUGUST 2021											
(Data collection began September 1, 2017)											
CUSTOMER ASSIST. PROGRAM (CAP) ENROLLMENT	March	April <sup>7</sup>	May	June	July	August	Totals				
New CAP Participants	163	223	283	286	236	220	8,512				
CAP Renewals	172	180	162	182	165	232	7,741				
CAP Departures	157	162	181	257	313	297	7,584				
Total Active CAP Participants w/Active Accounts	8,415	8,537	8,807	9,015	9,046	9,172					
PAYMENT PLANS	March	April	May	June	July	August	Totals				
Approved Payment Plans	1,328	1,104	953	1,269	1,147	1,275	177,912				
Payment Plans Established After Service Interruptions	-	-	-	-	-	-	1,320				
SERVICE INTERRUPTIONS - RESIDENTIAL	March <sup>3</sup>	April <sup>3</sup>	May <sup>3</sup>	June <sup>3</sup>	July <sup>3</sup>	August	Totals				
15-day Final Collection Notices	16,084	15,334	13,356	16,343	14,626	16,849	740,310				
48-hr Service Interruptions Notices	9,296	8,642	8,525	11,012	8,388	10,966	408,049				
Service Interruption Orders Created	*	*	*	*	*	*	82,689				
Service Interruptions Completed (Actual)	*	*	*	*	*	*	22,712				
CAP Enrolled Service Interruptions	*	*	*	*	*	*	802				
WATER THEFT	March	April	May	June	July	August	Totals				
No. of Incidents	-	-	-	-	-	-	367				
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 <sup>1</sup>	March	April	May	June	July	August	Totals				
Liens Filed	233	116	78		131	30	5,039				
Released	27	32	28	37	49	205	3,726				
Transferred to Alameda Cty.	-	-	-	-	-	277	1,889				
Transferred to Contra Costa Cty.	-	-	-	-	-	37	374				
Total/Month	260	148	106	37	180	549	11,028				
BAD DEBT - WRITE OFFS	March	April	May	June	July	August	Totals				
Total Referred to Collection Agency	\$ 182,006	\$ 190,961	\$ 153,032	\$ 182,090	\$ 211,011	TBD <sup>2</sup>	\$ 7,454,958				
Write-Off % to Billed Revenue	0.40%	0.35%	0.27%	0.29%	TBD <sup>8</sup>	TBD <sup>8</sup>					
<sup>1</sup> Liens filed monthly represents delinquent accounts 4-6 months in arrears.Liens filed monthly represents delinquent accounts 4-6 months in arrears.Liens filed monthly represents delinquent accounts 4-6 months in arrears.											
<sup>2</sup> Information 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.											
<sup>3</sup> 48-hours notices were generated, but not mailed to customers since March 23, 2020. Customers are receiving payment reminders in-lieu of 48-hours notices.											
<sup>7</sup> New CAP Participants and renewals data through April 27, 2021											
<sup>8</sup> Revenue billed information is not available from Accounting as of 9/2/21.											
*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	Hayward	Hercules
Meter	2	1	2	12	2	2	1	2	1	6	4
Illegal Connection	-	-	-	-	-	-	-	-	-	-	-
Hydrant	-	-	-	-	-	-	-	-	-	-	-
Total	2	1	2	12	2	2	1	2	1	6	4
Water Theft Type/City	Oakland	Piedmont	Pinole	Richmond	Rodeo	San Lorenzo	San Leandro	San Pablo	San Ramon	Total as of 9/1/2017	
Meter	237	1	5	69	7	1	5	3	2	365	
Illegal Connection	2	-	-	-	-	-	-	-	-	2	
Hydrant	-	-	-	-	-	-	-	-	-	0	
Total	239	1	5	69	7	1	5	3	2	367	



## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: September 9, 2021

MEMO TO: Board of Directors

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

FROM: Kelly A. Zito, Special Assistant to the General Manager *Andrew*

SUBJECT: EBMUD/EBRPD Liaison Committee Minutes – May 17, 2021

The EBMUD/EBRPD Liaison Committee meeting was called to order at 1:37 p.m. by EBRPD Director Dee Rosario. EBRPD Directors Dee Rosario, Beverly Lane, and Dennis Waespi were present at roll call. EBRPD staff participants included General Manager Sabrina Landreth, Assistant General Manager of Operations Jim O'Connor, Fire Chief Aileen Theile, and Executive Assistant Rachel Arbios. EBMUD Directors Frank Mellon and Andy Katz were present at roll call. EBMUD staff participants included General Manager Clifford Chan, Manager of Customer and Community Services Andrew Lee, Director of Operations and Maintenance David Briggs, Special Assistant to the General Manager Kelly Zito, Director of Engineering and Construction Olujimi Yolo, Director of Water and Natural Resources Michael Tognolini, Manager of Engineering Services Elizabeth Bialek, and Manager of Watershed and Recreation Scott Hill. Members of the public attending included Austin McNerny, Kelly Abram, and Ivette Rivera. All attendees participated remotely via Zoom.

**Moraga Creek Erosion and Flood Control Project (EBMUD).** Manager of Engineering Services Elizabeth Bialek provided an overview of the Moraga Creek Erosion and Flood Control Project. She described the proposed retaining system, site access, and construction staging area by Westchester Street in the Town of Moraga. In 2016 and 2017 trees were removed at the project site for safety reasons and additional tree removal is pending permit approval from the California Department of Fish and Wildlife, U.S. Army Corps of Engineers, and the Regional Water Quality Control Board. The project includes a tree replacement plan. EBMUD has coordinated with EBRPD on project details, design, and community outreach which included a March 16, 2021 community meeting; EBRPD Director Rosario participated in the meeting. Staff anticipates construction will be performed over two seasons and will begin in summer 2021. Community outreach will be ongoing. EBRPD Director Lane asked about noise during construction and EBMUD Director Mellon asked if the drought could accelerate the project timeline. EBMUD Manager of Engineering Services Bialek responded to questions. EBRPD Director Rosario asked if the trail will be rebuilt with concrete; EBRPD staff will provide EBRPD Director Rosario with a response.

**East Bay Watershed Trail Use (EBMUD).** Manager of Watershed and Recreation Scott Hill provided an overview of East Bay watershed trail use. There has been a significant increase in trail use during the pandemic. EBMUD suspended trail use permit requirements from mid-March 2020 through April 2020 to reduce staff contact with the public. Once the suspension ended, the

sale of trail permits increased. For comparison, 460 permits were issued in May 2019 and 2,869 were issued in May 2020. Most watershed trails users are equestrians and bicyclists. Demand for trail use access continues to be high, and compliance with watershed rules and regulations is low. Bicycle Trails Council of the East Bay has requested more trails be open to bicyclists. EBMUD will monitor trail use over the next two years to evaluate whether the surge in trail use continues and will reinstate trail user stakeholder group meetings if significant changes to trail access are being considered. EBRPD Director Lane asked about the necessity of trail use permits and how much of EBRPD police time is dedicated to enforcing trail use permits. EBMUD Manager of Watershed and Recreation Hill and EBMUD Director Mellon responded to questions.

Addressing the Committee were the following: (1) Austin McNerny of Bicycle Trails Council of the East Bay requested increased bicycle access to trails and said the council is open to partnering with EBMUD and EBRPD to educate trail users about trail rules and etiquette; (2) Kelly Abram commented about trail closures during construction at Mission Peak, the necessity of trail use permits, and trail closures during the pandemic; and (3) Ivette Rivera commented on the necessity of trail use permits and suggested EBMUD consider employing licensed arborists and maintaining a tree management plan.

**East Bay Watershed Forest Health (EBMUD).** Manager of Watershed and Recreation Scott Hill provided an overview of East Bay watershed forest management objectives and watershed forest resources which includes native and non-native forest. Forest management is a tool to achieve strategic fire management goals, biodiversity goals, and other resource goals. Approximately 1,500 non-native Monterey Pine trees in the north watershed are dead likely due to age, disease, and drought, and the mortality rate is increasing. Bay Laurels are also dying, and staff is working with forest health specialists to determine the cause. Typically, EBMUD removes an average of 250 dead Monterey Pine trees annually, but the increased mortality rate is outpacing resources. Since December 2020, EBMUD has spent more than 3,800 hours on fuel reduction of pine trees. EBMUD staff will continue working with Cal Fire to determine the cause of mortality in trees and will increase dead tree removal. EBMUD is also collaborating with Moraga – Orinda Fire District on a Cal Fire grant for tree removal. EBRPD Director Waespi raised questions about air quality management while burning felled trees and if there was significant tree mortality near the Redwood Canyon Golf Course in Castro Valley. EBRPD Director Rosario asked if the tree mortality was related to a fungal infection. EBMUD Manager of Watershed and Recreation Hill responded to questions.

**Tree Die-off and Vegetation Management (EBRPD).** Fire Chief Aileen Theile provided an overview of tree die-off and vegetation management in the EBRPD. EBRPD spent \$2.3 million in 2020, and \$20.5 million over the last 10 years, to manage vegetation. Tree mortality is a statewide issue, and a total of 1,001 acres are impacted in the EBRPD. The affected trees include Acacia, Eucalyptus, Monterey Pine, Bay Laurel, and some brush species. EBRPD has formed task forces, mapped areas of concern, and is seeking state and federal funding for tree removal projects. EBRPD Director Waespi asked if the governor's budget adjustments applied to fire safety or tree mortality and if there is a sense of urgency at the state level regarding this issue. EBRPD Fire Chief Theile responded to questions.



**Redwood Canyon Golf Course Update (EBRPD).** Assistant General Manager Jim O'Connor provided the update. The golf course has achieved Audubon Certification, which focuses on the reduction of chemical pesticides and herbicides as well as water conservation. There has been increased community outreach to address accessibility and awareness of the golf course. Golf course operator Touchstone has made capital investments towards drainage and irrigation lake improvements. The golf course irrigation system is well beyond its service life and new irrigation has been installed at seven holes, irrigation work is ongoing, and future work is planned. In response to the 2017 flooding, there are ongoing FEMA repairs. EBRPD continues to support vegetation management. EBMUD Director Mellon and EBRPD Director Waespi expressed appreciation for how Touchstone has operated the golf course, especially during the pandemic.

**Introduction of EBRPD General Manager.** EBRPD Director Rosario introduced new EBRPD General Manager Sabrina Landreth.

**Public Comment.** Kelly Abram inquired about redistricting and if the boundaries are being redrawn for population or gerrymandering.

**Adjournment.** EBRPD Director Rosario adjourned the meeting at 3:23 p.m.

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## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: September 9, 2021

MEMO TO: Board of Directors

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

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Redistricting Ad Hoc Committee Minutes – August 24, 2021

President Doug A. Linney called to order the Redistricting Ad Hoc Committee meeting at 8:52 a.m. He announced that in accordance with the Governor's Executive Order N-08-21, which suspends portions of the Brown Act, a physical location would not be provided for the meeting. Directors John A. Coleman and Marguerite Young were present at roll call. All Directors participated remotely. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Assistant General Counsel Lourdes Matthew, Executive Assistant II Robyn S. Johnson, and Secretary of the District Rischa S. Cole.

**Public Comment.** None.

**Review Redistricting Guidelines and Criteria and Next Steps.** Secretary of the District Rischa S. Cole presented an overview of the draft redistricting guidelines and criteria and responded to questions raised at the June 22, 2021 Redistricting Ad Hoc Committee meeting. Based on input received during the June 22 meeting, staff drafted guidelines and criteria that include information on how the Board will, to the extent possible, adopt provisions of the FAIR MAPS Act as best practices when establishing ward boundary lines; a reference to communities of interest; and updated criteria language to clarify actions to be completed by the Committee and meetings and hearings to be conducted by the full Board. Ms. Cole reviewed provisions of the FAIR MAPS Act and said that due to time constraints and limited resources, the Board would not be following some provisions in the Act, in particular those pertaining to conducting multiple public hearings and translating meeting materials into multiple languages. At the June 22 meeting, the Committee raised questions regarding public use of the District's software to draft and submit ward boundary maps; why special districts were not included in the FAIR MAPS Act; providing accessibility to the public for all Board meetings including livestreamed Redistricting Ad Hoc Committee meetings; clarification on whether the Board is required to hold public hearings for redistricting; if virtual meetings count as public meetings for the purposes of redistricting; and including a redistricting tab or hyperlink on the District's homepage. Ms. Cole reported a redistricting webpage will launch in mid-September and a link to the page will be available under the Announcements section on the District's homepage. The District's redistricting software licensing agreement does not permit use by the public; however, staff is researching free, online mapping tools for public use and will provide an update at the September 28, 2021 Redistricting Ad Hoc Committee meeting. Based on legislative reports, there was opposition to extending the FAIR MAPS Act to special districts, school districts, community college districts and county boards of education. Following the committee hearing in which opponents expressed opposition, the FAIR MAPS Act was amended to apply only to cities and counties. To increase accessibility, staff began using the closed captioning feature in Zoom during the August 10, 2021 Board meetings. Currently, the feature supports only the English language. Staff will research

costs and technical requirements for third-party vendors that provide closed captioning for Zoom meetings in multiple languages. Ms. Cole stated that due to time constraints and resource limitations, staff will not focus efforts on translating redistricting meeting materials but will continue exploring ways to provide greater accessibility for non-English speakers to participate in all Board meetings. Staff will update the Board on these efforts at a future meeting. Ms. Cole and Assistant General Counsel Lourdes Matthew clarified how public hearings and meetings conducted by webinar or teleconference count as public meetings for the purposes of redistricting. Next, Ms. Cole reviewed a draft redistricting activity schedule. The Committee discussed the information presented and the draft schedule. The Committee commented the District wants to maintain an open and transparent process for redistricting efforts and directed staff to adjust redistricting efforts based on the public's interest and potential costs. Ms. Cole and Assistant General Counsel Lourdes Matthew responded to Committee questions regarding adjustments to the redistricting activity schedule; funding for redistricting efforts; public participation options for an East of hills meeting; and public participation during the 2011-2012 redistricting process. The Committee thanked staff for their work and asked for additional information on the level of public interest/participation in the 2011-2012 redistricting efforts; directions for the public on how to use certain browsers to translate redistricting webpages and PDF documents; ensure the public can provide information to the Board in advance of Board meetings or can display redistricting information at Board meetings and hearings; ensure the public understands the redistricting criteria that states no substantive amendments can be made during the 14-day review period prior to the Board's vote on final redistricting plans; alternative dates for the proposed December 21 Special Redistricting Ad Hoc Committee meeting; and an amendment to the redistricting guidelines to clarify the Board will "adhere to provisions of the FAIR MAPS Act as much as reasonable." Staff will present updated draft guidelines and criteria to the Board for consideration at its September 14, 2021 meeting.

The next Redistricting Ad Hoc Committee meeting is scheduled for September 28, 2021.

**Adjournment.** President Linney adjourned the meeting at 9:56 a.m.

CCC/RSC

## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: September 9, 2021

MEMO TO: Board of Directors

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

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Finance/Administration Committee Minutes – August 24, 2021

Chair William B. Patterson called to order the Finance/Administration Committee meeting at 10:03 a.m. He announced that in accordance with the Governor's Executive Order N-08-21, which suspends portions of the Brown Act, a physical location would not be provided for the meeting. Directors John A. Coleman and Andy Katz were present at roll call. All Directors participated remotely. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Director of Finance Sophia D. Skoda, Treasury Manager Robert L. Hannay, Principal Management Analyst Samuel A. Feldman-Crough, Executive Assistant II Robyn S. Johnson, and Secretary of the District Rischa S. Cole.

**Public Comment.** None.

**Monthly Investment Transactions Reports.** Director of Finance Sophia D. Skoda reviewed the June and July 2021 reports. She reported that in June, the portfolio increased from \$658.8 million to \$674.4 million and in July from \$674.4 million to \$710.6 million. Interest received in June added approximately \$7,673 to the portfolio and approximately \$76,197 in July. The portfolio's current interest rate earnings are approximately 0.2 percent overall. The reports will be presented to the Board for consideration at its meeting in the afternoon. The Committee had no questions. It was moved by Director Coleman, seconded by Director Katz, and carried (3-0) by roll call vote to accept the reports.

**Quarterly Financial Reports.** Treasury Manager Robert L. Hannay provided an update on the quarterly payroll and disbursement reports and the quarterly investment report for the period April 1, 2021 through June 30, 2021. There were no real estate transactions conducted during this period. The quarterly reports were filed in compliance with government statutes. It was moved by Director Katz, seconded by Director Coleman, and carried (3-0) by roll call vote to accept the reports.

**Water Infrastructure Finance and Innovation Act (WIFIA) Loan Update.** Principal Management Analyst Samuel A. Feldman-Crough presented an update on the District's activities to secure a WIFIA loan. In October 2020, the District submitted a WIFIA Letter of Interest (LOI) to the U.S. Environmental Protection Agency (EPA). Based on the LOI, in January 2021, the EPA invited the District to submit a formal application to the WIFIA program. At its May 25, 2021 meeting, the Board authorized staff to pay a \$100,000 application fee to EPA. Before paying the non-refundable application fee, Mr. Feldman-Crough reported that in June 2021, staff worked with the District's municipal advisors to complete a final review of historical WIFIA loan rates and reasonable assumptions. The final review determined that over the last 25 years, interest rates typically, favored a slightly lower cost of borrowing for the District. While future interest rates are not predictable, staff believes a WIFIA loan is unlikely to provide savings based on interest rates alone and could in fact have a higher interest cost. He discussed some disadvantages of

WIFIA loans including increased construction costs because of American Iron and Steel requirements, increased reporting requirements, and a lengthy waiver process in cases where materials cannot be found from American suppliers. He said some of the typical advantages of a WIFIA loan compared to revenue bonds would not be beneficial to the District due to the District's high credit ratings, solid existing debt service coverage, flat debt service structure, and manageable capital plans. Based on the final review, staff determined the benefits of a WIFIA loan do not outweigh the likely costs as compared with other alternatives over time and made the decision in late June 2021 to decline to proceed with the application. The District informed the EPA and WIFIA program administrators and the EPA encouraged the District to consider future funding opportunities as needs arise. Mr. Feldman-Crough stated staff will continue to monitor state and federal loan programs to ensure the District is maximizing participation in programs when those programs provide clear financial benefits to the District. The Committee thanked staff for performing the final review before proceeding with the loan application. It was moved by Director Katz, seconded by Director Coleman, and carried (3-0) by roll call vote to accept the report.

**Annual Internal Audit Report.** Internal Auditor Supervisor Barry N. Gardin summarized the results and/or status of the following audits from the Fiscal Year 2021 (FY21) Internal Audit Plan regarding inspection fees; Memorandum of Understanding (MOU) compliance pertaining to fatigue, shift differential pay and the use of standby; purchasing activities including purchase card use; fleet administration; Business Classification Codes; and applicant and outside agency invoicing and receivables. He reported that during this period, staff identified opportunities to enhance procedural controls and improve accountability for assets; however, no significant areas of exposure, material findings, significant control weaknesses, sizeable exposure, or other significant issues warranting immediate Board action were identified. Ongoing audit activities include work on mitigating Information Technology vulnerability; addressing and resolving consumption revenue issues; assessing staff compliance with civil service procedures for testing and hiring; and an assessment of the District's laboratory services. He highlighted the audit objectives in the FY22 Internal Audit Plan and said the District received a report from a customer regarding an employee's improper, personal use of District materials and equipment. Staff investigated and determined there were no findings to substantiate or support the report. It was moved by Director Katz, seconded by Director Coleman, and carried (3-0) by roll call vote to accept the report.

**Adopt New Policy and Approve Revisions to Existing District Policies.** Internal Auditor Supervisor Barry N. Gardin reviewed a new policy which would provide accommodation for lactating employees in accordance with State and Federal law including the California Fair Employment and Housing Act and proposed revisions to the following six existing policies: Policy 3.02 – California Environmental Quality Act Implementation; Policy 3.04 – Coordination of District Construction and Maintenance Work with Other Agencies; Policy 7.01 – Aqueduct and Distribution Pipeline Rights-of-Way Maintenance; Policy 7.11 – Use of District Bay Area Facilities; Policy 7.15 – Climate Action; and Policy 8.04 – Establishing Wastewater Capacity Fees. The policies will be presented to the Board for consideration at its meeting in the afternoon. It was moved by Director Coleman, seconded by Director Katz, and carried (3-0) by roll call vote to support the staff recommendation.

**Adjournment.** Chair Patterson adjourned the meeting at 10:51 a.m.

CCC/RSC