

BOARD OF DIRECTORS EAST BAY MUNICIPAL UTILITY DISTRICT

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

Notice of Time and Location Change

REGULAR CLOSED SESSION 10:30 AM and REGULAR BUSINESS MEETINGS 1:15 PM Tuesday, January 11, 2022

Tuesday, January 11, 2022
Virtual

Notice is hereby given that the Tuesday, January 11, 2022 Regular Closed Session Meeting of the Board of Directors has been rescheduled from 11:00 a.m. to 10:30 a.m.

In accordance with Government Code section 54953(e), the Regular Closed Session Meeting scheduled for 10:30 a.m., and the Regular Business Meeting scheduled for 1:15 p.m., will be conducted via webinar and teleconference only. A physical location will not be provided for these meetings.

Dated: January 6, 2022

Rischa S. Cole

Secretary of the District

Kischa S. Cole

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BOARD OF DIRECTORS EAST BAY MUNICIPAL UTILITY DISTRICT

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

AGENDA

REGULAR CLOSED SESSION

Tuesday, January 11, 2022 10:30 a.m. ** Virtual**

Location

In accordance with Government Code section 54953(e), 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:

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

BROWN ACT BRIEFING:

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

ANNOUNCEMENT OF CLOSED SESSION AGENDA:

- 1. Existing litigation pursuant to Government Code section 54956.9(a):
 - a. *Timothy Alford, et al. v. East Bay Municipal Utility District, et al.* Contra Costa County Superior Court, Case No. MSC16-01348
 - b. Saji Pierce, et al. v. East Bay Municipal Utility District USDC, N.D. Cal., Case No. 3:21-cv-04325-AGT
- 2. Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2): three matters.
- 3. Conference with Labor Negotiators Clifford C. Chan, General Manager; David A. Briggs, Director of Operations & Maintenance; and Winnie W. Anderson, Interim Director of Human Resources, pursuant to Government Code section 54957.6 regarding COVID-19 response—vaccine directive: 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)

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; and Winnie W. Anderson, Interim Director of Human Resources, pursuant to Government Code section 54957.6: Employee Organizations International Union of Operating Engineers, Local 39; American Federation of State, County and Municipal Employees, Locals 444 and 2019; and International Federation of Professional & Technical Engineers, Local 21.

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

REGULAR BUSINESS MEETING

1:15 p.m. ** *Virtual* **

Location

In accordance with Government Code section 54953(e), 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
- Election of 2022 Officers
- 2022 Board Committee Assignment Preferences

ANNOUNCEMENTS FROM CLOSED SESSION:

<u>PUBLIC COMMENT</u>: 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 16 recommendations.)

- 1. Approve the Regular Meeting Minutes of December 14, 2021.
- 2. File correspondence with the Board.

CONSENT CALENDAR: (Continued)

- 3. Award contracts and authorize additional contracts for supplying automobile, truck, and heavy equipment tires for District vehicles and equipment.
 - 3a. Award contracts to the following vendors for supplying automobile, truck, and heavy equipment tires for District vehicles and equipment for beginning on or after January 11, 2022 for five years, in an aggregate amount not to exceed \$3,000,000: Brannon Tire; Bridgestone Americas Tire Operations, LLC; Don's Tire Service, Inc.; Dusty and Sons Tires; East Bay Tire Co.; George Oren Tire Specialist; Hernandez Tires Service; J&O's Commercial Tire Center; Jackson Tire Service Inc.; Morgan Tire of Sacramento, Inc.; Thiel's Tires; and Wingfoot Commercial Tire Systems dba Goodyear Commercial Tire + Service Center.
 - 3b. Authorize additional contracts for supplying automobile and light, medium, and heavy truck tires on an as-needed basis, with vendors that meet District standards and offer pricing at or below the range in the proposed contracts with the vendors above to increase flexibility and ensure vendor availability. The Board of Directors will be notified of additional qualified vendors by means of the General Manager's monthly report.
- 4. Award a sole source contract to Hydranautics for supplying 1,280 reverse osmosis membrane elements for the Richmond Advanced Recycled Expansion Water Project for one year, beginning on or after January 11, 2022 with one option to renew for an additional one-year period for a total cost, after the addition of taxes, including option years, not to exceed \$600,000.
- 5. Authorize an agreement beginning on or after January 11, 2022 with Black & Veatch Corporation in an amount not to exceed \$112,538 to evaluate the business case for a District-wide Advanced Metering Infrastructure project.
- 6. Authorize an agreement beginning on or after January 11, 2022 with Cornerstone OnDemand, Inc., for \$40,000 for one year with two options to renew for additional one-year periods for a total amount, including option years, not to exceed \$125,481 for an online learning management system.
- 7. Authorize an amendment to the agreement previously authorized under Board Motion No. 079-13 with the City of Emeryville (Emeryville) to include a 35 percent sewer service charge credit for Emeryville customers participating in the District's Customer Assistance Program.
- 8. Authorize an amendment to the Power Purchase Agreement previously authorized under Board Motion No. 118-20 with Solar Star Bear Creek, LLC to increase the agreement amount by \$517,000 to a total amount not to exceed \$700,000 for Photovoltaic-generated electricity.

CONSENT CALENDAR: (Continued)

- 9. Authorize actions related to replacing and supporting the District's construction management information system.
 - 9a. Authorize an agreement beginning on or after January 11, 2022 with Sage Method in an amount not to exceed \$338,395 for implementation services to replace the District's current construction management information system (CMIS).
 - 9b. Authorize an agreement beginning on or after January 11, 2022 with Kahua, Inc., for \$1,172,500 for five years with five options to renew for additional one-year periods for a total amount, including option years, not to exceed \$2,747,504 for software licensing and support for the CMIS.
- 10. Authorize an agreement with Dynamic Systems, Inc., for Oracle database software and hardware technical support services during the period of January 2022 to July 2023 with one option to renew for an additional one-year period for a total amount, including the option year, not to exceed \$1,650,000.
- 11. Authorize agreements and authorize additional agreements for welding services.
 - 11a. Authorize agreements with the following service providers for welding services during the period January 12, 2022 to June 30, 2023, in an aggregate amount not to exceed \$250,000: Eyeball Enterprise, Inc.; Ferguson Welding Service, Inc.; John Arthur Welding, Inc.; Larsson Welding; Mid Mountain Mechanical, Inc.; Nicole Welding, Inc.; and Woods Welding.
 - 11b. Authorize additional agreements for welding 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.
- 12. Authorize actions related to engineering support during construction, construction oversight, and construction of the Fuel System Improvements Project.
 - 12.1 Authorize an amendment to the agreement previously authorized under Board Motion No. 066-19 with Tait Environmental Services, Inc., to increase the agreement amount by \$1,558,270 to a total amount not to exceed \$2,505,056 for engineering support during construction and construction oversight under the Fuel System Improvements Project.
 - 12.2 Award a contract to the lowest responsive/responsible bidder, Mitchell Engineering, in the amount of \$15,499,000 for construction of Fuel System Improvements under Specification 2147.
- 13. Authorize the General Manager to execute a one-year temporary water transfer option agreement (Agreement) with Yuba County Water Agency (YCWA) and Contra Costa Water District. This agreement provides EBMUD the option to purchase up to 10 thousand acre-feet of transfer water from YCWA in calendar year 2022 plus any additional YCWA water which becomes available to EBMUD, and to spend up to \$300,000 to prepare for the potential water transfer, while reserving for the Board the authority to determine whether to exercise the water purchase option at a future public meeting.

CONSENT CALENDAR: (Continued)

- 14. Approve the assignment of the agreement previously authorized under Board Motion No. 124-19 from G4S Secure Solutions (USA), Inc., to Universal Protection Service, LP dba Allied Universal Security Services for contract security services.
- 15. Approve the assignment and transfer of the agreement previously authorized under Board Motion No. 205-07 from Ginn & Crosby, LLP to GinnLaw, PC for specialized legal services related to construction, public contracts and procurement, claims, and litigation.
- 16. Approve indemnification of Alameda County as part of the conditional use permit application for the Quarry Site Restoration Project.

<u>DETERMINATION AND DISCUSSION:</u>

- 17. Appoint Manager of Distribution Maintenance and Construction. (Resolution)
- 18. Legislative Update:
 - Federal Initiatives for 2022
 - Update on Legislative Issues of Interest to EBMUD
- 19. Make requisite findings and adopt a resolution to continue to hold meetings of the Board of Directors via teleconference under Government Code section 54953(e) until such time as the State of Emergency resulting from the COVID-19 pandemic no longer impacts the ability of Board members to meet safely in person. (Resolution)
- 20. Take actions related to a District emergency resulting from a catastrophic failure of a portion of the District's South Interceptor. (Resolution)
 - 20.1. Ratify the General Manager's January 4, 2022 declaration of a District emergency in accordance with Policy 7.03 Emergency Preparedness/Business Continuity because of a catastrophic failure of a portion of the District's South Interceptor.
 - 20.2. Authorize expenditure of sums as needed in response to such emergency.
- 21. Consider authorizing actions related to accepting Redistricting Proposal 1.
 - 21a. Consider and accept Redistricting Proposal 1 (Proposal 1) as recommended by the Redistricting Ad Hoc Committee for review and presentation at upcoming noticed public hearings.
 - 21b. In accordance with California Elections Code section 22001, set a public hearing for February 8, 2022, to present Proposal 1 as recommended by the Redistricting Ad Hoc Committee for public review and comment, and a public hearing for March 8, 2022, where the Board of Directors will consider adopting Proposal 1 to establish the East Bay Municipal Utility District ward boundaries as a result of the 2020 federal census.

DETERMINATION AND DISCUSSION: (Continued)

- 22. General Manager's Report:
 - Water Supply Update
 - EBMUD Biennial Report for Fiscal Years 2020-2021
 - Six-Month Forecast of Board Committee and Workshop Agenda Topics for 2022 and Summary of 2021 Committee and Workshop Topics
 - 2021 Interdepartmental Committees Annual Report
 - Monthly Report December 2021

REPORTS AND DIRECTOR COMMENTS:

- 23. Committee Reports:
 - Planning
 - Legislative/Human Resources
- 24. Other Items for Future Consideration.
- 25. Director Comments.

ADJOURNMENT:

The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, January 25, 2022.

Disability Notice

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

Document Availability

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

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BOARD CALENDAR

Date	Meeting	Time/Location	Topics
Tuesday, January 11	Planning Committee Legislative/Human Resources Committee	8:45 a.m. Virtual 9:15 a.m. Virtual	Wet Weather Consent Decree Implementation Update Federal Initiatives for 2022 Diversity, Equity, and
	Board of Directors	10:30 a.m. Virtual 1:15 p.m. Virtual	Inclusion Strategic Plan DraftClosed SessionRegular Meeting
Monday, January 17	Martin Luther King, Jr. Day		District Offices Closed
Tuesday, January 25	Sustainability/Energy Committee	TBD	
	Finance/Administration Committee	Cancelled	
	Diversity, Equity, and Inclusion Strategic Plan Workshop	TBD	
	Board of Directors	11:00 a.m. TBD 1:15 p.m. TBD	Closed SessionRegular Meeting
Tuesday, February 8	Planning Committee	TBD	
	Legislative/Human Resources Committee	TBD	
	Customer Assistance Program Workshop	TBD	
	Board of Directors	11:00 a.m. Virtual 1:15 p.m. Virtual	Closed SessionRegular Meeting
2022 Board Committee MembersFinance/AdministrationPatterson {Chair}, Coleman, KatzLegislative/Human ResourcesColeman {Chair}, McIntosh, PattersonPlanningYoung {Chair}, McIntosh, MellonSustainability/EnergyYoung {Chair}, Katz, MellonRedistricting Ad HocColeman, Linney, Young			



Closed Session and Regular Business Meetings Tuesday, January 11, 2022 10:30 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/i/97065086667?pwd=eUdZSGh5SG82akZiRDF2UDg2b0IvUT09

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

To *observe* the public portion of the 10:30 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/

EAST BAY MUNICIPAL UTILITY DISTRICT Office of the General Counsel

DATE: January 6, 2022

MEMO TO: Board of Directors

FROM: Derek McDonald, General Counsel

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

Prior to adjourning for closed session at the January 11, 2022 Board meeting, the Office of General Counsel will present to the Board its annual Brown Act and Ethics Update. Enclosed please find the packet of documents relevant to this presentation, as follows:

- 1. Power Point Presentation Annual Brown Act and Ethics Update
- 2. Policy 6.04 Ethics of the EBMUD Board of Directors
- 3. Relevant Provisions of the Brown Act
- 4. Sierra Watch v. Placer County
- 5. The Hon. Margo A. Raison, Attorney General Opinion No. 18-201
- 6. Regulations Regarding Behested Payments
- 7. Government Code § 85320 (as amended by Assembly Bill 319)
- 8. Hood Advice Letter, No. A-21-046
- 9. Hood Advice Letter, No. A-21-070
- 10. Byrd Advice Letter, No. A-20-134

DM:ctd

Attachments

Document 1

Power Point Presentation

Annual Brown Act and Ethics Update

Annual Brown Act and Ethics Update

January 22, 2022

Background and Purpose



- Board Resolution 33414-04, adopted March 23, 2004
 - Adopted Policy No. 6.04, "Ethics of the EBMUD Board of Directors"
 - Mandates: "Policy 6.4 shall be annually reviewed by the Board of Directors, together with a review of the Ralph M. Brown Act, at the first meeting of the Board in each calendar year, or as soon thereafter as practicable."

Outline of Today's Presentation



- Review of Ethics Policy No. 6.04
- Update on Legal Developments in 2021
 - The Ralph M. Brown Act
 - Conflicts of Interest under the Political Reform Act
 - Conflicts of Interest under Government Code § 1090

Policy No. 6.04 Ethics of the EBMUD Board of Directors



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

Policy No. 6.04 Ethical Duties Under Policy 6.04



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

The Ralph M. Brown Act



Purpose of the Brown Act

[P]ublic agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

(Gov. Code § 54950 [emphasis added].)

 A member of the public shall not be required, as a condition to attendance at a meeting ...to fulfill any condition precedent to his or her attendance. (Gov. Code § 54953.3.)

The Ralph M. Brown Act Assembly Bill 361 (Rivas)



Amended section 54953 of the Brown Act to allow governing bodies to hold meetings solely via teleconference so long as:

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

The Ralph M. Brown Act



Required Findings under AB 361

AB 361 requires the Board to meet "not later than" every 30 days to make these findings by majority vote:

- A. The legislative body has reconsidered the circumstances of the state of emergency.
- B. Any of the following circumstances exist:
 - i. The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - ii. State or local officials continue to impose or recommend measures to promote social distancing.

The Ralph M. Brown Act Provision of Board Meeting Documents



Senate Bill 274 (Wieckowski)

- The Brown Act previously required a public entity to <u>mail</u> meeting agendas and packets to members of the public upon request.
- Now a public entity must email the agenda and packets, or a web link to these documents, upon request for a copy of the documents via email, if technologically feasible.

• Sierra Watch v. Placer County

- Confirmed that Board documents must be made available to public for inspection 72 hours prior to meeting.
- Posting online and placing in closed clerk's office doesn't count.

The Ralph M. Brown Act



• Sierra Watch v. Placer County (cont.)

- O Govt. Code § 54957.5 states that if a writing on an agenda item is provided to the governing body less than 72 hours before the meeting, it must be 1) made available for public inspection 2) at a public office or location that the agency shall designate for this purpose 3) at the time the writing is distributed to the members of the body. The agency may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.
- County argued that <u>placing</u> documents in clerk's office after hours at the time they were sent to Supervisors, where they would be available for inspection the next day, complied with the law. Court rejected this position.
- o In unpublished part of opinion, Court also rejected the project approval as violating Brown Act's agenda requirements.

The Ralph M. Brown Act Attorney General Opinion 18-201



Background

- Five local agencies created the Indian Wells JPA, with one representative from each agency, to manage a Groundwater Sustainability Plan. The JPA had the authority to impose penalties for groundwater extractions in violation of the plan.
- Committee members took public comment at open meetings of their respective authorities on matters pending before the JPA and then advised their JPA representative with respect to those pending matters.

The Ralph M. Brown Act Attorney General Opinion 18-201



- Question 1: Does the Brown Act prohibit JPA appointees from discussing a matter pending before JPA with their respective member agencies at those agencies' separately held open meetings?
- Opinion: No, because such discussions do not involve collective deliberation by a majority of members of any governing body outside its respective governing meeting.

The Ralph M. Brown Act Attorney General Opinion 18-201



- Question 2: Is it a violation of procedural due process if a member agency discusses with its JPA appointee at an open meeting how to decide an adjudicatory matter pending before the JPA?
- *Opinion:* No clear conclusion, but precedent suggests due process could be violated.

The member agency's discussion of how to vote a particular way could lead the appointee to rely on extrinsic evidence or prejudge the matter. And it could also create varying degrees and types of pressure on the appointee. The result could very well be a risk of actual bias or prejudgment too high to be constitutionally tolerable. (104 Ops.Cal.Atty.Gen. 34, (2021).)



Governs:

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

Political Reform Act Conflicts of Interest - Overview



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

Political Reform Act Conflicts of Interest – Behested Payments



- A "behested payment" is a payment made at the behest of a candidate or elected officer for legislative, governmental or charitable purposes.
- Not considered gifts nor political contributions.
- Must be reported to FPPC within 30 days following date on which the payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made.

Political Reform Act Conflicts of Interest - Behested Payments



New Regulations

- 2 CCR § 18424: Requires description of relationship between recipient nonprofit and elected officer or immediate family member in disclosure.
- 2 CCR § 18424.1: Provides a "good faith estimate" procedure when exact amount of behested payment is difficult to ascertain within 30 days of reporting requirement.
- 2 CCR § 18424.2: Clarifies that when an elected official 1) acts in concert with a charitable organization and 2) is "featured" in a charitable fundraising solicitation, all resulting raised funds must be reported.



Campaign Finance - Assembly Bill 319 (Valladares)

- Former state law prohibited contributions and expenditures (and solicitation or receipt of such) from foreign governments and foreign "principals" in connection with state or local ballot measures.
- This bill extends the prohibition to state and local candidate elections.
- A "foreign principal" includes any <u>person</u> outside the United States, unless the person is a citizen of the United States or a lawfully-admitted permanent resident of the United States.



Carillion Boulevard Corridor Plan FPPC Advice Letters

Facts:

- City of Galt was considering adoption of a Carillion Boulevard Corridor Plan to reduce traffic and promote alternative modes of transportation along the 2.2mile corridor.
- Project would include reduction in traffic lanes from four to two, installation of bike lanes and installation of roundabouts.
- CEQA documents noted that the project would reduce overall passenger vehicle use and thus would likely reduce traffic noise.



Carillion Boulevard Corridor Plan FPPC Advice Letters

Questions:

- May Councilmember Lozano, who owns residential property between 500 and 1000 feet from the project site, take part in decisions related to the Corridor Plan?
- May Councilmember Papineau, who owns residential property less than 500 feet from the project site, take part in decisions related to the Corridor Plan?
- May Vice Mayor Sandhu, who owns residential property less than 500 feet from the project site, take part in decisions related to the Corridor Plan?



Carillion Boulevard Corridor Plan FPPC Advice Letters

Analysis:

• Basic Rule: A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a <u>material</u> financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on certain specified economic interests, including "[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more."



Carillion Boulevard Corridor Plan FPPC Advice Letters

Analysis (continued):

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



Carillion Boulevard Corridor Plan FPPC Advice Letters

Analysis (continued):

- Councilmember Lozano:
 - Property is located between 500 and 1000 feet from the project site.
 - Corridor Plan would not affect the development potential, highest or best use, market value or income producing potential of property. It would not substantially alter traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality, as evidenced by the findings of the Initial Study/Mitigated Negative Declaration.
 - Conclusion: Decisions would not have a reasonably foreseeable, material financial effect on Councilmember Lozano's real property and, therefore, he may take part in the decisions pertaining to the Corridor Plan.



Carillion Boulevard Corridor Plan FPPC Advice Letters

Analysis (continued):

- Councilmember Papineau and Vice Mayor Sandhu:
 - Properties are located less than 500 feet from the project site, so a heightened standard applies.
 - CEQA documents noted a reduction in traffic noise, congestion and traffic idling, and improved safety and increased bicycle access, which could affect market values of nearby properties.
 - Conclusion: There is no clear and convincing evidence Corridor Plan would not have a measurable affect on properties and so Councilmember Papineau and Vice Mayor Sandhu have disqualifying interests and must recuse themselves from decisions pertaining to the project.

Hood Advice Letter, No. A-21-046

Political Reform Act



Carillion Boulevard Corridor Plan FPPC Advice Letters

Question:

 Would the "public generally" exception allow Vice Mayor Sandhu to participate in decisions related to the Corridor Project?

Analysis:

- A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that
 - A significant segment of the public is affected and
 - The effect on his or her financial interest is not unique compared to the effect on the significant segment.
- A significant segment of the public includes "[a]t least 15
 percent of residential real property within the official's
 jurisdiction if the only interest an official has in the
 governmental decision is the official's primary residence."

Political Reform Act



Carillion Boulevard Corridor Plan FPPC Advice Letters

Analysis (continued)

- 15 percent of the City's residential real property is located less than (at most) 750 feet from Carillion Boulevard.
- The Vice Mayor's property is located over 300 feet from the project but involves several turns on residential streets to reach and is separated from the project by a sound wall.
- Considering the size and scope of the project, its "less than significant" impacts on noise and traffic levels, as well as the distance and physical barriers between the Vice Mayor's property and Carillion Boulevard, there would be no distinguishable difference in impacts on his property compared to other residences within 750 feet from Carillion Boulevard.

Political Reform Act



Carillion Boulevard Corridor Plan FPPC Advice Letters

Analysis (continued)

- Similarly, given the distance, physical barriers, and several turns, any potential effect on the market value of Vice Mayor Sandhu's real property would be indistinguishable from the effect on other properties within 750 feet from Carillion Boulevard.
- **Conclusion:** The foreseeable effect on Vice Mayor Sandhu's residence is indistinguishable from the effect on the public generally and he may participate in decisions related to the Project.

Hood Advice Letter, No. A-21-070

Government Code § 1090 Purpose



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

Government Code § 1090 Remedies for Violation



- An officer or employee found guilty of "willfully" violating section 1090 is subject to a fine of not more than \$1000 or imprisonment in state prison and is forever barred from holding office.
- Applies to any individual who willfully aids or abets the violation, even if individual does not have a financial interest in the contract.
- Any contract made in violation of section 1090 is void.



Facts:

- Modesto Irrigation District Board member Larry Byrd voted to adopt a groundwater replenishment program (GRP) to protect groundwater basin.
- GRP allowed farms of at least 10 acres outside MID's boundaries but within its sphere of influence to apply to receive irrigation water from MID at \$60/af in lieu of groundwater pumping.
- Byrd is a partner in almond grower AB La Grange.



Question:

• Does Section 1090 prohibit Board Member Byrd from taking part in, and the MID from entering into, any contract with AB La Grange to participate in a groundwater replenishment program?

Conclusion:

 Section 1090 would prohibit Board Member Byrd from taking part in, and the MID from entering into, any contract with AB La Grange involving the GRP because of his prohibitory financial interest in any such contract.



Analysis:

- "Participation" in making a contract includes an official's participation in a policy decision to create the program under which a contract will later be executed.
- Since Byrd participated in adoption of GRP, he would have a prohibited financial interest in any contract between MID and AB La Grange under the program, and both he and MID would be prohibited from entering into any such contract.



Analysis - Exception Does Not Apply:

- Under the "Public Services Generally" exemption, an officer is deemed not to have an interest in a contract for services generally provided by the public body on the same terms and conditions as if the officer was not a member of the public body.
- Exception applies only to services provided uniformly to all customers, and for which rates and charges have been clearly established.
- The exception does not apply where administering officials are required to exercise discretion and judgment in providing the service.
- Here, the GPR application contained limiting criteria not applicable to all customers, such that exception would not apply.

Conclusion



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

(1-866-ASK-FPPC)

Document 2

Policy 6.04

Ethics of the EBMUD Board of Directors



Policy 6.04

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ETHICS OF THE EBMUD BOARD OF DIRECTORS

SUPERSEDES

26 FEB 19

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

Promote ethical behavior in the conduct of District business.

Purpose and Scope

The proper operation of EBMUD requires that Board members remain objective and responsive to the needs of the public, make decisions within the proper channels of governmental structure, and not use public office for personal gain. To further these objectives, certain ethical principles govern the conduct of each member of the East Bay Municipal Utility District Board of Directors.

This policy promotes awareness of ethics, integrity and fidelity as critical elements in Board members' conduct and in achievement of the EBMUD mission. It references relevant policies, practices, and procedures that provide the legal framework and operational guidelines for addressing ethical issues.

Responsibilities of Public Office

EBMUD Board members are dedicated to the concepts of effective and democratic government by responsible elected officials. Board members:

- Uphold the Constitution of the United States and the Constitution of the State of California, and carry out the laws of the nation, the state and local governmental agencies;
- Comply with applicable laws regulating their conduct, including open government, conflict of interest, and financial disclosure laws;
- Fulfill all applicable training requirements, including attending two (2) hours of ethics training (AB 1234) and two (2) hours of sexual harassment prevention training and education (AB 1661) every two (2) years; and
- Work in full cooperation with other public officials, unless they are legally prohibited from doing so.

[California Government Code Section 1360; California Government Code 53235; California Government Code Section 87200; California Government Code Section 53237; Article 20, Section 3 of the California Constitution.]

Fair and Open Processes Involving the Public

EBMUD Board members promote fair and open public processes. Board members, and persons elected but who have not yet assumed office as members of the Board, fully comply with California's open meeting law for public agencies (the Brown Act).

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

Fair and Equal Treatment

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

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• Board members, in performance of their official duties and responsibilities, will not discriminate against or harass any person on the basis of race, color, religion, creed, sex, gender (including breastfeeding), gender identity (including transgender status), gender expression, marital or registered domestic partnership status, age for individuals forty or older, national origin, ancestry, disability (mental and physical), medical condition (cancer and genetic characteristics), genetic information, sexual orientation, military and veterans status, family or medical leave status, pregnancy (including childbirth or related medical condition), pregnancy disability leave status, or any other status protected by federal, state and/or local laws.

- Board members will not grant any special consideration, treatment, or advantage to any person or group beyond that available to every other person or group in similar circumstances.
- Board members will cooperate in achieving the equal opportunity objectives of EBMUD.

[See, e.g., Article 1, Section 31 of the California Constitution; Age Discrimination in Employment Act of 1967; Americans with Disabilities Act Amendments Act of 2008; Fair Employment and Housing Act; Rehabilitation Act of 1973; Title VII of the Civil Rights Act of 1964; California Labor Code Section 1102. See also EBMUD's Policy 6.06, Equal Employment Opportunity (EEO); Policy 6.08, Contract Equity Program; Policy 2.26, Prevention of Workplace Harassment; and Policy 2.02, Accommodation for Individuals with Disabilities in the Workplace.]

Proper Use and Safeguarding of EBMUD Property and Resources

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

- Board members will safeguard EBMUD property, equipment, moneys, and assets against unauthorized use or removal, as well as from loss including criminal acts or breach of trust.
- A Board member will not ask or require an EBMUD employee to perform services for the personal benefit or profit of a Board member or employee.
- Each Board member will protect and properly use any EBMUD asset within his or her control, including information recorded on paper or in electronic form.
- Board members will maintain written records, including expense accounts, in sufficient detail to reflect accurately and completely all transactions and expenditures made on EBMUD's behalf.
- Board members will adhere to District policies.

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

Use of Confidential Information

Board members will safeguard confidential information.

Board members will not disclose information that legally qualifies as confidential to unauthorized persons without approval of the Board of Directors. This includes information that (1) has been received for, or during, a closed session Board meeting, (2) is protected

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from disclosure under the attorney/client or other evidentiary privilege, or (3) is not disclosable under the California Public Records Act.

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

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

Conflict of Interest

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

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

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

Soliciting Political Contributions

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

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

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

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Incompatible Offices

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

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

Board Member-General Manager Relationship

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

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

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

Exercise Responsible Financial Management

The Board ensures the District exercises responsible financial management.

- The Board ensures that EBMUD maintains a system of auditing and accounting that completely and at all times shows the financial condition of the District in accordance with generally accepted accounting principles and legal requirements.
- The Board retains an independent auditor who conducts an annual audit of the District's books, records and financial affairs. The auditor will meet with the Board's Finance/Administration Committee at the conclusion of the audit each year to review the audit results and recommendations.

[MUD Act Section 11889.]

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

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

- The General Manager has primary responsibility for ensuring compliance with the District's personnel policies and procedures, and ensuring that District employees do not engage in improper activities, for investigating allegations of improper activities, and for taking appropriate corrective and disciplinary actions. The Board ensures that the General Manager is operating the District according to law and the policies approved by the Board.
- Board members will disclose to the General Manager, to the extent not expressly
 prohibited by law, improper activities within their knowledge. Board members will not
 interfere with the General Manager's responsibilities in identifying, investigating and
 correcting improper activities, unless the Board determines the General Manager is
 not properly carrying out these responsibilities.
- A Board member will not directly or indirectly use or attempt to use the authority or
 influence of his or her position to intimidate, threaten, coerce, command or influence
 any other person for the purpose of preventing such person from acting in good faith
 to bring to the attention of the General Manager or the Board any information that, if

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true, would constitute: a work-related violation by a Board member or District employee of any law or regulation, gross waste of District funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of a District official or employee, use of a District office or position or of District resources for personal gain, or a conflict of interest of a District Board member or District employee.

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

Directors'
Compensation and
Expense
Reimbursement

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

- EBMUD Board members receive monthly compensation in an amount set at a public meeting of the Board of Directors. Board members must attend a minimum of 50% of their assigned meetings. Meetings include regular business meetings, standing committee meetings, special meetings, joint powers authority meetings, retirement board meetings, and closed session meetings. Salary shall not be paid to a director for any month in which he or she has not attended the minimum number of meetings unless the Board President excuses the absence(s) for good cause. Good cause includes, but is not limited to, a Board member's illness, family emergency, or schedule conflict directly related to the business and interests of the District.
- Any Board member arriving 15 or more minutes late for a Board or Committee
 meeting will be considered absent from that meeting. Such absences will be taken into
 account when determining the minimum number of meetings attended for
 compensation during that period. Committee chairs or presiding officers may excuse
 late arrivals, at their discretion, due to unforeseen circumstances.
- Each Board member is encouraged to participate in outside activities and
 organizations that further the interests of the District. Board members do not receive
 compensation for attendance at non-District activities. Expenses incurred by Board
 members in connection with such activities are reimbursable, where authorized in
 advance or subsequently ratified by the Board President. No personal gain or loss to a
 Board member is intended. The following rules apply:
 - a) All expenses must be incurred in compliance with Policy 4.14, *Reimbursement of Director Expenses*. Any expense that is not specified in Policy 4.14 must be approved in a public meeting by the Board, before it is incurred.
 - All expenses must be reasonable and necessary and Board members will exercise prudence in all expenditures, including transportation, food, lodging, telephone, and technology-related charges.
 - c) Each Board member must use government and group rates offered by a transportation or lodging provider when available.
 - d) EBMUD does not provide credit cards to Board members. Upon incurring expenses, Board members will submit a reimbursement request, accompanied by evidence of payment of such expenses that will meet the District's requirements.
 - e) At the next Board of Directors meeting, each official shall briefly report on meetings attended at District expense. If multiple officials attended, a joint report may be made.

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

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Candidate's Statement

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

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

Violation of Ethics Policy

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

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

Authority

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

As amended by Motion No. 041-05, March 8, 2005

As amended by Resolution No. 33577-07, January 9, 2007 As amended by Resolution No. 33883-12, June 26, 2012 As amended by Resolution No. 35008-16, October 25, 2016 As amended by Resolution No. 35132-19, February 26, 2019 As amended by Resolution No. 35221-21, April 27, 2021

References

See footnotes in above sections.

References are available for public review in the Office of the District Secretary.

Resolution No. 35000-16, August 9, 2016



Document 3

Relevant Provisions of the Brown Act

West's Annotated California Codes Government Code (Refs & Annos)

Title 5. Local Agencies (Refs & Annos)

Division 2. Cities, Counties, and Other Agencies (Refs & Annos)

Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies (Refs & Annos) Chapter 9. Meetings (Refs & Annos)

West's Ann.Cal.Gov.Code § 54950

§ 54950. Declaration, intent; sovereignty

Currentness

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Credits

(Added by Stats.1953, c. 1588, p. 3270, § 1.)

West's Ann. Cal. Gov. Code § 54950, CA GOVT § 54950 Current with all laws through Ch. 770 of 2021 Reg.Sess.

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Division 2. Cities, Counties, and Other Agencies (Refs & Annos)

Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies (Refs & Annos) Chapter 9. Meetings (Refs & Annos)

West's Ann.Cal.Gov.Code § 54953

§ 54953. Meetings to be open and public; attendance; teleconferencing

Effective: September 16, 2021 Currentness

<Section operative until Jan. 1, 2024. See, also, § 54953 operative Jan. 1, 2024.>

<For Executive Order N-15-21 (2021 CA EO 15-21), relating to the applicability of Assembly Bill 361 and provisions governing teleconference meetings, in light of the COVID-19 pandemic, see Historical and Statutory Notes under Education Code § 89305.6.>

- (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.
- (b)(1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.
- (2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.
- (3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.
- (4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

- (c)(1) No legislative body shall take action by secret ballot, whether preliminary or final.
- (2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.
- (3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.
- (d)(1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.
- (2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.
- (3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.
- (e)(1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:
- (A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- (B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

- (C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
- (2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:
- (A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.
- (B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.
- (C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.
- (D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.
- (E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.
- (F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.
- (G)(i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.
- (ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

- (iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.
- (3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:
- (A) The legislative body has reconsidered the circumstances of the state of emergency.
- (B) Any of the following circumstances exist:
- (i) The state of emergency continues to directly impact the ability of the members to meet safely in person.
- (ii) State or local officials continue to impose or recommend measures to promote social distancing.
- (4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).
- (f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

Credits

(Added by Stats.1953, c. 1588, p. 3270, § 1. Amended by Stats.1988, c. 399, § 1; Stats.1993, c. 1136 (A.B.1426), § 4, operative April 1, 1994; Stats.1993, c. 1137 (S.B.36), § 4, operative April 1, 1994; Stats.1994, c. 32 (S.B.752), § 4, eff. March 30, 1994, operative April 1, 1994; Stats.1997, c. 253 (S.B.138), § 2; Stats.1998, c. 260 (S.B.139), § 1; Stats.2005, c. 540 (A.B.1438), § 1; Stats.2012, c. 209 (S.B.475), § 1; Stats.2013, c. 257 (S.B.751), § 1; Stats.2016, c. 175 (S.B.1436), § 1, eff. Jan. 1, 2017; Stats.2017, c. 137 (A.B.428), § 1, eff. Jan. 1, 2018; Stats.2021, c. 615 (A.B.474), § 204, eff. Jan. 1, 2022, operative Jan. 1, 2023; Stats.2021, c. 165 (A.B.361), § 3, eff. Sept. 16, 2021.)

West's Ann. Cal. Gov. Code § 54953, CA GOVT § 54953 Current with all laws through Ch. 770 of 2021 Reg. Sess.

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West's Ann.Cal.Gov.Code § 54953.3

§ 54953.3. Conditions to attendance

Currentness

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

Credits

(Added by Stats.1957, c. 85, p. 664, § 1. Amended by Stats.1981, c. 968, § 28.)

West's Ann. Cal. Gov. Code § 54953.3, CA GOVT § 54953.3 Current with all laws through Ch. 770 of 2021 Reg. Sess.

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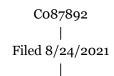
Sierra Watch v. Placer County

69 Cal.App.5th 1 Court of Appeal, Third District, California.

SIERRA WATCH, Plaintiff and Appellant,

v.

PLACER COUNTY et al.,
Defendants and Respondents;
Squaw Valley Real Estate et al., Real
Parties in Interest and Respondents.



Certified for Partial Publication.

Synopsis

Background: Environmental organization filed petition for writ of mandate and complaint for injunctive and declarative relief alleging that approval of resort development project by county board of supervisors violated the Ralph M. Brown Act based on county's failure to make memorandum explaining change to proposed development agreement available for public inspection at time it was sent to board less than 72 hours before open meeting. Following bench trial, the Superior Court, Placer County, No. SCV0038917, Michael Jones, J., denied petition. Environmental organization appealed.

[Holding:] The Court of Appeal, Blease, J., held that county violated Ralph M. Brown Act by placing copy of memorandum in county clerk's office after hours.

Affirmed in part and reversed in part.

West Headnotes (3)

[1] Counties \leftarrow Meetings

County violated Ralph M. Brown Act requirement to make a writing available for public inspection at time writing was distributed to county board of supervisors, if writing

was distributed to board members within 72 hours of an open meeting, by placing copy of memorandum explaining change to proposed resort development agreement in county clerk's office after hours, even though memorandum was placed in office at same time it was emailed to board members and office was a place where records were available for public inspection, since public could not actually inspect memorandum until office reopened the following morning. Cal. Gov't Code § 54957.5(b).

[2] Counties • Meetings

Counties cannot satisfy the Ralph M. Brown Act requirement to make a writing available for public inspection at the time the writing is distributed to the county board of supervisors, if the writing is distributed to the board members within 72 hours of an open meeting, merely by posting materials online. Cal. Gov't Code § 54957.5(b).

[3] Statutes • Relation to plain, literal, or clear meaning; ambiguity

To justify departing from a literal reading of a clearly worded statute, the results produced must be so unreasonable the Legislature could not have intended them.

**196 APPEAL from a judgment of the Superior Court of Placer County, Michael W. Jones, Judge. Reversed. (Super. Ct. No. SCV0038917)

Attorneys and Law Firms

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BLEASE, J.

*4 In 2016, Placer County (the County) approved a project to develop a resort on about 94 acres near Lake Tahoe. Sierra Watch afterward challenged the County's approval in two lawsuits, both of which are now on appeal. In one of its suits, it alleged the County's environmental review for the project was inadequate. In another, it alleged the County approved the project in violation of the Ralph M. Brown Act **197 (Brown Act, Gov. Code, § 54950 et seq.) — an act intended to facilitate public participation in local government decisions.

*5 This appeal concerns Sierra Watch's Brown Act allegations and involves two of the act's requirements. Its first claim concerns section 54957.5 of the Brown Act. Under that statute, in the event a county distributes to its board of supervisors any writing pertinent to an upcoming board meeting less than 72 hours before that meeting, the county must make that writing "available for public inspection" at a county office "at the time the writing is distributed" to the board. We consider here two competing interpretations of this statute. To satisfy section 54957.5's requirements, must the writing simply be placed in a county office that allows for public inspection of documents "at the time the writing is distributed" to the board, or must the writing be placed in this office and actually available for public inspection "at the time" of distribution? Considering the statute's plain language and purpose, we find the latter is true. In most instances, the distinction between the two interpretations is irrelevant, as a writing is generally available for public inspection at the moment it is placed in a location allowing for public inspection. But that is not true when, as in this case, the county places the writing in a county office at a time the office is closed to the public — for example, on a weekend. In that event, the writing is not actually available for public inspection until the office reopens to the public, and so is not available at the time required under section 54957.5.

Sierra Watch's second claim concerns section 54954.2 of the Brown Act. Under that statute, counties must post an agenda before each board meeting "containing a brief general description of each item of business to

be transacted or discussed at the meeting." The County here, in its agenda, informed the public that its board would consider approving a development agreement that its planning commission had recommended. But in the end, the County's board never considered that particular agreement. It instead considered and then approved a materially revised development agreement that County staff, in consultation with the project applicant and another party, had prepared the night before the meeting. The question we consider is whether the board's consideration of this revised agreement, rather than the one referenced on the County's agenda, rendered its agenda misleading. We find it did.

Because the trial court found differently on both of these issues, we reverse in part. But although we find the County's conduct violated the Brown Act, we reject Sierra Watch's request that we vacate the County's approvals.

*6 BACKGROUND

Ι

Factual Background

In 2011, Squaw Valley Real Estate LLC (Squaw) proposed a project titled the Village at Squaw Valley Specific Plan, which involves a proposed development on about 94 acres in Olympic Valley (formerly known as Squaw Valley). Shortly after, the County began environmental review for the project under the California Environmental Quality Act (CEQA), and in 2015, the County released a draft document, called an Environmental Impact Report or EIR, analyzing the project's potential impacts.

Several parties afterward expressed concern over the County's analysis of the **198 project's environmental impacts, including Sierra Watch and the California Attorney General. According to the Attorney General, the County's EIR insufficiently analyzed project impacts from increased vehicle use in the Lake Tahoe Basin. The Attorney General's office initially expressed these concerns in August 2016 in a formal comment letter, and later, in early November 2016, it reiterated these concerns in an e-mail to County counsel. In the e-mail, the deputy attorney general assigned to the matter offered to speak with County staff about her office's concerns but warned that, absent additional environmental review, her office would file litigation challenging the County's EIR.

Shortly after receiving this e-mail, on November 9, 2016, the County posted the agenda for the upcoming meeting of its board of supervisors (the Board), during which the Board would consider whether to approve the EIR for the project. Among other things, the agenda informed the public that the Board would consider at its November 15, 2016 meeting "a recommendation from the Placer County Planning Commission for APPROVAL of the following": (1) "a resolution to certify the Village at Squaw Valley Specific Plan Final Environmental Impact Report" and (2) "an ordinance to approve the Development Agreement relative to the Village at Squaw Valley Specific Plan." At the same time it posted the agenda, the County also made available for public inspection various documents discussed on the agenda, including the proposed development agreement for the project.

The same day the County posted the agenda, two deputy attorneys general met with County counsel and Squaw's counsel about the project. At the meeting, the two deputy attorneys general asked the County to require Squaw to pay an air quality mitigation fee to the Tahoe Regional Planning Agency *7 (TRPA). But the County declined to do so. Squaw, however, thought it better to pay the fee if the Attorney General would agree not to sue over the project. It approached the Attorney General about such an agreement and offered to ask the County to amend the development agreement for the project to include a requirement that it pay the TRPA fee. Squaw and the Attorney General afterward reached an agreement along these lines on November 14, 2016.² Shortly after, at Squaw's request and in consultation with the Attorney General, County counsel updated the development agreement to accommodate the agreement between Squaw and the Attorney General. To that end, she added a provision requiring Squaw to pay \$440,862 in fees to be used for TRPA "Environmental Improvement Projects," which are projects intended to reduce traffic and improve air and water quality at Lake Tahoe.

County counsel afterward, at 5:36 p.m. on November 14, 2016, e-mailed the County clerk the updated development agreement and a memorandum (the Schwab Memorandum) explaining the change and providing other information about the project. On receiving the e-mail, the County clerk placed copies of the development agreement and the memorandum in an office where the public can inspect County records — namely, the County clerk's office, which is open to the public from 8:00 a.m. to 5:00 p.m. on weekdays. At 5:42 p.m.,

the County clerk e-mailed the two documents to all Board members.

A few minutes before the County clerk shared the new materials with the Board, a deputy attorney general e-mailed Sierra Watch's counsel about the development. **199 Without going into detail, she informed Sierra Watch's counsel that Squaw had agreed "to mitigate ... the Project['s] in-basin trips as if the project were located in the basin." She also offered to talk about the new mitigation requirements, but Sierra Watch's counsel did not see the e-mail until after the Board's meeting began the following day.

The Board held its meeting the next day, which Sierra Watch attended. Before the meeting began, County staff placed at a public table at the meeting copies of the Schwab Memorandum and other project documents. Following some discussion of the development agreement, including the new TRPA provision, the Board voted in favor of the ordinance approving the agreement.

*8 II

Procedural Background

A couple of weeks after the Board approved the development agreement and the EIR for the project, Sierra Watch sent a letter to the County alleging it had violated the Brown Act. The Brown Act imposes various requirements on local agencies, including counties, intended to ensure that their actions and deliberations are conducted openly. (§ 54950.) According to Sierra Watch's letter, the County violated two of these requirements. First, it alleged the County violated section 54954.2 of the Brown Act, which requires counties (and other local agencies) to post an agenda at least 72 hours before each board meeting "containing a brief general description of each item of business to be transacted or discussed at the meeting." (§ 54954.2, subd. (a)(1).) Sierra Watch reasoned the County's agenda was insufficient because it did not "announc[e] ... that [the Board] was to consider a substantive amendment to the proposed Development Agreement" — namely, the addition of the TRPA-fee provision. Second, it alleged the County violated section 54957.5 of the Brown Act, which requires counties (and other local agencies), when distributing any meeting material to their boards less than 72 hours before an open meeting, to make that writing "available for public inspection ... at the time the writing is distributed to all, or a 284 Cal.Rptr.3d 195, 2021 Daily Journal D.A.R. 9909

majority of all, of the [board] members." (§ 54957.5, subd. (b).) The County violated this requirement, Sierra Watch asserted, because it failed to make the Schwab Memorandum available to the public at the same time it was distributed to the Board members. The County, however, disagreed with both Sierra Watch's allegations and declined to reconsider its approvals.

Shortly after receiving the County's response, Sierra Watch filed a petition for writ of mandate and complaint for injunctive and declaratory relief against the County and its Board. Sierra Watch alleged in its suit the two issues it raised in its letter: The County violated section 54954.2 because its agenda failed to notify the public that the Board would consider a substantive revision to the development agreement, and it violated section 54957.5 because it failed to make the Schwab Memorandum available for public inspection at the same time it was distributed to the Board. After the County successfully demurred to Sierra Watch's cause of action under 54954.2, Sierra Watch modified its allegations somewhat in an amended petition and complaint. In its amended petition and complaint, it alleged the County violated section 54954.2 because its "posted agenda listed no item of business describing that the Board would consider approving the substance of an agreement ... between the County, Attorney General's Office, and [Squaw] to purportedly address serious concerns about the Project's impacts on the Lake Tahoe Basin, which was memorialized in a substantive revision to *9 the ... Development Agreement." Sierra Watch asked the trial court to, among **200 other things, nullify the Board's approval of the development agreement, grant injunctive relief, and declare that the County violated the Brown Act.

Following a bench trial, the court rejected Sierra Watch's claims, starting with Sierra Watch's claim under section 54954.2. In the court's view, to determine whether the County violated this provision, it needed to consider whether the TRPA provision "constituted a distinct item of business which needed to be separately identified on the agenda, or whether the amended Development Agreement differed radically from the previous version of the Development Agreement to such an extent as to make the agenda misleading." But because it found neither true, it rejected Sierra Watch's claim. The court turned next to Sierra Watch's claim under section 54957.5. Rejecting Sierra Watch's contentions, it found the County made the Schwab Memorandum available for public inspection at the same time the memorandum was distributed to the Board members. It reasoned that the County clerk made the memorandum available for public inspection the moment she placed it in the County clerk's office — which she did around the same time she e-mailed the memorandum to the Board — even though the clerk's office was closed at that time.

Sierra Watch timely appealed.³

DISCUSSION

Ι

The County's Disclosure of the Schwab Memorandum

[1] We consider first whether the County violated the Brown Act's disclosure requirements under section 54957.5.

Under section 54957.5 of the Brown Act, a county must disclose writings that are distributed to all or most of the county's board of supervisors "in connection with a matter subject to discussion or consideration" at the board's open meetings. (§ 54957.5, subd. (a).) In most circumstances, section 54957.5 requires these writings to "be made available upon request *10 without delay." (§ 54957.5, subd. (a).) But when these writings are distributed to all or most board members less than 72 hours before an open meeting, it imposes a slightly different requirement in terms of when and where these writings must be made available. Under these circumstances, subdivision (b)(1) of section 54957.5 describes when these public records must be made available: If a "public record ... that relates to an agenda item for an open session of a regular meeting of [a county's board of supervisors], is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the [board]." Subdivision (b)(2) of section 54957.5 then describes where these public record must be made available: "A [county] shall make [the] writing ... available for public inspection at a public office or location that the [county] shall designate for this purpose." Subdivision (b)(2) adds that "[t]he [county] also may post the writing on the [county's] Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting." Should a county fail to abide by these requirements. an interested person cannot **201 nullify the county's resulting actions but can seek declaratory and injunctive relief. (§ 54960, subd. (a).)

With those requirements in mind, we turn to the issue before us. The Schwab Memorandum, as all parties agree, was a public record related to an agenda item for one of the Board's open meetings and was distributed to all the Board members less than 72 hours before that meeting. Under those circumstances, as all parties further agree, the County needed to make the memorandum "available for public inspection" at the same time it was distributed to the Board members. (See § 54957.5, subd. (b).) The question here is whether it did. The County, its Board, Squaw, and Squaw Valley Resort LLC (collectively, respondents) argue it did, reasoning the County complied with section 54957.5 because it placed the Schwab Memorandum in an office where records are "available for public inspection" at the same time it distributed the memorandum to the Board — that is, around 5:40 p.m. on November 14, 2016. Sierra Watch, in contrast, argues otherwise. Because the memorandum was placed in the County clerk's office after hours, it contends the County made the memorandum "available for public inspection" only when the office reopened on November 15, 2016.

We find Sierra Watch has the better argument. Section 54957.5 is not, as respondents believe, merely concerned with the time a record is *placed* in a location allowing for public inspection; it is instead principally concerned with the time a record is actually available for public inspection. That is plain from the statutory text. Per section 54957.5, subdivision (b)(1), "the writing shall be made available for public inspection ... at the time the writing is distributed to all, or a majority of all, of the members of the [board]." (Italics added.) In this case, the County distributed the Schwab Memorandum to the *11 Board around 5:40 p.m. on November 14, 2016. The question for us, then, is whether the memorandum was "available for public inspection ... at th[at] time." It was not. No document at the County clerk's office, after all, was "available for public inspection" at 5:40 p.m. on November 14, 2016 — a time when the clerk's office was closed.

Respondents, reading section 54957.5 somewhat differently, contend the statute's plain language instead requires a ruling in their favor. They argue as follows: (1) Subdivision (b) (1) of section 54957.5 required the County to make the memorandum "available for public inspection pursuant to [subdivision (b)(2)] at the time the writing [wa]s distributed to all, or a majority of all, of the members of the [Board]." (2) Subdivision (b)(2), in turn, required the County to make the memorandum "available for public inspection at a public office or location that the [County had] designate[d] for this

purpose." (3) Putting these two requirements together, the County fully complied with section 54957.5 because it placed the memorandum in the County clerk's office at the time it was distributed to the Board.

But subdivisions (b)(1) and (b)(2), read together, did not simply require the County to place the memorandum in the County clerk's office at the time it was distributed to the Board. Both these subdivisions, again, are principally concerned with the time that records are actually available for public inspection, not merely the time that these records are placed in areas allowing for public inspection. Subdivision (b)(1) describes when these records must be "available for public inspection" — namely, "at the time the writing is distributed to all, or a majority of all, of the members of the [board of supervisors]." Subdivision (b)(2) then describes where these records must be "available for public inspection" - **202 namely, "at a public office or location that the agency shall designate for this purpose." Together these subdivisions required the memorandum here to be available for public inspection "at a public office or [other designated] location" (§ 54957.5, subd. (b)(2)) "at the time the writing [wa]s distributed to all, or a majority of all, of the members of the [Board]" (§ 54957.5, subd. (b)(1)). But again, that did not happen. More specifically, the Schwab Memorandum was not available for public inspection at the County clerk's office around 5:40 p.m. on November 14, 2016 — the time the memorandum was distributed to the Board. It instead was first available for public inspection at the clerk's office a day later, when the clerk's office reopened. The County violated section 54957.5 as a result.

Apart from their textual argument, respondents also assert that accepting Sierra Watch's position would lead to several absurd results. First, they contend Sierra Watch's position will at times force counties to delay when they distribute materials to their board members. That is so, they explain, *12 because if a county would like to deliver certain materials to its board at, say, 6:00 p.m. on a Friday in advance of a Monday meeting, it would need to wait until its offices reopened on Monday to send the materials.

[2] Sierra Watch, in response, contends this is not necessarily so because agencies could always post their materials online to comply with section 54957.5, subdivision (b). But we are not so sure. Section 54957.5 does not say agencies may make records available at a physical location *or* alternatively post the records online — though some committee analyses on the bill enacting section 54957.5, subdivision (b) did interpret it

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this way. (See Sen. Rules Com., Analysis of Sen. Bill No. 343 (2007-2008 Reg. Sess.) p. 2 [to make "writings available for public inspection," this bill requires a local agency to "do either of the following": (1) "[m]ake the writing available at an office or location that has been designated by the agency and listed on the meeting agenda; or" (2) "[p]ost the writing on the local agency's Internet Web site" (italics added)]; Sen. Local Gov. Com., Analysis of Sen. Bill No. 343 (2007-2008 Reg. Sess.) pp. 1-2 [same].) The statute instead says agencies "shall" make records available at a physical location and "also may" post the records online. (§ 54957.5, subd. (b)(2), italics added; see Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 443, 261 Cal.Rptr. 574, 777 P.2d 610 ["the word 'may' is ordinarily construed as permissive, whereas 'shall' is ordinarily construed as mandatory, particularly when both terms are used in the same statute"]; Holland v. Assessment Appeals Bd. No. 1 (2014) 58 Cal.4th 482, 490, 167 Cal.Rptr.3d 74, 316 P.3d 1188 [" 'If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls.' "].) We thus agree with respondents that, under a literal reading of the statute, counties cannot satisfy section 54957.5, subdivision (b) merely by posting materials online. And we agree too that, if that is so, then accepting Sierra Watch's position may at times require counties to delay when they distribute materials to their board members.

[3] But even so, we do not find that result so absurd that we must override the plain meaning of the statutory language requiring records to be "available for public inspection ... at the time" they are distributed to the board. "To justify departing from a literal reading of a clearly worded statute, the results produced must be so unreasonable the Legislature could not have intended them." (In re D.B. (2014) 58 Cal.4th 941, 948, 169 Cal.Rptr.3d 672, 320 P.3d 1136.) We cannot **203 find so here. True, our literal reading of the statute may at times delay the distribution of materials to board members, occasionally leaving them with less time to consider late submissions. But the Legislature enacted section 54957.5, subdivision (b) in part because of the disparity of information available to the public and board members, with board members having access to agenda materials before the public. (See Assem. Com. on Local Gov., Analysis of Sen. Bill *13 No. 343 (2007-2008 Reg. Sess.) p. 2 [noting the bill author's concern that "the last-minute release of agenda packet materials leaves citizens feeling blindsided by their governments"].) And its solution to this perceived problem was not to require counties to make these materials available to the public "without delay" after distribution to board

members, as section 54957.5 requires in other circumstances. (See § 54957.5, subd. (a).) Its solution instead was to require counties to make these materials available to the public "at the time" they are distributed to board members. Considering this backdrop, it is at least plausible the Legislature thought it best that board members and the public have equal opportunity to review late submissions, even if achieving that requirement would on occasion result in less time for board members to review these submissions.

Respondents further assert that accepting Sierra Watch's position "would also lead to absurd results because it would allow opponents to perpetually delay project approval by submitting last minute comments outside of normal business hours." We appreciate the concern. Suppose that in the middle of the night before every meeting, a member of the public emails all board members comments concerning an item on the board's agenda. Strictly construing section 54957.5, those emails arguably would need to "be made available for public inspection" at the county's office "at the time" they were sent to the board members. But it of course would be absurd to expect the county to remain open and staff its office to allow public inspection of documents in the middle of the night.

For that reason, respondents argue, their favored reading of the statute is the better one. But their approach fares no better in addressing this issue. Respondents, again, contend a county satisfies section 54957.5, subdivision (b) if, at the time a record is distributed to most or all board members, the county places a copy of that record in a location allowing for public inspection — even if the county does so at a time when that location is currently closed. But unless the county staffs its office around the clock, it cannot even accomplish that much when a member of the public e-mails the board in the middle of the night. And so, even under respondents' approach, this potential issue remains. So how should we deal with this situation? We need not decide this issue today, which unlike our case, concerns the conduct of those outside a county's control. For our purposes here, it is enough that we find the *14 County violated section 54957.5 when, as a result of its own conduct, it failed to make the Schwab Memorandum **204 available for public inspection at the time it distributed the memorandum to the Board.

II**

Unpublished Text Follows

The County's Amendment to the Development Agreement

We consider next whether the County violated the Brown Act's requirements for posting agendas under section 54954.2.

The Brown Act requires counties, at least 72 hours before each meeting, to "post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting." (§ 54954.2, subd. (a)(1).) A county that fails to provide in its agenda the required "brief general description" of an item of business cannot discuss that item at the meeting, except in a few limited situations irrelevant here. (§ 54954.2, subds. (a)(3), (b).) And should it nonetheless do so, an interested person can seek declaratory and injunctive relief (§ 54960, subd. (a)) and also seek to nullify the county's action (§ 54960.1, subd. (a)). But interested persons cannot successfully nullify a county's action if the county at least substantially complied with section 54954.2's requirements. (\S 54960.1, subd. (d)(1).) Nor may they do so unless they suffered some prejudice from the county's action. (Fowler v. City of Lafayette (2020) 46 Cal.App.5th 360, 372.)

A. The County's Agenda Was Inaccurate and Misleading The County's agenda here, in relevant part, informed the public that the Board would consider approving a certain development agreement, which is a type of "'enforceable contract between a municipality and a developer' " that, "[i]n essence, ... 'freeze[s] zoning and other land use regulation applicable to specified property to guarantee that a developer will not be affected by changes in the standards for government approval during the period of development.' [Citation.]" (Center for Community Action & Environmental Justice v. City of Moreno Valley (2018) 26 Cal.App.5th 689, 696-697; see § 65864 et seq.) In particular, the County's agenda noted that its Board would "consider a recommendation from the Placer County Planning Commission" (the Planning Commission) to adopt "an ordinance to approve the Development Agreement relative to the Village at Squaw Valley Specific Plan."

According to Sierra Watch, however, the County's agenda ultimately proved to be "fatally misleading." Sierra Watch accepts that the agenda's reference to the "Development Agreement" would have allowed the approval of the development agreement that the County initially shared with the public at the time it posted its agenda. But, in

Sierra Watch's view, the County acted improperly when it amended the agreement the night before the Board's meeting to add a requirement that Squaw pay \$440,862 in air quality mitigation fees to TRPA. That is so, it reasons, because this fee requirement was effectively a "new type of approval" serving "to avoid a lawsuit by the Attorney General — a purpose entirely distinct from, and outside the scope of, the Development Agreement." And, it adds, even if this fee requirement were not a new type of approval distinct from the development agreement, the County's agenda was still "inadequate because the Development Agreement listed on it was substantially altered without notice, thereby misleading the public."

We address these arguments in turn, starting with Sierra Watch's contention that the TRPA fee requirement reflected a "new objective" and so was effectively a "new type of approval." The County required Squaw to pay various mitigation fees in the development agreement and perhaps, as Sierra Watch believes, it had somewhat different motives in imposing these different fees. Perhaps it required Squaw to pay some of these fees to address the County's concerns. and perhaps it required Squaw to pay the TRPA fee in part to address the Attorney General's concerns. But we reject Sierra Watch's contention that each provision in an agreement that addresses a distinct concern must necessarily be listed as a separate agenda item. Nothing in the Brown Act, in our view, imposes such a requirement. The Brown Act, again, requires a county's agenda to provide "a brief general description of each item of business to be transacted or discussed at the meeting." (§ 54954.2, subd. (a)(1).) And an agreement that includes, say, 10 distinct provisions to address the parties' various objectives on a topic is not, for that reason, 10 distinct "item[s] of business." It is instead one agreement and one "item of business." And so it is here: The development agreement for the project was, even as amended, one agreement and "one item of business."

Sierra Watch's two cited cases — *Hernandez v. Town of Apple Valley* (2017) 7 Cal.App.5th 194 (*Hernandez*) and *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167 (*San Joaquin Raptor*) — do not support a contrary finding. In *Hernandez*, a city council posted an agenda that discussed the potential approval of a "Wal-Mart Initiative Measure" but then, at its meeting, it approved more than just the initiative. It also approved a memorandum of understanding "that authorized accepting a gift from Walmart to pay for the" initiative process — something that "was first proposed at the meeting." (*Hernandez*, at pp. 197, 208.) The

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city council doing so, the court found, violated the Brown Act. It reasoned that section 54954.2 requires "each item of business" to be on the agenda, but the agenda in this case — which only referenced the "Wal-Mart Initiative Measure" — gave "no notice" of the separate and "important" item of business concerning the memorandum of understanding. (*Hernandez*, at pp. 208-209.)

The court's decision in San Joaquin Raptor is similar. The county there disclosed in its agenda that it would consider approving an application to subdivide three large parcels into nine parcels. (San Joaquin Raptor, supra, 216 Cal. App. 4th at p. 1171.) But it then approved at its meeting the subdivision application and the CEQA document prepared for the project. The court found it violated section 54954.2 as a result. Similar to the court in *Hernandez*, the court reasoned that section 54954.2 requires "each item of business" to be on the agenda, but the agenda in this case — which only referenced the subdivision application — gave no notice of the "distinct item of business" concerning the CEQA document. (San Joaquin Raptor, at pp. 1176-1177; see also Olson v. Hornbrook Community Services Dist. (2019) 33 Cal.App.5th 502, 521 [agenda discussing the intent to approve nine specific bills did not authorize the approval of a tenth bill].)

Although Sierra Watch finds these cases "squarely on point here," we find differently. Unlike in Hernandez and San Joaquin Raptor, the County here noticed one development agreement in its agenda and the Board then approved one development agreement, not two distinct agreements, at its meeting. Sierra Watch, again, believes the approved development agreement is really two documents — a development agreement and a TRPA fee agreement because its motive for adding the TRPA provision was "to avoid a lawsuit by the Attorney General." But again, we find that argument unpersuasive. To start, the premise that the County added the TRPA-fee provision "to avoid a lawsuit by the Attorney General" is questionable. As the trial court found, the County did not add that provision at the Attorney General's request. It instead added the provision, and apparently begrudgingly at that, because Squaw requested it. In any event, a contract that includes a provision to placate a third party, even if added late, is still only one contract and one "item of business."

That said, we acknowledge Sierra Watch's concern that local agencies may, in some instances, attempt to shoehorn new matters into existing agenda items to circumvent the Brown Act's requirements. But we reject its invitation to

treat the TRPA fee in this case as an entirely new matter that was outside the scope of the development agreement. In arguing we should find otherwise, Sierra Watch claims that "the Board itself" characterized the TRPA provision as a " 'complete and separate issue' " from the development agreement, and so we should find the same. But we read the record differently. At the meeting, one Board member said it was not the County's policy to "concede" that TRPA had authority to impose fees on projects outside the Lake Tahoe Basin, and he then sought to confirm that the TRPA provision added here reflected, not the County's concession about TRPA's jurisdiction, but "a complete and separate issue related to the relationship between Squaw and [the Attorney General]." County counsel, in response, confirmed that the provision was not a concession about TRPA's authority over the project but instead "a voluntary contribution on the part of [Squaw]." All this discussion, then, concerned only a desire to clarify the County's position concerning the scope of TRPA's authority — not the appropriate scope of a development agreement. Considering the context of this one Board member's "complete and separate issue" comment, we decline to find that "the Board itself" believed the TRPA concerned a matter "complete and separate" from the development agreement.

We turn next to Sierra Watch's second argument. Again, per Sierra Watch, even if the fee requirement were not a distinct agreement, the County's agenda would still be "inadequate because the Development Agreement listed on it was substantially altered without notice, thereby misleading the public." Unlike Sierra Watch's first argument, we find this one has merit.

The County's agenda, again, informed the public that the Board would "consider a recommendation from the Placer County Planning Commission" to adopt an ordinance approving "the Development Agreement relative to the Village at Squaw Valley Specific Plan." At the same time it shared the agenda, the County also shared a copy of the development agreement that the Planning Commission had recommended, which was titled "Development Agreement ... relative to the Village at Squaw Valley Specific Plan." With these actions, the County plainly indicated that the development agreement that the Board would consider at its meeting would be the development agreement that the Planning Commission had recommended and that the County had publicly shared. But in the end, the Board never considered that particular agreement. It instead only considered (and then approved) a materially revised

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version of the development agreement that County staff, in consultation with Squaw and the Attorney General, had prepared the night before the Board's meeting. It, in other words, only considered a version of the agreement that the Planning Commission had never considered, even though the agenda indicated that the Board would consider the agreement that the commission had actually considered. We find the Board's agenda was, as a result of this change, rendered inaccurate and misleading.

Under similar circumstances, courts have found a government body's agenda improperly misleading. Consider the California Supreme Court's decision in Santa Barbara Sch. Dist. v. Superior Court (1975) 13 Cal.3d 315 (Santa Barbara School District). That case concerned a statutory predecessor to the Brown Act that required governing boards of school districts to post, 48 hours before any public meeting, "[a] list of items that will constitute the agenda for" the meeting. (Santa Barbara School District, at p. 333, fn. 8.) The board there posted an agenda informing the public that "plans" for desegregating schools would be "[p]resent[ed] ... to the Board" on one date and "a plan" would be "adopt[ed] ... by the Board" at a later date. In this language, the court found that the board indicated — even if it did not state outright — that the plan to be adopted by the board would be one of the plans presented to the board at its earlier meeting. (*Id.* at p. 335.) But in the end, the board adopted a plan that "differed radically" from any of the plans it had previously presented, leading the court to find the board's agenda "fatally misleading." (Id. at pp. 335-336.) According to the court, once the board indicated in its agenda that it would adopt one of the plans presented at its earlier meeting, "it thereby limited its power to consider any other substantially different plan since otherwise the posted agenda would be fatally misleading." (Id. at p. 336.)

While the factual setting here is somewhat different, we find the error to be similar. The Board, in its agenda, said it would consider a specific agreement at its meeting (namely, the development agreement that the Planning Commission had recommended), but in the end, the Board never once considered that agreement. It instead only considered a materially different agreement (namely, the revised development agreement that Squaw staff prepared the night before the meeting), rendering the agenda inaccurate and misleading.

Respondents, in opposition, assert that the county code expressly allows the Board to "accept, modify, or disapprove' a draft Development Agreement recommended

by the Planning Commission," and so, they suggest, the Board did not act improperly in acting consistent with this authority. (See Placer County Code, § 17.58.240, subd. B ["After the board of supervisors completes the public hearing, it may accept, modify, or disapprove the recommendation of the planning commission"].) But the Board did not, as respondents suppose, consider the Planning Commission's recommended agreement and then modify it to include the TRPA provision. The Board never modified anything. Nor, again, did it ever consider the particular agreement that the Planning Commission had recommended. It instead considered only the revised version of the agreement. And because the agenda indicated that the Board would consider the development agreement that the Planning Commission had recommended, and not instead consider only a materially revised agreement that the Planning Commission had never considered, we find the agenda was misleading as a result.

Respondents next, believing the analogy to Santa Barbara School District inapt, contend the alteration to the development agreement here was only a limited one — a "half-page 'insert' [that] did not change any other provisions in the" agreement. But the substance of the change, not the length of the new language, is what matters. And the addition of the TRPA fee here in the amount of \$440,862, which was enough to address the Attorney General's significant concerns over the project, was a substantial alteration in our view. To emphasize the point, suppose circumstances were flipped and the County had removed a provision requiring the payment of nearly a half million dollars in fees as mitigation. Under those circumstances, we expect all would agree the change was a substantial one, even if excising that provision removed only half a page.

Respondents also challenge the idea that the Board's agenda indicated that any particular development agreement would be adopted. In their telling, the agenda never elaborated on the "'specific provisions of a Development Agreement [that] would be considered.' "We disagree. The County's agenda did not simply inform the public that its Board would consider approving some unspecified development agreement for the project. It did not, for example, say the Board would consider approving "a development agreement" for the project. It instead said the Board would consider approving "the Development Agreement relative to the Village at Squaw Valley Specific Plan" — which was the title of the development agreement that the Planning Commission had recommended. Any reasonable reader of this messaging would understand that the development agreement the Board

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would consider at its meeting would be the development agreement the Planning Commission had recommended.

Respondents next contend Santa Barbara School District is distinguishable by its own terms. To that end, they cite a portion of the opinion stating that "if the agenda had simply indicated the adoption of a 'Desegregation/Integration Plan for the Elementary District,' we would entertain no doubt that it would have given adequate notice." (Santa Barbara School District, supra, 13 Cal.3d at p. 335.) But had the school board there said only that, it would not have been suggesting that the board would consider approving any particular type of plan — and that is not something we can say here. Again, the County did not merely inform the public that its Board would consider an unspecified development agreement for the project. It instead indicated that the Board would consider the development agreement that the Planning Commission had recommended. But again, the Board never considered that particular version of the agreement.

Respondents further assert that "nothing in the Brown Act prohibits changes to agenda items ... between the posting of the agenda and the ultimate agency action." But even if that is generally true, a county's agenda still needs to be accurate; and an agenda is not accurate if it says a county's board of supervisors will consider one agreement at its meeting but then, at the meeting, the board instead considers a materially different agreement. Perhaps, had the Board here considered the development agreement the Planning Commission had recommended and then acted itself to modify the agreement to include the TRPA provision, we would have ruled differently. Perhaps, under those circumstances, we would have agreed that "nothing in the Brown Act prohibits changes to agenda items ... between the posting of the agenda and the ultimate agency action." But those are not the facts before us. And focusing on the facts presented, we conclude that the Board could not, in its agenda, say it would consider a particular development agreement at its upcoming meeting, and then, at its meeting, consider only a materially different agreement rather than the one it promised.

Finally, respondents express concern that accepting Sierra Watch's argument would make counties and other local agencies unable to respond to late comments. In their view, "[i]f a local agency could not make changes to a proposed project in response to public or other agency concerns (as the Board did here) without violating the Brown Act, public comments received in the three or more days between the posting of the agenda and the agency's decision would be for

naught." But our holding does not, as respondents imagine, bar a county's board from making changes to a proposed project in response to comments received after an agenda is posted. It has little to do with that topic. The Board here, after all, never even made changes to any proposed project — though respondents repeatedly try to characterize the record differently. Again, the County's agenda indicated that the Board would consider approving the development agreement that the Planning Commission had recommended. But, because of a last minute revision to the agreement, the Board never considered that particular agreement. The Board never, that is, considered the specific agreement that the agenda said it would consider. It instead only considered a substantially revised development agreement, leaving the posted agenda inaccurate and misleading.

B. Sierra Watch Has Not Shown Prejudice

Our conclusion that the County violated section 54954.2 does not end the matter. Because Sierra Watch seeks to nullify the Board's approval of the development agreement, it is not enough that the County violated section 54954.2. Sierra Watch, again, cannot nullify the Board's approval of the agreement if the County at least "substantial[ly] compli[ed]" with section 54954.2's requirements. (§ 54960.1, subd. (d) (1).) Nor may Sierra Watch nullify the Board's approval unless it suffered prejudice as a result. (Fowler v. City of Lafayette, supra, 46 Cal.App.5th at p. 372.)

We start (and end) with the need to show prejudice. To make this showing. Sierra Watch first asserts that, if it had more time to review the TRPA provision, it would have sought expert advice and then provided comments to the Board. But the County's violation of section 54954.2 was not the cause of Sierra Watch's limited ability to review the TRPA provision. The Board's agenda violated that statute, again, because it misled the public about the particular development agreement to be considered at the Board's meeting — something that could have been avoided had the agenda simply clarified that the development agreement the Board would consider at its meeting would not necessarily be the development agreement the Planning Commission had recommended. (See Santa Barbara School District, supra, 13 Cal.3d at p. 335 ["if the agenda had simply indicated the adoption of a 'Desegregation/Integration Plan for the Elementary District,' " rather than indicating the adoption of one of the plans presented at an earlier meeting, "we would entertain no doubt that it would have given adequate notice"].) But had the agenda clarified that point, and thus avoided the violation of section 54954.2, Sierra Watch still would not have been

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aware of the TRPA provision until the day of the meeting. Nor, considering Sierra Watch's allegations, can we say that Sierra Watch would have acted differently or been better positioned had the agenda clarified this point. Sierra Watch's alleged harm, thus, cannot be attributed to the County's violation of section 54954.2.

Sierra Watch also, to show prejudice, contends the Attorney General's agreement not to sue in light of the TRPA provision "conceivabl[y] ... influenced the Board's decision." But in evaluating allegations of prejudice under the Brown Act, we do not consider whether the agency's ultimate decision could have "conceivabl[y]" been different had the law been followed. We consider instead whether the agency's failure to comply with the law undermined the purposes of the Brown Act by depriving the public of a fair opportunity to participate in the agency's open meetings. (See Galbiso v. Orosi Public Utility Dist. (2010) 182 Cal.App.4th 652, 671 [finding a plaintiff was not prejudiced by an agency's alleged violation of the Brown Act because the plaintiff already had a fair opportunity to state her position]; cf. Rural Landowners Assn. v. City Council (1983) 143 Cal.App.3d 1013, 1023 [declining, in a CEQA case, to conclude that a party alleging prejudice must "show[] the result would have been different in the absence of the error"; the party instead must show the "failure to comply with the law result[ed] in a subversion of the purposes of CEQA by omitting information from the environmental review process"].) And on that topic, Sierra Watch only alleges that, had it known of the TRPA provision earlier, it would have sought expert advice and then submitted comments to the Board. But again, the unlawful conduct it alleges (the posting of a misleading agenda) did not cause the harm it alleges (the limited ability to review the TRPA provision).⁵

Because, in sum, Sierra Watch has failed to show that the County's violation of section 54954.2 deprived it of a fair opportunity to participate in the County's meeting, we decline to find that nullification of the County's action is proper. The County's conduct, we acknowledge, led to the late disclosure of the TRPA provision, which in turn led to Sierra Watch's alleged harm in having too little time to review this provision. But again, that alleged harm was unrelated to the County's violation of section 54954.2. Nothing in section 54954.2, after all, required the County to disclose the specific terms of the development agreement at the time the agenda was posted. (See § 54954.2 [requiring only a "brief general description of each item of business," which "generally need not exceed 20 words"].) And so even had the Board's agenda complied with

section 54954.2, Sierra Watch still would have been unaware of the TRPA provision. That said, we do not deny that Sierra Watch suffered some prejudice through the late disclosure of the TRPA provision. But that prejudice, if anything, resulted from the County's violation of section 54957.5; and as we discussed in part I of our opinion, the County's violation of that statute, even if prejudicial, does not provide ground for vacating the County's action.

End of Unpublished Text

DISPOSITION

The judgment is affirmed to the extent that it denies Sierra Watch's petition to set aside the County's action and is otherwise reversed. The trial court is instructed to enter a new judgment granting Sierra Watch's writ petition, including its request for declaratory and injunctive relief, in a manner consistent with this opinion. The parties are to bear their own costs on appeal. (Cal. Rules of Court, rule 8.278.)

I concur:

DUARTE, J.

RAYE, P. J., concurring.

[[/]]***

Unpublished Text Follows

This case presents two issues of statutory construction concerning the obligation of a county board of supervisors under the Ralph M. Brown Act (Gov. Code, § 54950 et. seq.)⁶ to make certain information available to the public in advance of a meeting to which the information relates.

Section 54954.2, subdivision (a)(1) requires a board to post an agenda at least 72 hours before each board meeting "containing a brief general description of each item of business to be transacted or discussed at the meeting."

Section 54957.5, subdivision (b)(1) requires county board of supervisors, when distributing any meeting material to their boards less than 72 hours before an open meeting, to make that writing "available for public inspection ... at the time the writing is distributed to all, or a majority of all, of the [board members]."

As to section 54957.5, subdivision (b), concerning the availability of meeting materials distributed to board members less than 72 hours before an open meeting, I agree with the majority opinion's conclusion that (1) materials placed in a public office after the close of business are not "available for public inspection" until the office reopens, and (2) the statute does not authorize online posting as an alternative method of providing public access. Consequently the materials at issue here, a provision requiring Squaw Valley Real Estate LLC to pay \$440,862 in fees to be used for Tahoe Regional Planning Agency (TRPA) "Environmental Improvement Projects," delivered to a public office after closing hours, were not available for public inspection until the following day, thus missing the 72-hour posting deadline.

However, I am not persuaded by the majority opinion's construction of section 54954.2, subdivision (a)(1) and its conclusion that the agenda posted by board did not comport with the statute.

In language about as clear as one can make it, the statute simply requires the agenda to contain "a brief general description of each item of business to be transacted or discussed." (§ 54954.2, subd. (a)(1).) The agenda here informed the public that the board would "consider a recommendation from the Placer County Planning Commission" to adopt an ordinance approving "the Development Agreement relative to the Village at Squaw Valley Specific Plan." At the same time it shared the agenda, the county also shared with the public a copy of the development agreement that the planning commission had recommended, which was titled "Development Agreement ... relative to the Village at Squaw Valley Specific Plan."

The majority opinion wisely rejects Sierra Watch's contention that each provision in an agreement that addresses a distinct concern must necessarily be listed as a separate agenda item. The development agreement for the project was, even as amended, one agreement and one "item of business." (§ 54954.2, subd. (a)(1).)

The majority opinion also rejects the invitation to treat the TRPA fee in this case as an entirely new matter that was outside the scope of the development agreement.

But the majority opinion accepts the argument that "the Development Agreement listed on it was substantially altered without notice, thereby misleading the public." The majority opinion reasons that the development agreement referred to in the agenda was the development agreement described in documents provided to board in advance of the meeting —the documents that were not made "available for public inspection" as required by section 54957.5, subdivision (b). The majority opinion likens this to facts considered in *Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315 (*Santa Barbara School District*) where "the board indicated —even if it did not state outright—that the plan to be adopted by the board would be one of the plans presented to the board at its earlier meeting. (*Id.* at p. 335.) But in the end, the board adopted a plan that 'differed radically' from any of the plans it had previously presented, leading the court to find the board's agenda 'fatally misleading.'" (Maj. opn *ante*, at p. 19.)

But this case is not like the bait and switch of the Santa Barbara School District case. The agenda did not indicate the board would "consider the recommendation from the Placer County Planning Commission set forth in the materials furnished to the Board" on a specified date. The development agreement the board considered and approved was the agreement the planning commission recommended, as amended to address the Attorney General's opposition. The amendment led the Attorney General to drop his opposition and smoothed the path to approval of the agreement recommended by the planning commission.

Even with the amendment the development agreement fit the "general description" set forth in the agenda. Perhaps if we treated agendas like pleadings we could assert there was a material variance but agendas are not that. If the public was misled, it was not because of the agenda but because the materials made available to them in advance of the meeting were incomplete and did not accurately describe the plan. It was the board's violation of section 54957.5, subdivision (b) and not the violation of section 54954.2, subdivision (a) (1) that created the problem complained of in the majority opinion.

Still, I agree there is no basis for setting aside the board's action. So I concur in the result.

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All Citations

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Footnotes

- * Pursuant to California Rules of Court, rules 8.1105 and 8.1110, this opinion is certified for publication with the exception of part II the Discussion and the concurring opinion.
- 1 Undesignated statutory references are to the Government Code.
- Squaw and the Attorney General's agreement was initially reflected in a series of e-mails. On January 4, 2017, the parties also entered into a formal contract.
- Around the same time it challenged the County's action under the Brown Act, Sierra Watch also challenged the County's action under CEQA. In that case too, the trial court ultimately rejected all Sierra Watch's claims. Sierra Watch afterward appealed the court's decision, which we consider in the separate case of *Sierra Watch v. Placer County et al.* (Aug. 24, 2021, C088130) 2021 WL 3732238 [nonpub. opn.].
- As originally drafted, section 54957.5 required only the disclosure of records distributed to a local agency's legislative body "by a member, officer, employee, or agent of such body for discussion or consideration at a public meeting." (Stats. 1980, ch. 1284, § 24, pp. 4343-4344.) But in 1993, the Legislature expanded this language to require the disclosure of records distributed "by *any person* in connection with a matter subject to discussion or consideration at a public meeting" language that remains the same today, with the exception of "a public meeting" now being "an open meeting." (Stats. 1993, ch. 1136, § 14, p. 6366, italics added; see § 54957.5, subd. (a).)
- ** See footnote *, ante.
- Sierra Watch bases its conceivably-different-outcome argument on *Hernandez*. In its view, *Hernandez* said a Brown Act violation is prejudicial so long as it was conceivably "a factor" in the agency's decision. But the *Hernandez* court said no such thing. The court instead appeared to find prejudice because the Brown Act violation before it which concerned a city council's approval of an agreement that was not on its agenda deprived the plaintiff of a fair opportunity to share his views on the agreement. (See *Hernandez*, *supra*, 7 Cal.App.5th at pp. 204-205 [noting that, had the agenda described the agreement, the plaintiff would have attended the meeting to express his "'serious concerns'"], 208 [noting that no one at the meeting expressed the plaintiff's concerns or even commented on the agreement].) The court then separately noted that the city's conduct was, apart from being prejudicial, also "troublesome as it is conceivable this [violation] was a major factor" in the council's approval of a related project. (*Id.* at p. 208.)
- *** See footnote *, ante.
- 6 Undesignated statutory references are to the Government Code.

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Document 5

The Hon. Margo A. Raison, Attorney General Opinion No. 18-201 104 Ops. Cal. Atty. Gen. 34 (Cal.A.G.), 2021 WL 4395135

Office of the Attorney General

State of California Opinion No. 18-201 September 17, 2021

*1 THE HONORABLE MARGO A. RAISON COUNSEL FOR THE COUNTY OF KERN

THE HONORABLE MARGO A. RAISON, COUNSEL FOR THE COUNTY OF KERN, has requested an opinion on the following questions related to the application of public meeting and procedural due process requirements to a joint powers authority.

QUESTIONS PRESENTED AND CONCLUSIONS

1. Would it violate the Ralph M. Brown Act for appointees to a joint powers authority to discuss a matter that is pending before that authority with their respective member agencies, at those agencies' separately held open meetings?

No. The contemplated discussions would not violate the Act because they would occur at open, public meetings, and there would be no collective deliberation by a majority of the members of any legislative body outside of such a meeting.

2. Would it violate procedural due process for a member agency of a joint powers authority to discuss with its appointee to that authority, at the member agency's open meeting, how to decide or vote a particular way on an adjudicative matter that is pending before the authority?

Depending on the particular circumstances, such discussion could violate procedural due process by infringing on a party's right to a neutral, impartial decision-maker.

BACKGROUND

A joint powers authority is an entity created when public agencies agree to exercise a power shared by the agencies. The agencies creating a joint powers authority may come from different levels of government and be subject to different statutory requirements. In this Opinion, we address questions related to a joint powers authority called the Indian Wells Valley Groundwater Sustainability Agency (Indian Wells).

The agreement creating this joint powers authority states that its purpose is to manage local groundwater pursuant to the Sustainable Groundwater Management Act, by adopting and implementing a Groundwater Sustainability Plan and providing technical and financial assistance to local groundwater agencies.² Among other powers and responsibilities, the Indian Wells joint powers authority may impose a penalty for groundwater extraction in violation of the Plan.³

Five local agencies created the Indian Wells joint powers authority and comprise its voting members. Each member agency has appointed a representative to serve on the joint powers authority's board of directors. We are informed that in advance of the joint powers authority's board meetings (but after the agenda for those meetings is posted), two member agencies have held their own respective open meetings at which they took public comment on matters that were pending before the authority, and then advised or directed their respective appointees to the authority with respect to those pending matters. We assume for the

purpose of our analysis that the appointee was the only one from the Indian Wells joint powers authority board of directors who was present at the member agency's open meeting.

ANALYSIS

Question 1

*2 We first consider whether the Brown Act prohibits members of the Indian Wells joint powers authority board of directors from discussing matters that are pending before the board when they attend open public meetings of the member agency that appointed them to the board.⁷

1. The Brown Act's open meeting requirements

The objective of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation. Public agencies "exist to aid in the conduct of the people's business," and the intent underlying the Act is that public agencies "actions be taken openly and that their deliberations be conducted openly." Because the Act is a remedial statute that seeks to protect the public, courts interpret it broadly to effectuate its purpose. ¹⁰

The Brown Act applies to "[a]ll meetings of the legislative body of a local agency." And it is expressly incorporated in the agreement creating the Indian Wells joint powers authority. Except as the Act otherwise provides, all meetings of local legislative bodies are required to be "open and public, and all persons shall be permitted to attend." A "meeting" is "any congregation of a majority of the members of a legislative body at the same time and location ... to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body."

To further the Act's purpose of facilitating public participation in local government decision-making, the legislative bodies of local agencies must give public notice of their meetings by providing the time, place, and agenda. Additionally, the public must have an opportunity at meetings "to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item." The Act prohibits local legislative bodies from taking action by secret ballot. It also prohibits them from holding closed sessions, with certain statutory exceptions. Further, the Act's open meetings requirement may not be evaded through "serial" meetings. Specifically, outside of a meeting held in compliance with the Act, the Act prohibits a majority of members of a legislative body from using "a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."

2. In the scenario presented by the requestor, there is no collective deliberation by members of any legislative body outside of a public meeting

*3 The scenario we confront here is one in which the legislative body of a joint powers authority is composed of one appointee from each of the member agencies. The requestor has asked us whether it violates the Brown Act for these appointees to discuss matters that are pending before the joint powers authority, while attending an open meeting of the legislative body of their own member agency. We assume for the sake of our analysis that no other member of the legislative body of the joint powers authority is present at the member agency meeting.²¹

We recognize that the Brown Act "does not purport to regulate the *individual* conduct of individual" members of any legislative body. ²² Instead, the Act is concerned with collective deliberation among a majority of the members of a legislative body. ²³ As the California Supreme Court has observed, some sort of collective decision-making of the body must be at stake:

[T]he action of one public official is not a "meeting" ... because the [[[Brown Act] uniformly speaks in terms of collective action, and because the term "meeting," as a matter of ordinary usage, conveys the presence of more than one person, it follows that under [the Act], the term "meeting" means that "two or more persons are required in order to conduct a 'meeting' within the meaning of the Act."²⁴

The scenario presented here does not involve any collective deliberation by a majority of any legislative body outside of its open meeting. The deliberation by each of the member agencies occurs at the open meeting of that agency's legislative body. And that deliberation is not among a majority of the board of directors of the Indian Wells joint powers authority because there is only one board member on each member agency's legislative body—the appointee. ²⁵ Indeed, even if every appointee deliberated with their appointing agency at its open meeting, that would not add up to a prohibited collective deliberation by the Indian Wells joint powers authority under the Brown Act because the appointees would not be deliberating with each other.

3. Consideration of opposing views does not alter our conclusion

We have considered and evaluated opposing views submitted to our Office. Ultimately, however, those views do not change our conclusion.

First, we address a concern that it would undermine the public's opportunity to participate in decision-making on matters pending before a joint powers authority if those matters were previously discussed by the legislative bodies of the member agencies. Proponents of this view reason that, if a number of appointees to the joint powers authority sufficient for a majority vote were to definitively reach the same decision based on discussions with their member agencies, it would render the public input at the joint powers authority's own meeting irrelevant and unlawfully pre-determine a matter pending before the joint powers authority. They assert that an earlier Attorney General opinion supports this reasoning.

*4 We disagree. The situation addressed by that earlier opinion is unlike the situation we consider here. It involved collective deliberation by a majority of the members of the same legislative body at that body's advisory subcommittee meeting. ²⁶ The members of that subcommittee comprised three of the legislative body's seven members. We concluded that no additional members of the parent legislative body could attend the subcommittee meetings because otherwise those meetings would be attended by a majority of the members of the parent body. ²⁷ As we described, a Brown Act problem arose because the unanticipated presence of a majority of the members of the parent body at the subcommittee meeting created the possibility that the parent body would effectively resolve matters at the subcommittee meeting, reducing the parent body's next meeting to a "rubber stamp." ²⁸ We explained:

Although the subcommittee meeting would be noticed and open to the public, the public would not anticipate that items will be resolved at that meeting due to the less than a quorum composition of the subcommittee. Members of the public wishing to present their views when the item is to be decided will attend the legislative body's meeting only to find that the decision has in effect already been made. The public will effectively be denied the right to present views prior to the legislative body's actual determination. Such result would undermine the Legislature's purposes in requiring notice, a posted agenda, and public participation prior to the resolution of a matter by a legislative body.²⁹

Following our Opinion, the Legislature amended the Brown Act to allow a majority of the members of a legislative body to attend committee meetings, "provided that the members of the legislative body who are not members of the standing committee attend only as observers." Further, the situation described in Question 1 is quite different from that addressed in our prior opinion. The member agencies who appoint the board of directors of the joint powers authority are independent legislative bodies—not advisory subcommittees of the joint powers authority. And they are not comprised solely of members of the board of directors of the joint powers authority. Instead, there is only one member in common between each of the member agencies'

legislative bodies and the board of directors of the joint powers authority. So the problematic situation in our earlier opinion is not present.

Second, we consider a suggestion that a Brown Act violation may be found on these facts because reports and media broadcasts of the meetings of member agencies would allow the appointed members of the board of directors of the joint powers authority to gain knowledge of each other's deliberations that occurred at the meetings of their respective member agencies. We do not see how this could be grounds for a Brown Act violation. An enumerated exception to the Act allows members of one legislative body to attend meetings of another legislative body—and, consequently, to gain first-hand knowledge of those meetings. Specifically, the exception states that the Act does not apply to

*5 [t]he attendance of a majority of the members of a legislative body at an ... open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.³²

If members of the board of directors of a joint powers authority may *attend* a member agency meeting without violating the Brown Act, it follows that they may also read or listen to second-hand media reports of such a meeting without running afoul of the Act.

Finally, we consider a suggestion that another Attorney General opinion, dealing with a joint powers authority, supports the conclusion that the circumstances here violate the Brown Act. That opinion concluded that a vote by an appointee to a joint powers authority was valid even though the appointee's vote was contrary to the appointing agency's position on the matter. We recognized that a member of a joint powers authority's legislative body has independent discretion when voting on authority matters. If anything, that earlier opinion supports—rather than undercuts—the conclusion we reach here. Because an appointee to the legislative body of a joint powers authority is not bound by the appointing agency's position, an opportunity would remain for public participation in the appointee's decision-making at the meeting of the joint powers authority.

Question 2

The second question asks whether a procedural due process violation would occur if a member agency at its open meeting discussed with its appointee to a joint powers authority how to decide or vote a particular way on an adjudicative matter that comes before the authority. A matter is "adjudicative" if it involves "the actual application of already existing rules to a specific set of existing facts," in the manner of a tribunal, as opposed to the development of legislative rules to apply to future cases. In the scenario presented by Question 2, then, the appointed directors of the joint powers authority would "act in a quasi-adjudicatory capacity similar to judges."

When "an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal." This requirement derives from both the federal and state Constitutions, which prohibit a governmental agency from depriving any person of property without due process of law. The touchstone of due process is fundamental fairness." Due process therefore requires (among other things) an impartial adjudicator who is "free of bias for or against a party."

*6 To be sure, due process requirements in administrative adjudications ""allow[] more flexibility" than in the context of judicial proceedings. In applying due process principles to administrative proceedings, our state court of appeal has emphasized that "the question is simply what process is due in a given circumstance." The standard of impartiality required at an administrative hearing is less exacting than that required in a judicial proceeding. But due process %7F'always requires a relatively level playing field, the 'constitutional floor' of a 'fair trial in a fair tribunal." DD' "[I]n other words," it requires "a fair hearing before a neutral or unbiased decision-maker."

When analyzing claims of a prohibited bias, the balancing inquiry called for in most procedural due process cases does not apply. 46 "[T]he unfairness that results from biased decisionmakers strikes so deeply at our sense of justice that it differs qualitatively from the injury that results from insufficient procedures. The fact that a decision-maker with a prohibited bias participated in an adjudicatory decision is enough to invalidate the decision. And if a legislative body performs the adjudication, the participation of one member with demonstrable bias generally taints the adjudication, because it is impossible to know what effect it had on other members of the body.

A due process violation can be established "by proof of actual bias" or by "showing a situation 'in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." ⁵⁰ Whether such a situation exists is determined "based on an objective assessment of the circumstances in the particular case." ⁵¹ The focus of that assessment is whether, "under a realistic appraisal of psychological tendencies and human weakness," the situation "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." ⁵²

Bias may result from an adjudicator's financial interests or other circumstances.⁵³ When a decision maker has a "financial interest [that] would offer a possible temptation to the average person as judge not to hold the balance nice, clear and true," that violates due process.⁵⁴ But "[a]bsent a financial interest, adjudicators are presumed impartial."⁵⁵ This "presumption of impartiality can be overcome only by specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias."⁵⁶ A mere subjective appearance of bias is not grounds for disqualification.⁵⁷ Ultimately, bias "must be established with concrete facts rather than inferred from mere appearances."⁵⁸

*7 We are asked whether, in light of the above principles, it would violate procedural due process for a member agency to discuss with its appointee to the board of directors of a joint powers authority how to decide or vote a particular way on an adjudicative matter that is pending before the authority. We have not found any judicial precedent addressing this precise scenario. And we recognize that a member agency's instruction to vote a certain way would not legally bind an appointee during the adjudication before the joint powers authority. Nevertheless, existing precedent suggests that the member agency's discussion of the pending matter could compromise the appointee's neutrality in at least two ways.

First, a member agency's consideration of a matter could, in some circumstances, create a situation where the appointee relies on evidence outside the record that is before the joint powers authority, or prejudges the matter prior to the adjudicatory proceeding by the joint powers authority. The requestor's legal analysis focuses on this possibility, reasoning that the member agency's deliberations about the matter would effectively be a separate hearing at which the appointee would hear evidence and testimony that the appointee would later rely on during the adjudicatory proceeding before the joint powers authority. We agree that it could violate due process if the appointee voted based on evidence presented to the member agency—but not to the joint powers authority—or on other "information of which the parties were not apprised and which they had no opportunity to controvert." The right to a fair hearing "would be meaningless if the tribunal were permitted to base its determination upon information received without the knowledge of the parties." We also take seriously the concern that the appointee might prejudge the matter as a result of the proceedings before the member agency. We recognize that courts have upheld a variety of administrative procedures where agency decision makers investigate, hold hearings, and even form tentative views before adjudicating a matter. [A] dvance knowledge of adjudicative facts that are in dispute ... does not disqualify the members of an adjudicatory body from adjudicating a dispute." But if it were demonstrated that the appointee was unwilling to reconsider the recommendation of the member agency, that could violate due process. [4]

Second, we believe that a member agency's discussion with its appointee about how to vote in a particular way in an adjudicative matter, coupled with the agency's position of influence over the appointee, could create independent due process concerns. As a general matter, procedural due process concerns can arise when someone with an interest in a proceeding has disproportionate influence over the decision maker. In *Caperton v. A.T. Massey Coal Company* (2009) 556 U.S. 868, for instance, the United States Supreme Court held that it violated due process for a judge to hear an appeal brought by a company whose chairman made massive contributions to the judge's election campaign shortly before the company filed the appeal. The Court reasoned that "there is a serious risk of actual bias— based on objective and reasonable perceptions— when a person with a personal stake in a particular case *had a significant and disproportionate influence in placing the judge on the case* by raising funds or directing the judge's election campaign when the case was pending or imminent." In a similar vein, courts in other states have repeatedly disapproved of the appearance at the hearing on behalf of a party by one who appoints the adjudicator. 66

*8 Courts have also recognized that, in certain circumstances, an appointee's desire to appease other government officials creates an unacceptable risk of bias. In *Jarrott v. Scrivener* (D.D.C. 1964) 225 F.Supp. 827, for example, the court found a due process violation based on secret communications from highly placed government officials to members of a zoning board. The two board members, both "relatively subordinate government employees," were informed "that a favorable decision" on a zoning matter "would be pleasing, and an unfavorable decision displeasing, to persons in very high governmental brackets." The court found that these communications created pressure that was real, "and the Board members contacted could not fail to be aware that they would incur administrative displeasure if they decided the appeal unfavorably." The court added that there "might be room" for a different conclusion if the communications had been public. 69

The question presented here potentially implicates the general concerns underlying these cases, but the factual scenario is obviously different from the ones discussed above. Unlike *Jarrott*, we assume that any discussion on how to vote would be communicated to the appointee in the context of an open meeting of the member agency. And unlike *Caperton*, there is no indication that anyone at the member agency holds a personal stake in the matter or made the appointment with a particular matter in mind. Nonetheless, we recognize that the scenario contemplated in the question presented could potentially exert a substantial external influence on the appointee's decision with respect to an adjudicative matter. For example, an appointee could face significant political repercussions for breaking with the member agency's direction, including the possibility of losing the appointment on the joint powers authority board. And the appointee might even face financial pressure if, for example, the appointee receives remuneration for the appointment.

Ultimately, more facts would be needed to assess bias in any given case. A recent state court of appeal decision further illustrates the fact-specific nature of the inquiry that would be required. In *Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal. App.5th 963, the court considered an adjudicatory hearing conducted by a city council about a conditional use permit for a gas station. One of the city councilmembers lived in a neighborhood near the proposed station, belonged to a neighborhood association that opposed the station, and made statements opposing it. ⁷⁰ The court held that these facts, standing alone, did not demonstrate an unacceptable probability of bias, but that the councilmember "crossed the line into advocacy against the project" in specific actions leading up to the hearing. ⁷¹ The "concrete facts" showing bias included "affirmative steps to assist opponents of the gas station conditional use permit" and the councilmember's work to organize opposition at the very hearing where he was supposed to be a neutral decision maker. ⁷²

*9 The question before us today is framed in general terms and, as illustrated, procedural due process analysis requires a careful inquiry into "the circumstances in the particular case." As a general matter, however, we believe that the scenario presented here could create a substantial risk of infringing a party's due process right to a neutral, impartial decision-maker in the adjudicatory proceeding. The member agency's discussion of how to vote a particular way could lead the appointee to rely on extrinsic evidence or prejudge the matter. And it could also create varying degrees and types of pressure on the appointee. The result could very well be a risk of actual bias or prejudgment too high to be constitutionally tolerable. ⁷⁴

Rob Bonta Attorney General Catherine Bidart Deputy Attorney General

Footnotes

- 1 See Gov. Code, §§ 6500 et seq. (Joint Exercise of Powers Act).
- Indian Wells Valley Groundwater Authority Joint Exercise of Powers Agreement (Agreement), pp. 1-2, available at < https://static l.squarespace.com/static/ 5a70e98dd55b41f44cbb2be0/t/5ae205a4575d1f737b70678e/1524762023428/Full+JPA+ Agreement.pdf> [as of September 17, 2021]; see also Wat. Code, §§ 10720-10737.8 (Sustainable Groundwater Management Act), 10723.6, subd. (a) (1) (authorizing formation of groundwater sustainability agency by joint powers agreement).
- 3 See Wat. Code, § 10732, subd. (b)(2) (authorizing groundwater sustainability agency to impose certain civil penalties after providing notice and opportunity for hearing).
- These member agencies are the Counties of Kern, Inyo, and San Bernardino, the City of Ridgecrest, and the Indian Wells Valley Water District. (Agreement, *supra*, pp. 6-7, 9 & Exh. A.) There are also two non-voting member agencies: the United States Bureau of Land Management and the United States Naval Air Weapons Station China Lake. (Agreement, *supra*, p. 7 & Exh. B.)
- Agreement, *supra*, pp. 6-7, 9 & Exh. A. Some, but not all, member agencies are required to select their appointees to the Indian Wells board of directors from the agency's own legislative body. (Agreement, *supra*, p. 7; see also Gov. Code, § 6508 [authorizing such provision in joint powers authority agreement].) In practice, each agency has selected its appointee from its own legislative body whether or not it is required to do so.
- These two member agencies—the City of Ridgecrest and the Indian Wells Valley Water District—have special voting status at the joint powers authority, and at least one of them must vote in favor of a proposed action for the Board to approve the action. (Agreement, *supra*, p. 9.)
- The Brown Act is set forth in Government Code sections 54950-54963. (See Gov. Code, § 54950.5 [naming those sections the Brown Act].)
- 8 Galbiso v. Orosi Public Utility Dist. (2008) 167 Cal. App. 4th 1063, 1075-1076.
- Gov. Code, § 54950; see also *ibid*. ("The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.").
- 10 See Golightly v. Molina (2014) 229 Cal.App.4th 1501, 1512.
- Gov. Code, § 54953; see, e.g., *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354, 362; see Gov. Code, § 54952 (defining "legislative body" to include "governing body of a local agency or any other local body created by state or federal statute").
- Agreement, *supra*, pp. 8-9.
- Gov. Code, § 54953, subd. (a); see also Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors (1968) 263 Cal. App.2d 41, 47-48; 63 Ops. Cal. Atty. Gen. 820 (1980).
- 14 Gov. Code, § 54952.2.
- 15 Gov. Code, §§ 54954, 54954.2.
- 16 Gov. Code, § 54954.3, subd. (a).
- 17 Gov. Code, § 54953, subd. (c)(1).
- Gov. Code, § 54962; see, e.g., Gov. Code, §§ 54956.9 (allowing closed session relating to litigation, as specified), 54957, subd. (b) (allowing closed session relating to personnel matters, as specified); see also Gov. Code, § 54957.7 (requiring body to disclose items that will be discussed in closed session, limiting discussion to those items during closed session, and requiring body to reconvene in open session and report certain actions and votes taken in closed session).
- 19 Gov. Code, § 54952.2, subd. (b).
- 20 Gov. Code, § 54952.2, subd. (b)(1); see Page v. MiraCosta Community College Dist. (2009) 180 Cal.App.4th 471, 503-504.
- If we were instead presented with a scenario where more than one director of the joint powers authority board attended the meeting of a particular member agency, we would look to Government Code section 54952.2, subdivision (c)(4), which explicitly allows a majority of one legislative body to attend and participate at another legislative body's meeting. See footnotes 32-33 and accompanying text.
- 22 65 Ops.Cal.Atty.Gen. 63, 66 (1982).

- Gov. Code, § 54952.2, subds. (a) (providing that Brown Act applies to congregation of majority of legislative body's members to hear, discuss, deliberate, or take action on item within body's jurisdiction), (c)(1) (exempting from Act "[i]ndividual contacts or conversations between a member of a legislative body and any other person," so long as the contacts are not used to conduct a "serial" meeting by a majority of members of that body); see *Golightly v. Molina, supra*, 229 Cal.App.4th at p. 1514 ("[I]t is collective decisionmaking by a legislative body, not the solitary decisionmaking of an individual public official, which is subject to the Brown Act").
- 24 Roberts v. City of Palmdale (1993) 5 Cal.4th 363, 375-376, quoting Wilson v. San Francisco Municipal Ry. (1973) 29 Cal.App.3d 870, 879.
- See Gov. Code, § 54952.2, subds. (a)-(b); *Golightly v. Molina, supra*, 229 Cal.App.4th at pp. 1513-1514; *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors, supra*, 263 Cal.App.2d at pp. 47-48.
- 26 79 Ops.Cal.Atty.Gen. 69, 69 (1996).
- 27 *Id.* ("A fourth member of a seven member legislative body of a local agency may not attend, as a member of the public, an open and noticed meeting of a less than a quorum advisory committee of that body, without violating the notice, agenda, and public participation requirements of the Ralph M. Brown Act applicable to meetings of the parent legislative body.").
- 28 79 Ops.Cal.Atty.Gen., *supra*, at pp. 75-76.
- 29 *Ibid.*
- 30 Gov. Code, § 54952.2, subd. (c)(6) (added by 1997 Cal. Stat., ch. 253, § 1).
- See Gov. Code, § 54952.2, subd. (c)(4). The members are limited to observing the meeting only when the majority is attending a meeting of its own standing committee. (See Gov. Code, § 54952.2, subd. (c)(6).)
- 32 Gov. Code, § 54952.2, subd. (c)(4), italics added.
- 33 See 83 Ops.Cal.Atty.Gen. 267, 267-268 (2000).
- 34 *Id.* at p. 268, citing *Harbach v. El Pueblo De Los Angeles etc. Com.* (1971) 14 Cal.App.3d 828, 834, and finding nothing to the contrary in the relevant statute, ordinances, resolutions, or joint powers agreement.
- 35 Meridian Ocean Systems, Inc. v. State Lands Com. (1990) 222 Cal.App.3d 153, 167.
- 36 Petrovich Development Co., LLC v. City of Sacramento (2020) 48 Cal.App.5th 963, 973.
- Morongo Band of Mission Indians v. State Water Resources Control Bd. (2009) 45 Cal.4th 731, 737. Our due process analysis is limited to constitutional principles that would govern any joint powers authority. A particular joint powers authority may also be governed by a statute that provides additional procedural rules. (See, e.g., Gov. Code, § 11400, subd. (a) [identifying "administrative adjudication provisions of the Administrative Procedure Act"]; see also Gov. Code, §§ 11410.10-11410.30 [applicability of administrative adjudication provisions].)
- 38 U.S. Const., 14th Amend., § 1; Cal. Const., art. 1, § 7, subd. (a).
- *People v. Lemcke* (2021) 11 Cal.5th 644, 655; see *id.* at p. 659, fn. 7 ("While the protections afforded under the due process clauses of the California Constitution and the federal Constitution are not coterminous [[[citations], we have previously acknowledged that, as with the federal Constitution, the 'essence' of our state due process clause is 'fundamental[[[] fair[ness in the] decision-making process.' [Citations.]").
- 40 Morongo Band of Mission Indians v. State Water Resources Control Bd., supra, 45 Cal.4th at p. 737; see Today's Fresh Start, Inc. v. Los Angeles County Office of Education (2013) 57 Cal.4th 197, 214 (discussing due process in administrative adjudications); Horn v. County of Ventura (1979) 24 Cal.3d 605, 612 (procedural due process applies to administrative but not legislative matters); Nasha v. City of Los Angeles (2004) 125 Cal.App.4th 470, 482 (same); 78 Ops.Cal.Atty.Gen. 77, 78 (1995).
- 41 Today's Fresh Start, Inc. v. Los Angeles County Office of Education, supra, 57 Cal.4th at p. 214 (noting that while the "bar against financially interested adjudicators applies with as much force to administrative adjudicators as to judicial officers" in other respects, "administrative hearings need not be conducted with the same rigor demanded of judicial proceedings," citing Haas v. County of San Bernardino (2002) 27 Cal.4th 1017, 1027 and Gai v. City of Selma (1998) 68 Cal.App.4th 213, 219).
- 42 Nightlife Partners v. City of Beverly Hills (2003) 108 Cal. App. 4th 81, 90.
- 43 Gai v. City of Selma, supra, 68 Cal. App.4th at p. 219; see, e.g., Withrow v. Larkin (1975) 421 U.S. 35, 56 (recognizing that it does not violate due process for an agency decision maker "to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings").
- 44 Nightlife Partners, supra, 108 Cal.App.4th 81, 90, original emphasis.
- 45 Ibid.
- 46 *Haas v. County of San Bernardino, supra*, 27 Cal.4th at p. 1035. Generally, courts analyze federal due process claims by balancing three factors: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally,

- the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (*Mathews v. Eldridge* (1976) 424 U.S. 329, 335.) Due process analysis under the California Constitution also weighs a fourth factor: "the dignitary interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their side of the story before a responsible government official." (*People v. Allen* (2008) 44 Cal. 4th 843, 862-863, 868.)
- 47 *Haas v. County of San Bernardino, supra*, 27 Cal.4th at p. 1036. "In Justice Holmes famous phrase, 'even a dog distinguishes between being stumbled over and being kicked." (*Ibid.*)
- Woody's Group, Inc. v. City of Newport Beach (2015) 233 Cal.App.4th 1012, 1022-1023; Nasha v. City of Los Angeles, supra, 125 Cal.App.4th at p. 485 ("Because the Planning Commission's decision was tainted by bias and must be vacated, it is unnecessary to address Nasha's other contentions").
- 49 Cinderella Career & Finishing Schools, Inc. v. FTC (D.C. Cir. 1970) 425 F.2d 583, 592 ("Litigants are entitled to an impartial tribunal whether it consists of one [person] or twenty and there is no way which we know of whereby the influence of one upon the others can be quantitatively measured"); see, e.g., Nasha v. City of Los Angeles, supra, 125 Cal.App.4th at pp. 478, 485 (bias of one of three planning commissioners tainted commission's decision).
- Morongo Band of Mission Indians v. State Water Resources Control Bd., supra, 45 Cal.4th at p. 737, quoting Withrow, supra, 421 U.S. at p. 47; see Golden Day Schools, Inc. v. State Dept. of Educ. (2000) 83 Cal.App.4th 695, 709.
- 51 See *People v. Peoples* (2016) 62 Cal.4th 718, 788.
- 52 *Withrow, supra*, 421 U.S. at p. 47.
- 53 See Caperton v. A.T. Massey Coal Co. (2009) 556 U.S. 868, 876-877.
- 54 Haas v. County of San Bernardino, supra, 27 Cal.4th at p. 1026.
- 55 Today's Fresh Start, Inc. v. Los Angeles Cty. Off. of Educ., supra, 57 Cal. 4th at p. 219.
- Morongo Band of Mission Indians v. State Water Resources Control Bd., supra, 45 Cal.4th at p. 741; see also Lent v. California Coastal Commission (2021) 62 Cal.App.5th 812, 855 ("A party must allege concrete facts that demonstrate the challenged judicial officer is contaminated with bias or prejudice. 'Bias and prejudice are never implied and must be established by clear averments," quoting Andrews v. Agricultural Labor Relations Bd. (1981) 28 Cal.3d 781, 792).
- 57 Andrews v. Agricultural Labor Relations Bd., supra, 28 Cal.3d at pp. 791-794.
- 58 Petrovich Development Co., supra, 48 Cal.App.5th at p. 974, quoting Independent Roofing Contractors v. California Apprenticeship Council (2003) 114 Cal.App.4th 1330, 1340.
- See 83 Ops.Cal.Atty.Gen., *supra*, at p. 267.
- 60 English v. City of Long Beach (1950) 35 Cal. 2d 155, 158.
- 61 Id. at p. 159; see also ibid. ("A hearing requires that the party be apprised of the evidence against [it] so that [it] may have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced"), Vollstedt v. City of Stockton (1990) 220 Cal. App. 3d 265, 269 (holding that a city manager violated due process by upholding a demotion based on information received from the city's personnel director instead of from the hearing before the city's civil service commission).
- 62 Today's Fresh Start, Inc. v. Los Angeles Cty. Off. of Educ., supra, 57 Cal. 4th at pp. 226-227 (rejecting the view "that engaging in an administrative investigation and forming opinions based on the fruits of that investigation yields the sort of extrinsic bias the due process clause was intended to prohibit").
- 63 State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 841, quoting Breakzone Billiards v. City of Torrance (2000) 81 Cal.App.4th 1205, 1236.
- 64 Id. ("There must be ... a commitment to a result (albeit, perhaps, even a tentative commitment), before the process will be found violative of due process"); see, e.g., Furtney v. Simsbury Zoning Comm'n (1970) 159 Conn. 585, 594 ("The decisive question in the instant case is whether Eno [a commissioner] had actually made up his mind, in advance of the public hearing, that he was going to approve the proposed change of zone regardless of any changes or arguments in opposition which might be urged at the hearing"); cf. Today's Fresh Start, supra, 57 Cal. 4th at p. 227, discussing the United States Supreme Court's decision in Trade Comm'n. v. Cement Institute (1948) 333 U.S. 683 ("Even assuming that the entire commission had formed the view, based on its investigation, that the cement industry was engaged in unlawful price fixing, that view did not prevent members of the cement industry from producing voluminous evidence, presenting testimony and argument, and persuading the commission to revise its conclusions").
- 65 Caperton, supra, 556 U.S. at 884, italics added.
- See, e.g., *Place v. Board of Adjustment of Borough of Saddle River* (1964) 42 N.J. 324, 332 (declaring this practice "patently improper"); *Barkey v. Nick* (Mich. Ct. App. 1968) 11 Mich. App. 381, 384-385 (voiding a decision "made pursuant to an argument by

one charged in part with the appointment of that administrative body," and finding it imposed "duress on the members of the board, not as a matter of fact, but as a matter of law").

- 67 Jarrott v. Scrivener (D.D.C. 1964) 225 F.Supp. 827, 834.
- 68 Ibid.
- 69 *Ibid.*
- 70 Petrovich Development Co., LLC v. City of Sacramento, supra, 48 Cal.App.5th at p. 974.
- 71 *Ibid.*
- 72 *Id.* at 976.
- 73 People v. Peoples, supra, 62 Cal.4th at p. 788.
- See Morongo Band of Mission Indians v. State Water Resources Control Bd., supra, 45 Cal.4th at p. 737.

104 Ops. Cal. Atty. Gen. 34 (Cal.A.G.), 2021 WL 4395135

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Document 6

Regulations Regarding Behested Payments

West's Annotated California Codes Government Code (Refs & Annos) Title 9. Political Reform (Refs & Annos) Chapter 2. Definitions (Refs & Annos)

West's Ann.Cal.Gov.Code § 82004.5

§ 82004.5. Behested payment

Effective: January 1, 2018 Currentness

"Behested payment" means a payment that is made at the behest of a committee, an elected officer, a member of the Public Utilities Commission, or an agent thereof, under any of the following circumstances:

- (a) Full and adequate consideration is received from the committee or elected officer.
- (b) The payment is made to a different candidate or to a committee not controlled by the behesting candidate.
- (c) As to an elected officer, it is clear from the surrounding circumstances that the payment was made for purposes unrelated to the officer's seeking or holding of elective office. For purposes of this subdivision, a payment is made for purposes related to an elected officer's seeking or holding of elective office if all or a portion of the payment is used for election-related activities, as defined in Section 82022.5. The following types of payments are presumed to be for purposes unrelated to an elected officer's seeking or holding of elective office:
- (1) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.
- (2) A payment made by a state, local, or federal governmental agency.
- (3) A payment made by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. 1
- (4) A payment made principally for charitable purposes.
- (5) A payment made principally for legislative or governmental purposes by a person other than a state, local, or federal governmental agency.

Credits

(Added by Stats.2017, c. 749 (A.B.867), § 2, eff. Jan. 1, 2018.)

Footnotes

1 Internal Revenue Code sections are in Title 26 of the U.S.C.A. West's Ann. Cal. Gov. Code § 82004.5, CA GOVT § 82004.5 Current with all laws through Ch. 770 of 2021 Reg.Sess.

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2 CCR § 18424

§ 18424. Behested Payment Reporting. Additional Information.

To the extent the information is known to the elected officer or Public Utilities Commission ("PUC") member, the behested payment report filed pursuant to Section 84224 shall include the following:

- (a) A brief description of any relationship of the nonprofit organization payee to the elected officer, PUC member, or a member of their immediate family, or member of their campaign or officeholder staff. The brief description shall include the following information about any individual listed above:
 - (1) Any decision-making capacity within the organization, such as a board member or executive officer position.
 - (2) Salaried employment at the organization.
 - (3) Status as a founding member of the organization.
 - (4) A position on an honorary or advisory board of the organization.
- (b) A brief description of any proceeding before the elected officer's or PUC member's agency at the time of a reported payment or within the 12 months prior to the reported payment in which the payor is the named party or subject of the decision.
 - (1) A "proceeding" for purposes of subdivision (b) includes decisions on a contract, license, permit, or other entitlement and matters of nongeneral legislation. A "proceeding" does not include decisions on general legislation.
 - (2) A proceeding is considered "before the elected officer's or PUC member's agency" if it has been placed on the agency's formal agenda, or if the official has knowledge that the matter has been submitted to the agency for decision and the official may make, participate in making, or otherwise use official position to influence the agency's decision on the matter, as those terms are defined in Regulation 18704.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82004.5, 82041.3 and 84224, Government Code.

HISTORY

1. New section filed 11-8-2021; operative 12-8-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 46).

This database is current through 12/24/21 Register 2021, No. 52

2 CCR § 18424, 2 CA ADC § 18424

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2 CCR § 18424.1

§ 18424.1. Behested Payment Reporting. Good Faith Estimate.

A good faith estimate of a behested payment amount, payment date or both will meet the reporting requirements under Section 84224 where each of the following are met:

- (a) The elected officer or Public Utilities Commission ("PUC") member practiced reasonable efforts to obtain the required information and is unable to ascertain the exact amount or date of the behested payment from the payee prior to the reporting deadline. For purposes of this regulation, reasonable efforts include sending a written request to the payee for the required information prior to the 30 day filing deadline.
- (b) The elected official or PUC member states the payment information is an estimated amount or estimated date that reflects the best efforts of the elected officer or PUC member to ascertain the accurate information and states the reason the official is unable to provide the information.
- (c) An amended report with corrected information is filed within 10 days of the elected officer or PUC member receiving the payment information from the payee.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82004.5, 82041.3 and 84224, Government Code.

HISTORY

1. New section filed 11-8-2021; operative 12-8-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 46).

This database is current through 12/24/21 Register 2021, No. 52

2 CCR § 18424.1, 2 CA ADC § 18424.1

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2 CCR § 18424.2

- § 18424.2. Behested Payment Reporting. Charitable Organization Fundraising Solicitations.
- (a) A payment made in response to a fundraising solicitation from a charitable organization is a reportable payment "made at the behest of" the elected officer or Public Utilities Commissioner ("PUC") member in the following circumstances:
 - (1) The solicitation is sent under the control or at the direction of, in cooperation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the elected officer, PUC member, or agent thereof; and
 - (2) The solicitation "features" the elected officer or PUC member.
- (b) For purposes of this regulation, a solicitation "features" the elected officer or PUC member if either applies:
 - (1) The solicitation includes the elected officer or PUC member's photograph or signature or singles out the name or office of the officer or member by the manner of display in the layout of the document, such as by headlines, captions, type size, typeface, or type color.
 - (2) The solicitation includes a roster or letterhead listing its governing board, the elected officer or PUC member is listed as a board member, and the board includes a majority of elected officers or PUC members.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82004.5, 82041.3 and 84224, Government Code.

HISTORY

1. New section filed 11-8-2021; operative 12-8-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 46).

This database is current through 12/24/21 Register 2021, No. 52

2 CCR § 18424.2, 2 CA ADC § 18424.2

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2 CCR § 18424.3

§ 18424.3. Behested Payment Reporting. Payments from Donor Advised Funds.

- (a) The "name of payor" reported in a behested payment report under Section 84224 for a payment from a sponsoring organization utilizing a donor advised fund must include the following information to the extent it is known by the elected officer or Public Utility Commission ("PUC") member filing the report:
 - (1) The name of the sponsoring organization.
 - (2) The name of the donor advised fund. If the sponsoring organization withholds the name of the donor advised fund, the official shall report this name as "anonymous donor advised fund."
 - (3) The name of the donor. Where a donor advised fund has more than one donor, the name of the donor, or donors, who exercised advisory privileges over the donor advised fund for the payment may be provided in lieu of naming each donor. Where a donor's advisor exercised discretion in the making of a behested payment, the official must provide the name of the donor's advisor for this payment, in addition to the donor. If the sponsoring organization withholds the donor information, the official shall report the name as "anonymous donor" and to the extent known, the donor's advisor.
- (b) It is the duty of the elected officer or Public Utilities Commission member to identify and report the information required by subdivision (a) with as much specificity as the official knows or can determine by inquiring with the sponsoring organization. If the official learns the identity of the donor or donor advised fund with greater specificity after the report filing date, the official has a duty to amend the behested payment report with the information within 10 days of the official receiving the additional information.
- (c) The "single source" of the payment for purposes of determining the \$5,000 threshold triggering a behested payment report, and any subsequent reporting requirements is the following:
 - (1) Where an individual donor is identified under subdivision (a)(3), the donor is the "single source" of the payment.
 - (2) Where multiple donors are identified under subdivision (a)(3), each donor is a "single source" for an equal portion of the payment.
 - (3) Where a sponsoring organization withholds the name of the donor, the donor advised fund identified under subdivision (a)(2) is the "single source" of the payment. If the donor advised fund is an anonymous donor advised fund:

- (A) To the extent the sponsoring organization provides, and the official discloses, sufficient information to attribute the payment to a specific anonymous donor advised fund, the anonymous donor advised fund is the single source.
- (B) For all other anonymous donor advised fund payments, the official shall aggregate and report all behested payments from an anonymous donor advised fund of the same sponsoring organization and shall consider this as a "single source."
- (d) For purposes of this regulation:
 - (1) The "donor" is the person or persons who funded the donor advised fund and retains advisory privileges over the donor advised fund, including the ability to designate an advisor.
 - (2) A "donor advised fund" is as defined in section 4966(d)(2) of Title 26 of the United States Code.
 - (3) The "donor's advisor" is the person designated by the donor who exercised advisory privileges over the donor advised fund for this payment.
 - (4) A "sponsoring organization" is as defined in section 4966(d)(1) of Title 26 of the United States Code.

Note: Authority cited: Section 83112, Government Code. Reference: Section 84224, Government Code.

HISTORY

1. New section filed 11-22-2021; operative 12-22-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 48).

This database is current through 12/24/21 Register 2021, No. 52

2 CCR § 18424.3, 2 CA ADC § 18424.3

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Document 7

Government Code section 85320

(As Amended by Assembly Bill 319)

West's Annotated California Codes
Government Code (Refs & Annos)
Title 9. Political Reform (Refs & Annos)
Chapter 5. Limitations on Contributions (Refs & Annos)
Article 3. Contribution Limitations (Refs & Annos)

West's Ann.Cal.Gov.Code § 85320

§ 85320. Foreign government or foreign principal; violations; exception; punishment

Effective: January 1, 2022 Currentness

- (a) A foreign government or foreign principal shall not make, directly or through any other person, a contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, any state or local ballot measure or in connection with the election of a candidate to state or local office.
- (b) A person or a committee shall not solicit or accept a contribution from a foreign government or foreign principal in connection with the qualification or support of, or opposition to, any state or local ballot measure or in connection with the election of a candidate to state or local office.
- (c) For the purposes of this section, a "foreign principal" includes the following:
- (1) A foreign political party.
- (2) A person outside the United States, unless either of the following is established:
- (A) The person is an individual and a citizen of the United States.
- (B) The person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States.
- (3) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.
- (4) A domestic subsidiary of a foreign corporation if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation who is neither a citizen of the United States nor a lawfully admitted permanent resident of the United States.

- (d) This section shall not prohibit a contribution, expenditure, or independent expenditure made by a lawfully admitted permanent resident.
- (e) Any person who violates this section shall be guilty of a misdemeanor and shall be fined an amount equal to the amount contributed or expended.

Credits

(Added by Stats.1997, c. 67 (S.B.109), § 1. Amended by Stats.2000, c. 349 (A.B.746), § 1; Stats.2021, c. 313 (A.B.319), § 1, eff. Jan. 1, 2022.)

West's Ann. Cal. Gov. Code § 85320, CA GOVT § 85320 Current with all laws through Ch. 770 of 2021 Reg.Sess.

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Document 8

Hood Advice Letter, No. A-21-046



April 22, 2021

Kimberly Hood Interim City Attorney City of Galt Best Best & Krieger 500 Capital Mall, Suite 1700 Sacramento, CA 95814

Re: Your Request for Advice Our File No. A-21-046

Dear Ms. Hood:

This letter responds to your request for advice on behalf of Galt City Councilmembers Kevin Papineau and Rich Lozano and Vice Mayor Paul Sandhu regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹

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

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

QUESTION

- 1. Under the Act, may Councilmember Lozano take part in decisions regarding the Carillion Boulevard Corridor Plan, which would include various street improvements, given that his residential real property is between 500 and 1,000 feet of Carillion Boulevard?
- 2. Under the Act, may Councilmember Papineau and Vice Mayor Sandhu take part in decisions regarding the Corridor Plan, given that their respective residential real properties are located within 500 feet of Carillion Boulevard?

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

CONCLUSION

- 1. Yes. Given the scope of the Corridor Plan and physical barriers between the project site and his residential real property located between 500 and 1,000 feet away, the Corridor Plan would not appear to affect the development potential, income producing potential, highest and best use, character, or market value of Councilmember Lozano's real property and he may take part in the Corridor Plan decisions.
- 2. No. Because the residences are located less than 500 feet from the project site, they are subject to a stricter standard that requires clear and convincing evidence the Corridor Plan would have no measurable effect on the residential real property. Given that the Corridor Plan would reduce a current four-lane facility into a two-lane facility and is intended to reduce noise, overall traffic, and the speed of traffic near the residences, there is no clear and convincing evidence the project would not have a measurable effect on the properties. Accordingly, Councilmember Papineau and Vice Mayor Sandhu have disqualifying conflicts of interests under the Act.

FACTS AS PRESENTED BY REQUESTER

The City of Galt ("City") was awarded a grant from the California Energy Commission (CEC) in response to its Grant Funding Opportunity Local Government Challenge notice in 2017 to prepare a Climate Action Plan, Corridor Plan and Master Plan that support the City's 2030 General Plan implementation policies and goals, in addition to regional and statewide climate and transportation policies and directives. The Carillion Boulevard Corridor Plan ("Corridor Plan") is a high-level planning level document that identifies proposed improvements that could be made when traffic demands warrant. These improvements would take place well into the future and incrementally, as warranted by traffic conditions and funding availability. The Corridor Plan contains two proposed planning options for traffic improvements, Alternative 1 and Alternative 2, though the City Council is not required to select either of these options. However, the City does not have to formally adopt or implement either Alternative contained in the Plan at this time. An environmental analysis of potential impacts was also prepared in the form of an Initial Study and Mitigated Negative Declaration.

Carillion Boulevard is a 2.2-mile corridor located east of Highway 99 between Twin Cities Road and Simmerhorn Road. Carillion is a four-lane arterial that primarily services residential housing with limited access points from collector streets. The focus of the Corridor Plan is to encourage less use of automobile travel by enhancing transportation modes, such as walking and cycling, to create a "Complete Street" road. As such, one of the Alternatives in the Plan includes a "road diet" and roundabouts or controlled signals to promote traffic calming with buffered bike lanes. However, none of the Plan Alternatives are designed to change the traffic capacity and none of the Plan Alternatives propose to increase the right-of-way along Carillion Boulevard. The environmental study for the Plan did not identify any significant impacts to traffic, aesthetics/views, noise, or air quality as a result of the Plan Alternatives, nor is the Plan anticipated to divert traffic into the neighborhoods, which consist of residential streets and cul-de-sacs accessed by other arterial and collector streets from Carillion. No residences front Carillion in the Plan area and the adjacent residential neighborhoods are separated from Carillion by 6-foot sound walls and approximately 20-foot landscape buffers.

Councilmember Papineau owns a single-family residence that is within 500 feet of Carillion Boulevard by straight line and one side of his property line abuts the sound wall along Carillion Boulevard. However, he does not have direct access to Carillion Boulevard from his residential subdivision. His property requires several turns along residential streets to access a collector street that connects to Carillion. Specifically, he has two routes to access Carillion Boulevard via the following collector streets: via Walnut Avenue, which is 1/2 mile and six turns; and (2) via Elk Hills Drive which is just over 1/3 mile and involves three turns to access Carillion Boulevard.

Councilmember Lozano owns a residential property in a residential subdivision that is more than 500 feet but within 1,000 feet via a direct line to Carillion Boulevard. However, numerous residences are between his residence and Carillion Boulevard and accessing Carillion from his property requires one turn on a residential street to access a collector street that then connects to Carillion Boulevard.

Finally, Vice Mayor Sandhu owns a residential property on an interior cul-de-sac. The real property is located approximately 304 feet from Carillion Boulevard via a straight line. However, Vice Mayor Sandhu's property has numerous residences between it and Carillion Boulevard and requires access on other residential streets before connecting to Carillion.

The Plan Alternatives for Carillion Boulevard will not change the width of the traveled right-of-way and are not anticipated to increase traffic on Carillion Boulevard or in the residential streets within the neighboring residential subdivision where the residential properties of Councilmembers Papineau and Lozano and Vice Mayor Sandhu are located. As noted above, the residential subdivisions do not have direct access to Carillion Boulevard and are separated from Carillion by a sound wall and landscaping areas. Additionally, the environmental study (Initial Study/Mitigated Negative Declaration) prepared by independent contractor, Raney Planning & Management, Inc., for the Plan did not identify any significant impacts to traffic, aesthetics/views, noise, or air quality as a result of the Plan Alternatives.

In a follow-up email, you provided a link to the Initial Study/Mitigated Negative Declaration. The Initial Study/Mitigated Negative Declaration explains that the road diet would convert the current four-lane facility into a two-lane facility and allow room for a buffered bike lane in each direction. Between Vauxhall Road and Simmerhorn Boulevard, the project would include future widening of the existing two-lane roadway to accommodate buffered bike lanes and sidewalks. Limited right-of-way expansions would be necessary in some locations, resulting in disturbance of areas that are not currently paved. The Initial Study/Mitigated Negative Declaration also states:

Upon completion of the proposed improvements, the project would not include any increases in operational noise sources relative to existing conditions. The project would not result in increased vehicle travel within the City; rather, . . ., the proposed roundabouts would reduce vehicle idling times, while the lane reductions included in the proposed road diet would reduce mid-block travel speeds. In addition, given that the proposed improvements would prioritize pedestrian and bicycle modes of transport consistent with the City's Complete Streets policies, the project would likely result in an overall decrease in passenger vehicle use within the City. Thus, traffic noise would likely be reduced as a result of the project.

A map included in the Initial Study/Mitigated Negative Declaration indicates the project includes 11 proposed roundabouts throughout the length of Carillion Boulevard, spanning numerous city blocks.

ANALYSIS

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests are "[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more." (Section 87103(b).) Councilmembers Papineau and Lozano and Vice Mayor Sandhu have economic interests in their respective real property.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, "[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6)." The residential real property of the Councilmembers and Vice Mayor Sandhu are not explicitly involved in the governmental decisions relating to the Corridor Plan.

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

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. (Regulation 18702.2(a)(7).) The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is also material whenever the governmental decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

(Regulation 18702.2(a)(8).)

Because Councilmember Lozano's real property is located between 500 and 1,000 feet from the project site, the relevant materiality standard is Regulation 18702.2(a)(8). The development of the Corridor Plan would not affect the development potential or highest or best use of Councilmember Lozano's real property, nor would it affect the property's market value or income producing potential. Additionally, the Corridor Plan would not substantially alter traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality, as evidenced by the findings of the Initial Study/Mitigated Negative Declaration. Accordingly, under the Act, the decisions at issue would not have a reasonably foreseeable, material financial effect on Councilmember Lozano's real property and, therefore, he may take part in the decisions pertaining to the Corridor Plan.

Councilmember Papineau and Vice Mayor Sandhu own real property located less than 500 feet from the project site and, therefore, the relevant materiality standard is Regulation 18702.2(a)(7). Under that heightened standard, there must be clear and convincing evidence there will be no measurable impact on the official's real property. Based on the facts provided, that standard is not met. Although the Initial Study/Mitigated Negative Declaration indicates the Plan Alternatives would have "no impact" or "less-than-significant impacts" on traffic, aesthetics/views, noise, or air quality generally, those conclusions do not end our analysis. As the Initial Study/Mitigated Negative Declaration states, a "less-than-significant impact" refers to "[a]ny impact that would not be considered significant under CEQA relative to existing standards." These determinations can be influential in our analysis of facts with respect to the Act, particularly when considering whether a project's impact would be "substantial" under Regulation 18702.2(a)(8), but Regulation 18702.2(a)(7) requires clear and convincing evidence of no measurable effect on an official's real property.

Here, despite concluding that the Corridor Plan would have "less-than-significant-impact" on noise for purposes of CEQA, it also states that "traffic noise would likely be reduced as a result of the project." Likewise, although the Initial Study anticipates a less-than-significant impact on transportation, one of the Corridor Plan's primary purposes is "traffic calming" through the introduction of a "road diet" and roundabouts. The Initial Study notes that the Corridor Plan may reduce passenger vehicle use in the City, congestion, mid-block travel speeds, and vehicle idling times. In addition to potential measurable effects on noise and traffic levels, additional changes such as the replacement of vehicle lanes with bicycle lanes and improved pedestrian safety measures could also affect the market value of nearby properties. For these reasons, we do not find clear and convincing evidence that the Corridor Plan would have no measurable effect on the real properties owned by Councilmember Papineau and Vice Mayor Sandhu. Accordingly, under the Act, they have disqualifying conflicts of interest with respect to the Corridor Plan and must recuse themselves from decisions pertaining to the project.

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

Sincerely,

Dave Bainbridge General Counsel

By: Kevin Cornwall

Counsel, Legal Division

KMC:dkv



Document 9

Hood Advice Letter, No. A-21-070

May 27, 2021

Kimberly Hood Interim City Attorney City of Galt Best Best & Krieger 500 Capital Mall, Suite 1700 Sacramento, CA 95814

Re: Your Request for Advice

Our File No. A-21-070

Dear Ms. Hood:

This letter responds to your request for advice on behalf of Galt Vice Mayor Paul Sandhu regarding the conflict of interest provisions of the Political Reform Act (the "Act"). ¹

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

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

QUESTION

Would the effect of the City's Corridor Plan on Vice Mayor Sandhu's residential real property be indistinguishable from the effect on the public generally, such that he may take part in decisions concerning the Corridor Plan, despite being otherwise disqualified?

CONCLUSION

Yes, given the minimal effects, as well as the distance and physical barriers between his residence and the project site, the foreseeable effect on Vice Mayor Sandhu's residence is indistinguishable from the effect on the public generally.

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

FACTS AS PRESENTED BY REQUESTER

The City of Galt ("City") was awarded a grant from the California Energy Commission ("CEC") in response to its Grant Funding Opportunity Local Government Challenge notice in 2017 to prepare a Climate Action Plan, Corridor Plan, and Master Plan that support the City's 2030 General Plan implementation policies and goals, in addition to regional and statewide climate and transportation policies and directives.

The Corridor Plan is a high-level planning document that identifies proposed improvements to Carillion Boulevard that could be made when traffic demands warrant. Carillion Boulevard is a 2.2-mile corridor located east of Highway 99 between Twin Cities Road and Simmerhorn Road. Carillion is primarily a four-lane arterial that services mainly residential housing with limited access points from collector streets. The Corridor Plan contains two proposed planning options for traffic improvements—Alternatives 1 and 2—though the City Council is not required to select either of these options and will simply be considering whether to accept the Corridor Plan as complete to satisfy the CEC grant requirements. The City does not have to formally adopt or implement either Alternative contained in the Plan at this time. An environmental analysis of potential impacts was also prepared in the form of an Initial Study/Mitigated Negative Declaration ("IS/MND"), which did not identify any significant impacts to traffic, aesthetics/views, noise, or air quality as a result of the Plan Alternatives. Nor is the Corridor Plan anticipated to divert traffic into the neighborhoods, which consist of residential streets and cul-de-sacs accessed by other arterial and collector streets from Carillion Boulevard.

Acceptance of the Corridor Plan does not require completion of any of the proposed improvements and does not bind the City or future City Councils to implementing any of the alternatives. Instead, any improvements to Carillion Boulevard would take place at some future date and incrementally, as warranted by traffic conditions and funding availability and pursuant to any future or more specific studies that the City may conduct beyond the high-level Corridor Plan.

There are approximately 7,045 residential parcels in the City and at least 15% of those parcels are located about 700-750 feet from Carillion Boulevard.

Vice Mayor Sandhu's property is not directly adjacent to and does not directly abut Carillion Boulevard. Rather, his property is located approximately 304 feet from the eastern property line to Carillion Boulevard. His residence is located on an interior cul-de-sac over 300 feet "as the crow flies," but involves several turns on other residential streets to reach Carillion Boulevard. Under either Alternative, the traveled roadway will remain the same with the existing sound wall limiting any changes in noise that may result for those properties. The "less than significant impacts" and benefits identified in the IS/MND and *Hood* Advice Letter, No. A-21-046 would impact at least 15% of the Cities residential properties equally, including Vice Mayor Sandhu's residential property, without any measurable difference for properties that are 300 or 700 feet from Carillion Boulevard. The City is not aware of any other facts indicating that Vice Mayor Sandhu's residential real property would be uniquely affected as compared to the significant segment of the public pursuant to Regulation 18703(b)(2).

ANALYSIS

In *Hood* Advice Letter, No. A-21-046, we advised, based on the facts provided, that there was not clear and convincing evidence that the Corridor Plan would have no measurable effect on the residential real property owned by Vice Mayor Sandhu. Accordingly, we advised that Vice Mayor Sandhu had a disqualifying conflict of interest under the Act and must recuse himself from decisions pertaining to the project. With additional information regarding the number of residential real properties near Carillion Boulevard, we now advise on whether the "public generally exception" applies, such that Vice Mayor Sandhu may still take part in decisions pertaining to the project.

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family," or on certain specified economic interests. (Section 87103 (emphasis added).)

A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public includes "[a]t least 15 percent of residential real property within the official's jurisdiction if the only interest an official has in the governmental decision is the official's primary residence." (Regulation 18703(b)(2).) Here, 15 percent of the City's residential real property is located less than (at most) 750 feet from Carillion Boulevard.

In this case, considering the size and scope of the project, the "less than significant" (though not necessarily immeasurable) impacts on noise and traffic levels, as well as the distance and physical barriers between his property and Carillion Boulevard, it appears there would be no distinguishable difference on Vice Mayor Sandhu's property compared to other residences within 750 feet from Carillion Boulevard, all of which would experience similar impacts. Similarly, given the distance, physical barriers, and several turns it takes to reach Carillion Boulevard from Vice Mayor Sandhu's real property, it also appears that any potential effect on the market value of Vice Mayor Sandhu's real property would be indistinguishable from the effect on other properties within 750 feet from Carillion Boulevard.

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

Sincerely,

Dave Bainbridge General Counsel

By: Kevin Cornwall

Counsel, Legal Division

KMC:dkv



Document 10

Byrd Advice Letter, No. A-20-134



February 23, 2021

Larry Byrd Modesto Irrigation District (MID) Stanislaus County 2100 Tim Bell Road Waterford, CA 95386

Re: Your Request for Advice

Our File No. A-20-134

Dear Mr. Byrd:

This letter responds to your request for advice on behalf of Modesto Irrigation District ("MID") Board Member Larry Byrd regarding Government Code Section 1090, et seq.¹ Please note that we are only providing advice under Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest, including Public Contract Code.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice. Lastly, the Commission does not provide advice with respect to past conduct. (Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

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

QUESTION

Does Section 1090 prohibit Board Member Byrd from taking part in, and the MID from entering into, any contract with AB La Grange to participate in a groundwater replenishment program? 2

¹ All further statutory references are to the Government Code, unless otherwise indicated.

² We cannot provide advice as to whether Board Member Byrd has a conflict in the decision to renew the GWP because this involves past conduct, as prior votes authorizing the program have already occurred. We address only the question of entering the contract after taking part in decision regarding the program.

CONCLUSION

Section 1090 would prohibit Board Member Byrd from taking part in, and the MID from entering into, any contract with AB La Grange involving the GRP because of his prohibitory financial interest in any such contract.

FACTS AS PRESENTED BY REQUESTER

Larry Byrd serves as one of the five Directors of the Modesto Irrigation District ("MID"), a public entity that provides electrical power and water in portions of Stanislaus County, California. In 2017, 2018 and 2019, the MID Board (including board member Byrd) voted for a groundwater replenishment program ("GRP") to allow farms consisting of at least 10 acres within the MID sphere of influence and the Modesto Groundwater Sub-Basin but outside MID's irrigation boundaries (about 41,764 total acres) to purchase water from the MID to substitute for groundwater pumping. Approximately 400 farms meet those criteria. In a subsequent email, you explain that the 10-acre minimum requirement for participation in the groundwater replenishment program was recommended by staff and adopted by the Board because Stanislaus County established 10 acres as the minimum acre requirement for enrollment of prime farmland into a Williamson Act contract. Stanislaus County considers 10 acres the minimum parcel size that is large enough to sustain agricultural uses. 89 parcels totaling 278 acres within the area that is covered by the program (within MID's sphere of influence, within the Modesto Groundwater Sub-Basin, but outside MID's annexed area) do not meet this criterion.

The purpose of the program is to replenish the Modesto Sub-Basin aquifer by shutting off groundwater pumping and apply MID water to qualified lands. Participation in this program is voluntary and requires the submission of an Application and Agreement ("Agreement") along with a \$100 non-refundable application fee. Landowners who are approved to participate in the GRP must pay to MID \$60 for each acre-foot of water delivered under the program and comply with all terms and conditions set forth in the Agreement.

Receipt and use of replenishment water through the GRP is limited to use upon the Applicable Land specified in this Application and Agreement, all of which must be currently developed agricultural lands solely reliant upon groundwater from the Modesto Sub-basin. The receipt and use of replenishment water must be for agricultural irrigation purposes only, and the Landowner must warrant that the water received is put to reasonable and beneficial uses at all times. Non-beneficial uses include, but are not limited to, water used for lawns, pasture without livestock benefit, hunting and/or wildlife habitat, recreational ponds, and other uses or practices as determined solely by MID. Water must not be used directly or indirectly for any domestic, commercial or industrial purposes.

Board Member Byrd is a general partner in AB La Grange, a California general partnership, which farms almonds in Stanislaus County. Tyler C. Angle Business Ventures, LP, ("Angle") as well as Tim Byrd are the other general partners in AB La Grange. Board Member Byrd does not

have any interest in Angle, which owns and operates other farming enterprises. AB La Grange did not participate in the GRP because of board member Byrd's role as an MID board member.

ANALYSIS

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended "not only to strike at actual impropriety, but also to strike at the appearance of impropriety." (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest." (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) When an officer with a proscribed financial interest is a member of the governing body of a public entity, the prohibition of Section 1090 also extends to the entire body, and it applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

MID Directors are public officials subject to Section 1090. Additionally, this matter involves a contract between the MID and applicants who qualify for participation in the GRP. Under Section 1090, transactions are viewed in a broad manner to avoid narrow or technical definitions of a contract. (*People v. Honig, supra*, at p. 351 citing *Stigall, supra*, at pp. 569, 571.) Further, when members of a public board, commission or similar body have the power to execute contracts, each member is conclusively presumed to be involved in the making of all contracts by his or her agency regardless of whether the member actually participates in the making of the contract. (*Thomson v. Call*, supra at pp. 645 & 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen. 49 (2006).)

Section 1090 casts a wide net to capture those officials who participate in any way in the making of the contract. (*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.) Therefore, for purposes of Section 1090, participating in making a contract is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing plans and specifications, and solicitations for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall, supra*, at p.569.) Thus, the final execution of a contract, which is the time when the contract is technically made, is not the only time when a conflict of interest may be presented. We must look to whether the official had the opportunity and did participate in the policy decision to create the government program under which the contract would later be executed. (See, e.g., 81 Ops.Cal.Atty.Gen. 317 (1998) [council member could not participate in the establishment of a loan program and then leave office and apply for a loan].)

Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest" (*People v. Honig* (1996) 48 Cal.App.4th 289, 333), and officials are deemed to

have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although Section 1090 nowhere specifically defines the term "financial interest," case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (See, e.g., *Thomson*, *supra*, at pp. 645, 651-652.)

Since Board Member Byrd has already taken part in previous votes on the GRP, he would have a prohibitory financial interest in any contract between MID and AB La Grange involving the GRP and Section 1090 would prohibit him from taking part in, and the MID from entering into, any such contract.³

The Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed to be a "remote interest," as defined in Section 1091, or a "noninterest," as defined in Section 1091.5. However, none of the statutory exceptions to Section 1090 are relevant here. Section 1091.5(a)(3) states that "[a]n officer or employee shall not be deemed to be interested in a contract if his or her interest is ... "[t]hat of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she was not a member of the body or board." Attorney General opinions and case law make clear that the exception is intended to apply only to services that are uniformly provided to all customers and for which rates and charges have been clearly established, such as public utilities (such as water, gas, and electricity), and the renting of hangar space in a municipal airport on a first come, first served basis. (See, e.g., 81 Ops.Cal.Atty.Gen. at p. 319).

In contrast, where administering officials are required to exercise judgment or discretion, the exception has been found not to apply. While the application form for participation in the GRP contains standardized terms and conditions, including a standard rate per acre-foot of water delivered, there are also various limiting criteria approved by the Board when it established the GRP. Namely, qualifying properties must be at least 10 acres in size, located within the MID sphere of influence and the Modesto Groundwater Sub-Basin but outside MID's irrigation boundaries, and the water must be used for agricultural irrigation purposes only. On balance, we conclude that the GRP does not fit within the parameters of Section 1091.5(a)(3), and the exception does not apply.

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

Sincerely,

Dave Bainbridge General Counsel

Zachary W. Norton

³ We note that Section 1090 would not preclude Board Member Byrd from taking part in, and the MID from entering into, a contract with any other entity involving the GRP (such as Angle) where Board Member Byrd does not have a financial interest in the contracting party.



Draft Prepared By

Secretary of the District

MINUTES

Tuesday, December 14, 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 10:40 a.m. He announced that in accordance with Government Code section 54953(e), 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, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. Director Frank Mellon joined at 10:42 a.m. and Director Lesa R. McIntosh joined at 10:45 a.m. All Directors participated remotely.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Assistant General Counsel Lourdes Matthew (Items 1a and 2), Director of Finance Sophia D. Skoda (Items 1a and 2), Director of Human Resources Laura A. Acosta (Item 2), and IEDA representatives Jeff Bailey and Gregory Ramirez (Item 2).

PUBLIC COMMENT

Addressing the Board were the following: 1) Eric O. Larsen, President, AFSCME Local 444 commented on inflation, cost of living, the December CPI and the most recent offer from District negotiators; 2) George D. Cleveland, Chief Steward, AFSCME Local 2019 commented on a member involved in a fact finding investigation and asked the District to apologize for mistakenly including the member in the process; and 3) Ivette Rivera, EBMUD Gardener Foreman, commented on the lawsuits filed by former employees Ayriel Bland and Saji Pierce. Secretary of the District Rischa S. Cole read comments into the record regarding negotiations, recruitment and retention, and equity adjustments for Information Technology staff from the following: Harry Richardson, Supervising Systems Programmer; Kevin Fitzsimmons, Information Services Supervisor; Andy Szeto, Information Services Supervisor; Tom Canale, Information Services Supervisor; Kevin Kim, IT Engineer II; Michael Leong, IT Engineer II; Henry Lavigne, Senior IT Engineer; David Valenzuela, Senior IT Engineer; John Pennington, Senior IT Engineer: Rex Jou, Senior IT Engineer; Susan Lord, Senior IT Engineer; Brandon Lee, Senior IT Engineer; Mark Smith, Senior IT Engineer; Anonymous Employee; Sean McDonough, Senior IT Engineer; Hai Lin, Senior IT Engineer; Ross Hoyt, Senior IT Engineer; Ronald Brunner, Senior IT Engineer; Spencer Cowenhoven, Senior IT Engineer; Anna Lee, Senior IT Engineer; and Yu Lin, Senior IT Engineer.

President Linney requested an update on the investigation referenced by George Cleveland.

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ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Linney announced the closed session agenda and said the Regular Business Meeting would convene at 1:15 p.m. The Board convened for discussion (remotely).

Regular Business Meeting

President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:17 p.m. He announced that in accordance with Government Code section 54953(e), 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.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

BOARD OF DIRECTORS

President Linney led the Pledge of Allegiance.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Nick Lawrence commented on continuing unsafe conditions on Tappan Terrace in Orinda; 2) George D. Cleveland, Chief Steward, AFSCME Local 2019 commented on a member required to use sick leave due to COVID-19 and the vaccination status of the General Manager and Board members; 3) Kelly A. commented on remarks from EBMUD Board members regarding public comment from non-ratepayers; and 4) Ivette Rivera, EBMUD Gardener Foreman commented on the lawsuits filed by former employees Ayriel Bland and Saji Pierce.

In response to Kelly A.'s comments, President Linney stated the Board of Directors welcomes public comments.

CONSENT CALENDAR

 Motion by Director Mellon, seconded by Director Coleman to approve the recommended actions for Items 1-11 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). Regular Meeting Minutes of December 14, 2021 Page 3 of 13

- 1. **Motion No. 210-21** Approved the Regular Meeting Minutes of November 23, 2021 and the Special Closed Session Meeting Minutes of December 2, 2021.
- 2. The following correspondence was filed with the Board: 1) Presentation entitled, "Close Out of Emergency Declaration Oakport Wet Weather Facility Chemical Tank Failure" dated December 14, 2021; 2) Presentation entitled, "East Bay Plain Subbasin Groundwater Sustainability Plan," dated December 14, 2021; 3) Presentation entitled, "Drought Update," dated December 14, 2021; 4) Presentation entitled, "Water Supply Update," dated December 14, 2021; 5) Presentation entitled, "EBMUD Principles for Potential Wheeling Agreement with Marin Water," dated December 14, 2021; 6) Presentation entitled, "Resolution Continuing Virtual Meetings of the Board," dated December 14, 2021; 7) Oakland Tribune Proof of Publication of the Notice of Public Hearing to Consider Adopting the East Bay Plain Subbasin Groundwater Sustainability Plan (Legal No. 6626856 published November 26 and December 3, 2021); 8) West County Times Proof of Publication of the Notice of Public Hearing to Consider Adopting the East Bay Plain Subbasin Groundwater Sustainability Plan (Legal No. 6626856 published November 26 and December 3, 2021); and 9) Written comments (undated) from the following District employees regarding negotiations, recruitment and retention, and equity adjustments for Information Technology staff: Harry Richardson, Supervising Systems Programmer; Kevin Fitzsimmons, Information Services Supervisor; Andy Szeto, Information Services Supervisor; Tom Canale, Information Services Supervisor; Kevin Kim, IT Engineer II; Michael Leong, IT Engineer II; Henry Lavigne, Senior IT Engineer; David Valenzuela, Senior IT Engineer; John Pennington, Senior IT Engineer: Rex Jou, Senior IT Engineer; Susan Lord, Senior IT Engineer; Brandon Lee, Senior IT Engineer; Mark Smith, Senior IT Engineer; Anonymous Employee; Sean McDonough, Senior IT Engineer; Hai Lin, Senior IT Engineer; Ross Hoyt, Senior IT Engineer; Ronald Brunner, Senior IT Engineer; Spencer Cowenhoven, Senior IT Engineer; Anna Lee, Senior IT Engineer; and Yu Lin, Senior IT Engineer.
- 3. **Motion No. 211-21** Authorized an agreement beginning on or after December 14, 2021 with ADS Corp. in an amount not to exceed \$9,609,396 for the Consent Decree Performance Evaluation Plan Flow and Precipitation Monitoring.
- 4. **Motion No. 212-21** Authorized agreements beginning on or after December 14, 2021 with Fehr & Peers and Sandis Civil Engineers Surveyors Planners in an aggregate amount not to exceed \$400,000 for two years for preparation of signed, stamped, and site-specific traffic control plans.
- 5. **Motion No. 213-21** Authorized an agreement beginning on or after December 14, 2021 with National Plant Services, Inc. for five years for a total amount not to exceed \$3,000,000 for sanitary sewer inspection and cleaning services in support of the East Bay communities' infiltration and inflow reduction activities in the communities' collection systems.
- 6. **Motion No. 214-21** Authorized agreements beginning on or after January 1, 2022 with Occupational Health Centers of California dba Concentra Medical Centers, Emeryville Occupational Medical Center, Kaiser Permanente On-the-Job, Mobile-Med Work Health Solutions, Inc., and Alshifa Medical Group dba Trinity Urgent Care & Occupational Health for three years with two options to renew for additional one-year periods, in an aggregate amount, including option years, not to exceed \$250,000 for providing medical evaluations required by federal and state regulations.

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- 7.1 **Motion No. 215-21** Awarded a contract to the lowest responsive/responsible bidder, JMB Construction, Inc., in an amount not to exceed \$8,433,652 for construction of the Special Structures Rehabilitation Phase 1 project under Specification SD-404.
- 7.2 **Motion No. 216-21 -** Authorized an amendment to the agreement previously authorized under Board Motion No. 191-20 with CDM Smith, Inc. to increase the agreement amount by \$508,612 to a total amount not to exceed \$1,502,817 and extend the agreement term to December 31, 2023 for additional construction inspection and engineering services during construction for the Special Structures Rehabilitation Phase 1 Project.
- 8. **Motion No. 217-21** Authorized the General Manager to execute an option agreement with Sycamore Mutual Water Company (Sycamore) at a maximum total cost of \$230,000 whereby EBMUD would secure the right of first refusal to negotiate with Sycamore for the purchase of up to 6,000 acre-feet of transfer water in 2022.
- 9. **Motion No. 218-21** Authorized a second amendment to the Memorandum of Agreement (MOA) for the Bay Area Regional Reliability partnership to extend the term of the MOA through March 31, 2023, update the signatory authorities and the delegated contacts, and include Marin Municipal Water District as a participating partner to work collaboratively to develop the Bay Area Shared Water Access Program.
- 10. **Motion No. 219-21** Authorized 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 in an additional amount not to exceed \$250,000.
- 11. Adopt resolutions to amend and restate the East Bay Municipal Utility District 401(a), 401(k) and 457 Deferred Compensation Plans to comply with tax law requirements enacted under the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) of 2019.

Resolution No. 35256-21 – Amending and Restating the East Bay Municipal Utility District 401(a) Plan.

Resolution No. 35257-21 – Amending and Restating the East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan.

Resolution No. 35258-21 – Amending and Restating the East Bay Municipal Utility District 457 Deferred Compensation Plan and Trust.

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PUBLIC HEARING

12a. Conduct a public hearing to receive comments on the East Bay Plain Subbasin Groundwater Sustainability Plan.

President Linney opened the public hearing at 1:33 p.m. He announced the hearing is to receive comments on the East Bay Plain Subbasin Groundwater Sustainability Plan (GSP) pursuant to the Sustainable Groundwater Management Act (SGMA).

Senior Civil Engineer Bradley M. Ledesma and Associate Civil Engineer Grace W. Su presented the update. EBMUD and the City of Hayward (Hayward) are the designated Groundwater Sustainability Agencies (GSAs) for the Subbasin, and through an existing cooperating agreement, have completed the GSP. The GSP was developed and written to meet California Code of Regulations and using the Department of Water Resource's best management practices and guidance documents. The GSP identifies sustainable management criteria that are used to establish whether undesirable results have occurred within the following six sustainability indicators: 1) chronic lowering groundwater levels; 2) reduction in groundwater storage; 3) seawater intrusion; 4) degradation of water quality; 5) land subsidence; and 6) depletion of interconnected surface water. The criteria in the GSP were based on the best available data and science; however, they will change over time as identified data gaps are filled. The GSP also evaluated a future scenario relative to the sustainable management criteria that accounts for climate change, land use changes, and future groundwater pumping. It also outlines ongoing management actions that Hayward and the District will be responsible for implementing to monitor the Subbasin and ensure that sustainable management criteria are met to avoid undesirable results. Mr. Ledesma highlighted stakeholder and public outreach efforts conducted throughout the GSP development process. EBMUD and Hayward provided 90-day notice on September 7, 2021 to the cities and counties within the geographic area covered by the GSP of the intent to hold a public hearing and adopt the GSP. The draft GSP was available for public review from September 17, 2021 through November 1, 2021 and remains posted on each agency's SGMA website. Ms. Su highlighted key points in the GSP and in the comment letters received on the draft GSP. The comments and associated responses are included as an appendix in the GSP. Mr. Ledesma noted a public hearing and Board adoption of the GSP are required before the District can submit the final GSP to the Department of Water Resources by January 31, 2022 as required under the SGMA. Mr. Ledesma and Ms. Su responded to Board questions regarding entities besides state agencies that may have commented on or participated in the development of the GSP; the number of wells in the San Leandro/San Lorenzo area; the status of the GSP for the basin where the Demonstration Recharge, Extraction and Aquifer Management Project is located; capacity in the District's Bayside Groundwater facility in wet years; the potential for increased contaminated zones due to climate change; Hayward's estimated costs for monitoring actions; and whether Hayward has drawn water from the Subbasin.

President Linney asked for public comment. There were no comments. President Linney closed the public hearing at 1:55 p.m.

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- 12b. Adopt the East Bay Plain Subbasin Groundwater Sustainability Plan prepared pursuant to the Sustainable Groundwater Management Act.
 - Motion by Director Mellon, seconded by Patterson to approve the recommended actions for Item 12b 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. 35259-21 – Adopting East Bay Plain Subbasin Groundwater Sustainability Plan.

DETERMINATION AND DISCUSSION

13. Appointment to the Position of Assistant Attorney.

General Counsel Derek T. McDonald introduced Ruby Acevedo as the candidate for the position of Assistant Attorney of the District with the title of Attorney II and highlighted her background and experience.

• Motion by Director McIntosh, seconded by Director Young to approve the recommended actions for Item 13 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. 35260-21 – Appointing Ruby Acevedo to the Position of Assistant Attorney of the District With the Title of Attorney II. (effective December 20, 2021)

The Board welcomed Ms. Acevedo and commented on how her experience working in the public interest will benefit various District efforts. Ms. Acevedo thanked the Board and said she looks forward to working at the District.

14. Declare an end to the District emergency initiated on November 3, 2021 and ratified on November 9, 2021 under Board Resolution No. 35253-21 to install temporary chemical storage tanks at the Oakport Wet Weather Facility.

Director of Wastewater Eileen M. White presented an update on actions to address the catastrophic failure of one of the three 10,000-gallon sodium hypochlorite storage tanks at the Oakport Wet Weather Facility (WWF). The incident occurred on Monday, November 1, 2021 and it was determined the tank could not be repaired. On November 3, the General Manager, in consultation with the Board President, declared a District emergency in accordance with Policy 7.03 — Emergency Preparedness/Business Continuity. The Board ratified the emergency declaration at its Regular meeting on November 9. Ms. White explained sodium hypochlorite dosing is needed to disinfect the flow that enters the Oakport WWF and the failure of one tank creates a significant shortage of chemical supply at the WWF. Work by the contractor and District staff to install a temporary storage system began on November 11. The contractor removed the failed tank and replaced it with a spare tank from the District's Orinda Water Treatment Plant and provided a trailer of chemicals to directly fill the tanks. District staff installed the secondary containment piping, chemical pump and eye wash station; performed the electrical and instrumentation work for the spare tank; and managed chemical procurement. The replacement tank was placed into service on November 30 and the temporary tanks were placed into service on December 9. Total estimated

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costs for this work are \$240,000. Ms. White said staff will continue reviewing preparedness for wet weather events and implement lessons learned across the wastewater system. She acknowledged the various District workgroups that assisted with efforts to address this issue. In response to Board questions, Ms. White explained aging infrastructure caused the failure and said the repair costs would most likely not qualify for reimbursement from President Biden's Infrastructure Investment and Jobs Act.

• Motion by Director Coleman, seconded by Patterson to approve the recommended actions for Item 14 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. 35261-21 – Resolution Terminating the Existence of an East Bay Municipal Utility District Emergency.

15. Make requisite findings and adopt a resolution to continue to hold meetings of the Board of Directors via teleconference under Government Code section 54953(e) until such time as the State of Emergency resulting from the COVID-19 pandemic no longer impacts the ability of Board members to meet safely in person.

Director of Operations and Maintenance David A. Briggs provided a COVID-19 update which included the most recent data on positive cases in Alameda and Contra counties; the number of positive employee (160) and contractor (23) cases at the District; the number of staff currently guarantined or in isolation and unable to telecommute (12); and said staff was notified in early December about plans for those that have been telecommuting full-time to return to the office 1-2 days per week beginning January 18. Mr. Briggs discussed key points of the Safe Return to Workplace plan and clarified this date could change if there is a winter surge in positive cases. Additional information will be provided when the District begins transitioning to a long-term, post-pandemic plan. He reviewed Section 54953(e) of the Ralph M. Brown Act and the safety protocols that will be in place as the Board transitions back to in-person meetings in January. General Manager Clifford C. Chan said that although the Board is planning to attend meetings in person in January, staff recommends adopting the resolution to allow the Board to continue to hold remote meetings in the event there is a winter surge in positive COVID-19 cases. General Manager Chan responded to questions regarding alternative office spaces for Board members for social distancing purposes and said he will contact Board members before January 11 to confirm if meetings will be in person. There was discussion regarding rapid antigen tests for Board members and staff that will be in close contact during Board meetings and comments on whether unvaccinated Board members should participate in person on January 11.

- Addressing the Board were the following: 1) George D. Cleveland, Chief Steward, AFSCME Local 2019 clarified remarks made during public comment earlier regarding the vaccination status of the General Manager and Board members did not mean to imply a Board member was not vaccinated but to point out Board members should have met the November 1 deadline to provide proof of vaccination; and 2) Gary Walters II, AFSCME Local 2019 Contract Negotiation Team member and ratepayer expressed concern regarding comments from the Board on whether unvaccinated Board members should participate in meetings in person.

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• Motion by Director Coleman, seconded by Director Young to approve the recommended actions for Item 15 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. 35262-21 - Authorizing Continued Utilization of Teleconferencing for Meetings of the East Bay Municipal Utility District Board of Directors (*Under Assembly Bill 361*).

16. Legislative Update.

Manager of Legislative Affairs Marlaigne K. Dumaine said the second year of the state legislative session will focus on approximately 1,500 two-year bills, provided an update on the state budget, and on Assembly members planning to resign or not seek re-election. She highlighted seven state legislative initiatives for 2022 for Board review and consideration: 1) Climate Change – advance EBMUD's interests related to climate change and climate adaptation discussions; 2) Emerging Contaminants – advance EBMUD's interests in legislative and policy discussions and seek opportunities to support efforts to eliminate the use of Per- and Polyfluoroalkyl Substances (PFAS) and other emerging contaminants; 3) Forest Health/Wildfire Prevention and Response – advance EBMUD's interests in efforts to address forest health and vegetation management in the context of water and wastewater service; 4) Housing Fees – seek constructive ways to protect and advance EBMUD's interests as the legislature considers development-related fees, including capacity charges and connection fees, in the context of increasing housing supply and affordability; 5) Racial Equity and Justice – look for opportunities to advance EBMUD's interests as the legislature continues to consider racial equity and justice issues in the context of policy development in areas relevant to EBMUD priorities; 6) Ratepayer Assistance – seek constructive ways to advance EBMUD's interests as the administration and legislature consider ways to provide ongoing as well as additional pandemic-related assistance to water and wastewater customers; and 7) Water Supply Reliability and Resiliency – protect and advance EBMUD's interests in the context of water supply reliability and resiliency, including the use of recycled water, and the Mokelumne River fishery. Ms. Dumaine noted the climate change initiative does not cover wildfire or water which are covered under initiatives 3 and 7. The Board discussed the initiatives and asked that the District act as a resource as appropriate when the legislature begins discussing workforce transitions for those employed in the fossil fuels industry; continue monitoring and supporting ongoing funding for the infill/infrastructure program; explore the feasibility of designating a portion of surplus budget funds as start-up funding for an ongoing statewide ratepayer assistance program; and share the District's experience accessing funding from the California Water and Wastewater Arrearage Payment Program with program administrators for potential future program improvements. President Linney asked if staff could provide information on the Water Infrastructure Funding Act of 2022, and disclosed he is working to defeat the initiative. Ms. Dumaine explained staff's process for presenting initiatives to the Board and said at this time, staff could provide information on the text but are unable to analyze the initiative at this time. In conclusion, she provided a brief update on federal legislative activities. Legislative/Human Resource Committee member Lesa R. McIntosh reported the Committee met earlier in the day and voted to support the seven state legislative initiatives.

• Motion by Director McIntosh, seconded by Director Young to approve the recommended actions for Item 16 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

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> Motion No. 220-21 – Approved the state legislative initiatives for the 2022 Legislative Year: 1) Climate Change – advance EBMUD's interests related to climate change and climate adaptation discussions; 2) Emerging Contaminants – advance EBMUD's interests in legislative and policy discussions and seek opportunities to support efforts to eliminate the use of Per- and Polyfluoroalkyl Substances (PFAS) and other emerging contaminants; 3) Forest Health/Wildfire Prevention and Response – advance EBMUD's interests in efforts to address forest health and vegetation management in the context of water and wastewater service; 4) Housing Fees – seek constructive ways to protect and advance EBMUD's interests as the legislature considers development-related fees, including capacity charges and connection fees, in the context of increasing housing supply and affordability; 5) Racial Equity and Justice – look for opportunities to advance EBMUD's interests as the legislature continues to consider racial equity and justice issues in the context of policy development in areas relevant to EBMUD priorities; 6) Ratepayer Assistance – seek constructive ways to advance EBMUD's interests as the administration and legislature consider ways to provide ongoing as well as additional pandemic-related assistance to water and wastewater customers; and 7) Water Supply Reliability and Resiliency – protect and advance EBMUD's interests in the context of water supply reliability and resiliency, including the use of recycled water, and the Mokelumne River fishery.

- Director Coleman left the meeting at 2:45 p.m. and rejoined at 2:46 p.m.
- 17.1- Adopt the Proposed Wheeling Principles (EBMUD Principles) to govern negotiation of a potential wheeling agreement with Marin Municipal Water District (Marin Water) in furtherance of Marin Water's Marin East Bay Emergency Intertie Project; and authorize the General Manager to begin negotiating a wheeling agreement with Marin Water based on the EBMUD Principles for potential future consideration by the Board.

General Manager Clifford C. Chan introduced the item and Director of Water and Natural Resources Michael T. Tognolini presented an update on Marin Water's water supply as of December 7, the recent California Environmental Quality Act challenge from the North Coast Rivers Alliance to Marin Water, and an upcoming meeting for the Ad Hoc Committee appointed by the Mayor of Richmond to review Marin Water's project. Mr. Tognolini reviewed the following proposed EBMUD Principles which were developed to protect EBMUD's interests and its customers if EBMUD determines that it can wheel transfer water for Marin Water in 2022 and include feedback received from the Planning Committee and Board in November: 1) No financial impact to EBMUD, full cost recovery (e.g., staff time, O&M costs, construction costs, recovery of capital investments; 2) No water quality impacts to EBMUD customers; 3) No reduced level of service to EBMUD customers; 4) No EBMUD water supplies (Mokelumne, local, Central Valley Project) will be sold to Marin Water; 5) No impact to EBMUD's ability to prioritize purchase of transfer water for EBMUD customers. Marin Water will not compete with EBMUD for water transfers; 6) EBMUD has the right to terminate wheeling agreement for any reasonable cause as determined by EBMUD (operational, staff resources, etc.); 7) No opposition to project from the City of Richmond; 8) Marin Water performs substantial engagement in Richmond and West Contra Costa County and includes EBMUD in meetings; 9) Mitigation for community impacts in Richmond and EBMUD's service area considered through an equity lens with follow-through on commitments; 10) Marin Water should support EBMUD customers as a community partner. Examples include a potential contribution to EBMUD Customer Assistance Program or Water Lifeline Program, full street paying for construction activities, and/or other partnerships; 11) If EBMUD is asking for customer demand reductions, Marin Water must

achieve water efficiency levels equivalent to EBMUD for EBMUD to support Marin Water in meeting public health and safety needs; 12) EBMUD will make its own determination on California Environmental Quality Act compliance; 13) No significant unmitigated impacts to native fish species; and 14) If constructed, operation of emergency intertie may only occur when Marin Water has declared a drought emergency and EBMUD principles for wheeling are met. Staff is recommending the Board adopt the EBMUD Principles to govern negotiation of a potential wheeling agreement with Marin Water regarding Marin Water's Marin East Bay Emergency Intertie Project. There was discussion regarding the status of Marin Water's Principles and whether EBMUD needed to adopt the EBMUD Principles before Marin Water adopts principles. Director Coleman expressed continued concern that EBMUD Principle 7 – No opposition to project from the City of Richmond – could set a precedent and be used against EBMUD in negotiations on future projects. There was considerable Board discussion and input from General Manager Chan and General Counsel Derek T. McDonald on Principle 7. After additional discussion, the decision was made to keep Principle 7 in the document and to table Item 17.2 for a future meeting. General Manager Chan clarified staff would not bring Item 17.2 to the Board for consideration until Marin Water has approved principles and provided them to the District.

• Motion by Director McIntosh, seconded by Director Young to approve the recommended actions for Item 17.1 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 221-21 – Adopted the Proposed Wheeling Principles (EBMUD Principles) to govern negotiation of a potential wheeling agreement with Marin Municipal Water District (Marin Water) in furtherance of Marin Water's Marin East Bay Emergency Intertie Project.

Secretary of the District Rischa S. Cole asked the Board to consider making a motion to table Item 17.2 for a future meeting.

• Motion by Director McIntosh, seconded by Director Young to table Item 17.2 for a future meeting carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 222-21 – Tabled authorizing the General Manager to begin negotiating a wheeling agreement with Marin Water based on the EBMUD Principles for potential future consideration by the Board until a future meeting.

18. General Manager's Report.

Water Supply Update

Director of Operations and Maintenance David A. Briggs presented the update. He reviewed Upper Mokelumne and local precipitation, snowpack water content and total unimpaired runoff data for Water Year 2021 (October 1, 2020 – September 30, 2021) and reported the end of water year storage was 437,000 acre-feet. He reviewed the following information as of December 7: the District's current water supply and precipitation in the Mokelumne and East Bay and snow depth at Caples Lake. He said total system storage from all reservoirs is 442,410

Regular Meeting Minutes of December 14, 2021 Page 11 of 13

acre-feet and concluded with an overview of water supply projections for the country and the District for Rainfall Year 2022.

2021 Drought Update

Director of Operations and Maintenance David A. Briggs reported between October 4 and December 5, the District diverted 15,500 acre-feet (AF) of its 33,250 AF Central Valley Project (CVP) allocation and that diversions are scheduled to continue until February 2022. The U.S. Bureau of Reclamation has indicated to CVP contractors that 2022 allocations could be extremely limited if dry conditions persist.

Manager of Water Supply Linda H. Hu provided an update on 2022 water transfers. Over the upcoming months, staff will present water transfer options and agreements to the Board for consideration, including a temporary water transfer option agreement with Yuba County Water Agency (YCWA) and Contra Costa Water District (CCWD). The agreement would provide EBMUD the option to purchase up to 10,000 AF of transfer water from YCWA in calendar year 2022 plus any additional YCWA water which becomes available to EBMUD.

Engineering Manager Lena L. Tam reviewed state and federal activities since August 20 and reported the District has been complying with the state's order to curtail diversions on the Mokelumne River. At the end of November, the state notified water users of plans to adopt rules to reduce water waste and in early December, the Department of Water Resources announced there would be no water allocations except for public health and safety needs for certain CVP contractors. She discussed the District's water shortage response actions noting the State Water Resources Control Board (SWRCB) has indicated it may consider imposing mandatory water rationing if dry conditions persist.

Manager of Water Conservation Alice E. Towey reviewed actions the District would take if the SWRCB imposes rationing. The Board would be required to implement a mandatory rationing goal, declare a water shortage emergency, and declare a Stage 2 or higher drought. Regulations that prohibit specific activities would be enacted and the District's Excessive Water Use Penalty Ordinance would go into effect. She discussed the planned outreach, messaging and conservation programming that would be implemented to support customers and concluded with drought outreach efforts to date, media activity and plans being developed if dry conditions persist in 2022.

Monthly Report – November 2021

General Manager Clifford C. Chan pointed out the report includes information on efforts to secure funding for customer arrearages. The District submitted its California Water and Wastewater Arrearage Payment Program application to the SWRCB for \$9,631,323.40 in drinking water arrearages for 10,900 customers in arrears and an additional 9,450 accounts that received assistance via the District's Customer Assistance Program during the pandemic. He said the state's moratorium for water shutoffs is set to end on December 31, 2021 but the District does not plan to transition to implementing flow restrictors until arrearages are paid and the Board receives an additional update.

REPORTS AND DIRECTOR COMMENTS

19. Committee Reports.

- Filed with the Board were the Minutes for the November 23, 2021 Redistricting Ad Hoc Committee and Finance/Administration Committee meetings.
- Planning Committee Chair Marguerite Young reported the Committee met earlier (remotely) and received updates on the DSRSD/EBMUD Recycled Water Authority (DERWA) Side Agreement; the Oakland Inner Harbor Pipeline Crossing Update; and the Fiscal Year 2021 Annual Readiness Report.
- Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met earlier (remotely) and received updates on the State Legislative Initiatives for 2022 Legislative Year and the Contract Equity Program Annual Report for Fiscal Year 2021.
- Los Vaqueros Reservoir JPA member John A. Coleman reported the JPA met on December 8 regarding the following: Election or Appointment of Authority Secretary; Consideration of an Administrative Agreement between the JPA and Contra Costa Water District; Establishing Committees; Discussion of Board Policies and Action Calendar; Discussion of Director and Alternate Director Roles; Discussion of Alternatives for Authority Liability and Errors and Omissions Insurance; Planning the 2022 Meeting Schedule; and Discussion of Proposed Revisions to the Authority Fact Sheet.

20. Other Items for Future Consideration.

None.

21. **Director Comments.**

- Director Coleman reported participating in the virtual East Bay Leadership Council Water Task Force meeting on December 8 and plans to participate in the virtual Los Vaqueros Reservoir JPA meeting on January 12, present at the virtual Walnut Creek Rotary meeting on January 18, and attend the UMRWA Board meeting at Pardee on January 28.
- Director Mellon reported attending the memorial services for former Alameda County Supervisor Wilma Chan in Oakland on December 5.
- Director Patterson reported attending the memorial services for former Alameda County Supervisor Wilma Chan (virtually) on December 5.
- President Linney reported attending the memorial services for former Alameda County Supervisor Wilma Chan (virtually) on December 5.
- Directors Katz, McIntosh, and Young had no reports.

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ADJOURNMENT

President Linney adjourned the meeting at 4:16 p.m.
SUBMITTED BY:
Rischa S. Cole, Secretary of the District
APPROVED: December 14, 2021
Doug A. Linney, President of the Board

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AGENDA NO.	3a-b.
MEETING DATE	January 11, 2022

TITLE AUTOMOBILE, TRUCK, AND HEAVY EQUIPMENT TIRES

TYPE	□Construction	☐General Services	⊠Materials & Supplies	☐Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	□OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

A. Award contracts to the vendors listed below for supplying automobile, truck, and heavy equipment tires for District vehicles and equipment beginning on or after January 11, 2022 for five years, in an aggregate amount not to exceed \$3,000,000.

Brannon Tire George Oren Tire Specialist Thiel's Tires Hernandez Tires Service Wingfoot Commercial Tire Bridgestone Americas Tire Operations, LLC J&O's Commercial Tire Systems dba Goodyear Don's Tire Service, Inc. Commercial Tire + Service Center **Dusty and Sons Tires** Jackson Tire Service Inc. Center East Bay Tire Co. Morgan Tire of Sacramento,

Inc.

B. Authorize additional contracts for supplying automobile and light, medium, and heavy truck tires on an as-needed basis, with vendors that meet District standards and offer pricing at or below the range in the proposed contracts with the vendors above to increase flexibility and ensure vendor availability. The Board of Directors will be notified of additional qualified vendors by means of the General Manager's monthly report.

SUMMARY

The District maintains a fleet of approximately 1,300 light, medium, and heavy duty vehicles and equipment. Tire replacement is a critical activity to support the safe and effective operation of the District's fleet. The best pricing available to the District and public entities is through Government and Utility Price Schedules program.

DISCUSSION

The Government and Utility Price Schedules program is only available through authorized dealers and distributors who make no profit on tire sales, but instead are given a rebate from the manufacturer. The

Funds Available: FY22/23, CIP#000528 & CIP#000526, Page 50-51	Budget Coding: various/various	Contract Equity Forms? ☐ Yes ☐ No
Originating Department	Department Director or Manager	Approved
Maintenance and Construction	Michael R. Ambrose	General Manager
Attachment(s): P-035; P-061		

Automobile, Truck, and Heavy Equipment Tires January 11, 2022 Page 2

listed vendors each participate in the Government and Utility Price Schedules program, which includes Michelin, Firestone, Goodyear, BFGoodrich, and Sumitomo tires. Utilizing vendors within the Government and Utility Price Schedule program allows the District to receive uniform pricing, even for outlying areas such as Pardee and Stockton. This program also allows the use of local vendors.

Additional vendors that meet District standards and offer pricing under the Government and Utility Price Schedules program may be added in the future to increase geographic flexibility and ensure vendor availability. These contracts support the Long-Term Infrastructure Investment Strategic Plan goal.

VENDOR SELECTION

The District contacted multiple tire manufacturers and requested a list of local participating vendors covering the East Bay and outlying areas. The vendors listed participate in the Government and Utility Price Schedules program and have demonstrated a satisfactory service level for District operations.

SUSTAINABILITY

Economic

Funding for these purchases is available in the FY22/23 adopted capital budget for Vehicle and Heavy Equipment Additions, Water Project and Vehicle Replacements Project.

ALTERNATIVES

<u>Do not award these contracts</u>. This alternative is not recommended because District vehicles require tire replacement to ensure continuous and safe operation.

<u>Solicit bids through a District request for quotation process</u>. This alternative is not recommended because pricing under the Government and Utility Price Schedules program is significantly lower.

 $I:\Sec\2022\ Board\ Related\ Items\011122\ Board\ Agenda\ Items\0MD\ -\ Automobile,\ Truck,\ and\ Heavy\ Equipment\ Tires.docx$



CONTRACT EQUITY PROGRAM SUMMARY (P-035) This summary contains information on the contractor's workforce and contract equity participation. (Completed to

TITLE Materials and Supplies	y contains inforn				- Introduction		oquity puritor	DATE:	a by District)		
Automobile, Truck,	and Heavy	Fauipment	Tires						Decer	mber 16,	2021
CONTRACTOR:						PERC	ENTAGE	OF CONTE	RACT DO	LLARS	
Various Firms (See below)					Ava	ailability G		Contracting		Partici	oation
BID/PROPOSER'S	FIRM	'S OWNERS	HIP			White Me	en	25%	6	66.7	7%
PRICE: Eth		nicity		der	v	Vhite Won	nen	2%	1	16.7%	
\$3,000,000 *	See I	below		•	Et	nnic Mino	rities	25%	6	8.3	%
		CONTRA	CT E	QUIT	TY PAR	TICIPAT	ION				
	ESTIMATED		GEN	DER			CONTRA	ACTING PARTI	CIPATION		
COMPANY NAME	AMOUNT	ETHNICITY	М	w	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIME:											
Don's Tire Service, Inc.	\$250,000	White		X		8.3%					
East Bay Tire Co.	\$250,000	White	X		8.3%						
George Oren Tire Specialist	\$250,000	White	Х		8.3%						
J&O's Commercial Tire Center	\$250,000	White	Х		8.3%						
Jackson Tire Service Inc.	\$250,000	White	Х		8.3%						
Hernandez Tires Service	\$250,000	Hispanic	Х				8.3%				
Morgan Tire of Sacramento, Inc.	\$250,000	White	Х		8.3%						
Bridgestone Americas Tire Operations, LLC Wingfoot Commercial Tire Systems	\$250,000	White	х		8.3%						
dba Goodyear Commercial Tire + Service Center	\$250,000	Publicly Held	X						8.3%		
Thiel's Tires	\$250,000	White		Х		8.3%					
Dusty and Sons Tires	\$250,000	Black	Х		8.3%						
Brannon Tire	\$250,000	White	Х		8.3%						
TOTAL		\$3,000,000			66.7%	16.7%	8.3%	0.0%	8.3%	0.0%	0.0%
	CONTRAC	CTOR'S WC	RKF	ORC	E PRO	FILE (Fi	om P-02	Form)			
		White M	en	١	White Wo	men	Ethnic	Minorities	Tota	al Employe	ees
No. of Em	ployees:										
Percent of Total Em	ployees:					See Att:	ached For	m P-061			
MSA Labor M	arket %:							501			
MSA Labor Market L	ocation:										
			C	MC	JENTS						

Contract Equity Participation - 66.7% White Men participation, 16.7% White Women participation, and 8.3% Ethnic Minority participation. Contract Duration: Two-year contract with 3 One-year renewal options

*Total not to exceed: \$3,000,000

I	Workforce Profile & Statement of Nondiscrimination	Good Faith Outreach Efforts	Award Approval
	Submitted	Requirement Satisfied	Recommended
Ī	NA	NA	Boules



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title:				Ethnic Min	ority Perce	ntages Fro	m U.S. Cer	sus Data	
Α	Automobile, Truck, and Heavy I	Equipment Tires			В	н	A/PI	AI/AN	TOTAL
			Natio	onal	10.5	10.7	3.7	0.7	27.3
		DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9
Material	s and Supplies	12/16/2021	Alameda/C	C Counties	10.7	15.6	15.4	0.5	46.2
R=Recm P=Prime S=Sub				Number of E	thnic Mino	hnic Minority Employees			I
	ny Name, Owner/Contact Person, s, and Phone Number		В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM: L/SBE	Company Wide	1	6	0	0	7	53.8%	53.9%
Don's Tire	e Service, Inc.	Manager/Prof	1	0	0	0	1	25.0%	
Angela Fr	rizzi	Technical/Sales	0	0	0	0	0	0.0%	1
820 Gilma	an Street	Clerical/Skilled	0	1	0	0	1	50.0%	
Berkeley,	CA 94710	Semi/Unskilled	0	5	0	0	5	71.4%	1
,		Bay Area	1	6	0	0	7	53.8%	39.9%
510-526-0	0225	AA Plan on File:	NA '	0		contract with		NA	33.370
310-320-0	0333		Alameda Cou	intr		es-Co. Wide:			40
	\a_ma	Co. Wide MSA:		_	1		13	Bay Area:	13
RP	WM	Company Wide	6	73	28	0	107	58.8%	27.3%
East Bay	Tire Co.	Manager/Prof	1	9	9	0	19	40.4%	
Frank Ha	llare	Technical/Sales	0	11	4	0	15	48.4%	
2200 Hun	ntington Drive, Unit C	Clerical/Skilled	2	45	13	0	60	68.2%	
Fairfield,	CA 94533	Semi/Unskilled	3	8	2	0	13	81.3%	
		Bay Area	5	57	11	0	73	68.9%	39.9%
707-402-7	7709	Co. Wide MSA:	Total USA		# Employee	s-Co. Wide:	182	Bay Area:	106
RP	WM: L/SBE	Company Wide	1	2	5	0	8	66.7%	53.9%
George C	Oren Tire Specialist	Manager/Prof	1	1	1	0	3	60.0%	
Doug And	•	Technical/Sales	0	1	4	0	5	83.3%	
	arado Street	Clerical/Skilled	0	0	0	0	0	0.0%	
San Lean	ndro, CA 94577	Semi/Unskilled	0	0	0	0	0	0.0%	1
		Bay Area	1	2	5	0	8	66.7%	39.9%
510-534-0	0676	Co. Wide MSA:	Alameda			s-Co. Wide:	12		
—	WM: L/SBE		0	44	1			Bay Area:	
RP		Company Wide	-	14	1	0	15	60.0%	46.3%
	mmercial Tire Center	Manager/Prof	0	0	0	0	0	0.0%	
Charlie Ta		Technical/Sales	0	0	1	0	1	20.0%	
533 S 13t		Clerical/Skilled	0	0	0	0	0	0.0%	
Richmond	d, CA 94804	Semi/Unskilled	0	14	0	0	14	93.3%	
		Bay Area	0	14	1	0	15	60.0%	39.9%
510-237-6	6399	Co. Wide MSA:	Alameda/Con	tra Costa	# Employee	s-Co. Wide:	25	Bay Area:	25
RP	WM: SBE	Company Wide	0	3	0	0	3	20.0%	48.4%
Jackson 7	Tire Service Inc.	Manager/Prof	0	0	0	0	0	0.0%	
Wendy B	overo	Technical/Sales	0	2	0	0	2	15.4%	
801 S Hw	vy 49	Clerical/Skilled	0	1	0	0	1	50.0%	
Jackson,	CA 95642	Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
209-223-3	3000	Co. Wide MSA:	California		# Employee	s-Co. Wide:	15	Bay Area:	0
RP	EMM: H - L/SBE	Company Wide	0	1	0	0	1	100.0%	53.9%
Hernande	ez Tire Service	Manager/Prof	0	1	0	0	1	100.0%	
	Jesus Hernandez	Technical/Sales	0	0	0	0	0	0.0%	1
2462 Mar		Clerical/Skilled	0	0	0	0	0	0.0%	1
	ndro, CA 94577	Semi/Unskilled	0	0	0	0	0	0.0%	1
	,	Bay Area	0	1	0	0	1	100.0%	39.9%
510-460-2	2074			'		<u> </u>			
11 III-410 II-	2314	Co. Wide MSA:	Alameda		# ⊏mployee	s-Co. Wide:	1	Bay Area:	1

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: Automobile Truck and House Fautinment			Ethnic Minority Percentages From U.S. Census Data								
	tomobile, Truck, and Heav	y Equipment			В	Н	A/PI	Al/AN	TOTAL		
Tire	es		Natio	onal	10.5	10.7	3.7	0.7	27.3		
		DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9		
Materials a	and Supplies	6/7/2002	Alameda/C	C Counties	10.7	15.6	15.4	0.5	46.2		
R=Recmmd P=Prime S=Sub	d Composition of Ownership		Number of Et		" thnic Minor	hnic Minority Employees			10.2		
	Name, Owner/Contact Person, nd Phone Number		В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %		
RP	WM: L/SBE	Company Wide	0	45	0	0	45	80.4%	48.4%		
Morgan Tire	of Sacramento, Inc.	Manager/Prof	0	4	0	0	4	57.1%			
Brent Serrac		Technical/Sales	0	30	0	0	30	85.7%			
1500 Auburr	n Blvd.	Clerical/Skilled	0	0	0	0	0	0.0%			
Sacramento,	, CA 95815	Semi/Unskilled	0	11	0	0	0	0.0%			
		Bay Area	0	0	0	0	0	0.0%	39.9%		
916-924-145	58	Co. Wide MSA:	California		# Employee	s-Co. Wide:	56	Bay Area:	0		
RP	WM	Company Wide	1	16	1	2	20	69.0%	47.4%		
Bridgestone	Americas Tire Operations, LLC	Manager/Prof	0	0	0	0	0	0.0%			
Chinh Brown	1	Technical/Sales	0	1	0	0	1	25.0%			
200 4th Aver	nue South	Clerical/Skilled	0	14	1	2	17	81.0%			
Nashville, TN	N 37201	Semi/Unskilled	1	1	0	0	0	0.0%			
		Bay Area	0	0	0	0	0	0.0%	39.9%		
615-937-334	13	Co. Wide MSA:	San Joaquin		# Employee	s-Co. Wide:	29	Bay Area:	0		
RP	PHC	Company Wide	3	4	5	0	12	100.0%	39.9%		
	ommercial Tire Systems dba ommercial Tire + Service Center	Manager/Prof	0	0	1	0	1	100.0%			
Willa Neale		Technical/Sales	1	2	0	0	3	100.0%			
25880 Clawi	iter Road	Clerical/Skilled	0	0	1	0	0	0.0%			
Hayward, CA	A 94545	Semi/Unskilled	2	2	3	0	0	0.0%			
	(Local office)	Bay Area	3	4	5	0	12	100.0%	39.9%		
330-812-583	304	Co. Wide MSA:	9 Bay Area C	ounties	# Employee	s-Co. Wide:	12	Bay Area:	12		
RP	WW: L/SBE	Company Wide	0	3	0	0	3	60.0%	53.9%		
Thiel's Tires		Manager/Prof	0	0	0	0	0	0.0%			
Paul Thiel		Technical/Sales	0	3	0	0	3	75.0%			
2973 Whippl	le Road	Clerical/Skilled	0	0	0	0	0	0.0%			
Union City, C	CA 94587	Semi/Unskilled	0	0	0	0	0	0.0%			
		Bay Area	0	3	0	0	3	60.0%	39.9%		
209-223-300	00	Co. Wide MSA:	Alameda		# Employee	s-Co. Wide:	5	Bay Area:	5		
RP	EMM: B - L/SBE	Company Wide	4	0	0	0	4	80.0%	53.9%		
Dusty and S	ons Tires	Manager/Prof	0	0	0	0	0	0.0%			
		T	3	0	0	0	3	100.0%			
Melvin A. Wi	ilkerson Jr.	Technical/Sales									
_		Clerical/Skilled	0	0	0	0	0	0.0%			
Melvin A. Wi	ela Pkwy.		0	0	0	0	0 1	0.0% 50.0%			
Melvin A. Wi 2201 Mande	ela Pkwy.	Clerical/Skilled			-				39.9%		
Melvin A. Wi 2201 Mande	ela Pkwy. A 94608	Clerical/Skilled Semi/Unskilled	1	0	0	0	1	50.0%	39.9% 5		
Melvin A. Wi 2201 Mande Oakland, CA	ela Pkwy. A 94608	Clerical/Skilled Semi/Unskilled Bay Area	1 4	0	0	0	1	50.0% 80.0%			
Melvin A. Wi 2201 Mande Oakland, CA 510-832-628	ela Pkwy. A 94608 B5 WM: L/SBE	Clerical/Skilled Semi/Unskilled Bay Area Co. Wide MSA:	1 4 Alameda	0	0 0 # Employee	0 0 s-Co. Wide:	1 4 5	50.0% 80.0% Bay Area:	5		
Melvin A. Wi 2201 Mande Oakland, CA 510-832-628	ela Pkwy. A 94608 35 WM: L/SBE e	Clerical/Skilled Semi/Unskilled Bay Area Co. Wide MSA: Company Wide	1 4 Alameda 0	0 0	0 0 # Employee	0 0 s-Co. Wide:	1 4 5 17	50.0% 80.0% Bay Area: 63.0%	5		
Melvin A. Wi 2201 Mande Oakland, CA 510-832-628 RP	ela Pkwy. A 94608 B5 WM: L/SBE e perlege	Clerical/Skilled Semi/Unskilled Bay Area Co. Wide MSA: Company Wide Manager/Prof	1 4 Alameda 0 0	0 0 15 2	0 0 # Employee 2 1	0 0 s-Co. Wide: 0	1 4 5 17 3	50.0% 80.0% Bay Area: 63.0% 37.5%	5		
Melvin A. Wi 2201 Mande Oakland, CA 510-832-628 RP Brannon Tire Carey Cumb	ela Pkwy. A 94608 WM: L/SBE e perlege son Way	Clerical/Skilled Semi/Unskilled Bay Area Co. Wide MSA: Company Wide Manager/Prof Technical/Sales	1 4 Alameda 0 0	0 0 15 2 10	0 0 # Employee 2 1 1	0 0 s-Co. Wide: 0 0	1 4 5 17 3 11	50.0% 80.0% Bay Area: 63.0% 37.5% 91.7%	5		
Melvin A. Wi 2201 Mande Oakland, CA 510-832-628 RP Brannon Tire Carey Cumb 3730 N. Wils	ela Pkwy. A 94608 WM: L/SBE e perlege son Way	Clerical/Skilled Semi/Unskilled Bay Area Co. Wide MSA: Company Wide Manager/Prof Technical/Sales Clerical/Skilled	1 4 Alameda 0 0 0 0 0 0	0 0 15 2 10	0 0 #Employee 2 1 1 0	0 0 s-Co. Wide: 0 0	1 4 5 17 3 11	50.0% 80.0% Bay Area: 63.0% 37.5% 91.7% 20.0%	5		

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





AGENDA NO.	4.
MEETING DATE	January 11, 2022

TITLE PURCHASE OF REVERSE OSMOSIS MEMBRANE ELEMENTS FOR THE RARE WATER PROJECT

<u>TYPE</u>	□Construction	☐General Services	⊠Materials & Supplies	□Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	□OTHER
<u>ACTION</u>	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Award a sole source contract to Hydranautics for supplying 1,280 reverse osmosis (RO) membrane elements for the Richmond Advanced Recycled Expansion (RARE) Water Project for one year, beginning on or after January 11, 2022 with one option to renew for an additional one-year period for a total cost, after the addition of taxes, including option years, not to exceed \$600,000.

SUMMARY

The RO system is comprised of three separate trains, each with a rated capacity of 2 million gallons per day (MGD). Each train includes 420 membrane elements, which are 40-inch-long cartridges of spiral-wound RO membrane. This contract provides for the purchase of 1,280 RO membrane elements to replace membrane elements at the RARE Water Project that are reaching the end of their useful life. This procurement will allow the District to replace all the membrane elements at the RARE Water Project.

DISCUSSION

The RARE Water Project treats secondary effluent via microfiltration and RO to a high purity for use as boiler feed water for the Chevron Richmond Refinery (Chevron). Currently, the RARE Water Project has the capacity to treat up to 3.5 MGD of recycled water, thereby reducing Chevron's demand for potable water. The RO process removes dissolved solids from the water and can reduce salinity by 99.5 percent. High-performance membranes are needed to meet stringent water quality standards for hardness, calcium, magnesium, and silica.

The RARE Water Project has been in operation since 2010, and the current RO membrane elements are demonstrating decreased performance, including elevated silica levels in the product water. Replacement of the membranes will enable the District to continue meeting the water quality limits in its agreement with Chevron. This contract supports the District's Long-Term Water Supply Strategic Plan goal to reduce potable water demand through water recycling.

Funds Available: FY22/23, CIP# 2004604; Page 91	Budget Coding: 818/2014932/2014934:00/55210	Contract Equity Forms? ☑ Yes ☐ No
Originating Department	Department Director or Manager	Approved
Wastewater	Eileen M. White	Clipped On General Manager
Attachment(s): P-035; P-061		

Purchase of Reverse Osmosis Membrane Elements for the RARE Water Project January 11, 2022 Page 2

VENDOR SELECTION

District staff initiated communication with multiple RO membrane vendors to understand the different types of membranes available on the market. Hydranautics was the only vendor that indicated its membranes could meet RARE's water quality requirements during the first three years of operation.

SUSTAINABILITY

Economic

Funding for this purchase is available in the FY22/23 adopted capital budget for the RARE Water Project. All capital equipment replacement costs for RARE are reimbursed by Chevron.

Social

New RO membranes will increase the operational reliability of the RARE Water Project by ensuring the recycled water quality limits can be achieved.

Environmental

Offsetting Chevron's potable water demand with recycled water conserves the District's potable water resources.

ALTERNATIVES

<u>Do not authorize this purchase</u>. This alternative is not recommended because the District requires new RO membrane elements to meet the water quality limits in its agreement with Chevron.

<u>Do not award a sole source contract</u>. This alternative is not recommended because other membrane vendors were unable to meet the water quality requirements at the RARE Water Project.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\WW - Purchase of Reverse Osmosis Membrane Elements for the RARE Water Project.docx



CONTRACT EQUITY PROGRAM SUMMARY (P-035) This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

TITLE Materials and Supplies	5							DATE:			
Purchase of Reve Project	rse Osmosis	Membrane	Elem	ents	for the	RARE V	Vater		Nover	mber 23,	2021
CONTRACTOR:						PERC	ENTAGE	OF CONTE	RACT DO	LLARS	
Hydranautics Oceanside, CA 92058		Sole So	ource		Ava	ailability G	Group	Contracting	Objectives	Partici	pation
BID/PROPOSER'S	FIRM	'S OWNERS	HIP			White Me	n	25%	6	100	.0%
PRICE:	Ethr	icity	Gen	nder	v	Vhite Won	nen	2%	•	0.0)%
\$600,000 *	WI	nite	Me	en	Eti	nnic Mino	rities	25%	6	0.0)%
		CONTRA	CT E	QUIT	Y PAR	TICIPAT	ION			"	
	ESTIMATED		GEN	DER			CONTRA	ACTING PARTI	CIPATION		
COMPANY NAME	AMOUNT	ETHNICITY	М	w	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreig
PRIME:		\$600,000 CTOR'S WO White Me			100.0% 100.0% E PRO White Wo	•	Ethnic	0.0% 5 Form) Minorities	0.0% Tota	0.0%	0.0% ees
Percent of Total Em		17.6%			4.6%			28 <i>1</i> 7.8%		000	
MSA Labor N		32.4%			27.5%			0.2%		369	
		32.470			۷۱.۵۶						
MSA Labor Market	LUCATION:		_C.0	AMC	MENTS		San Dieg				
Contract Equity Participation Contract Duration: One-Year v *Total not to exceed: \$600,000			ation.	3 Mill	MENTO						
	ent of Nondisc	rimination	(Faith Ou				Award Ap Recomme		
Workforce Profile & Stateme Submit	tod				quireme	nt Saticfi	אבו			hahad	



(Completed by District)

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

Title:				Ethnic Min	ority Perce	ntages Fro	m U.S. Cer	sus Data			
Purchase of Reverse Osmosis Membrane Elements for the RARE Water Project				В	Н	A/PI	Al/AN	TOTAL			
Lieili	ents for the NAIL Water P	Toject	Nati	onal	10.5	10.7	3.7	0.7	27.3		
		DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9		
Materials an	nd Supplies	11/23/2021	Alameda/C	C 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 Na	me, Owner/Contact Person, I Phone Number		В	н	A/PI	Al/AN	TOTAL	PERCENT	MSA %		
RP	WM	Company Wide	23	98	156	2	279	75.6%	40.2%		
Hydranautics		Manager/Prof	4	10	28	0	42	43.8%			
Karin Spink		Technical/Sales	0	1	6	0	7	87.5%			
405 Jones Ro	ad	Clerical/Skilled	2	14	10	1	27	64.3%			
Oceanside, CA	A 92058	Semi/Unskilled	17	73	112	1	203	91.0%			
		Bay Area	0	0	0	0	0	0.0%	39.9%		
760-901-2554		AA Plan on File:	NA		Date of last	contract with	District:	NA			
		Co. Wide MSA:	San Diego		# Employee	s-Co. Wide:	369	Bay Area:	0		
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\//M=\//hite M	ale, WW=White Women, EM=Ethnic N	lingrity (Ethnicities: P -Pl	ack H-Hispania A	/DI= A sign/Dasifi	a lalandar and	AI/AN=Amorio	on Indian/Alac	okan Matina)			



AGENDA NO.	5.
MEETING DATE	January 11, 2022

TITLE ADVANCED METERING INFRASTRUCTURE BUSINESS CASE EVALUATION

TYPE	□Construction	□General Services	☐Materials & Supplies	☑Professional Services
	□CEQA	□Grants	□Water Supply Assessment	□OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Authorize an agreement beginning on or after January 11, 2022 with Black & Veatch Corporation (Black & Veatch) in an amount not to exceed \$112,538 to evaluate the business case for a District-wide Advanced Metering Infrastructure (AMI) project.

SUMMARY

Services in this agreement include quantifying the costs and evaluating the business case of a District-wide AMI project and estimating the payback period based on data from the District's pilot programs. The findings from this evaluation will be completed prior to the Fiscal Years 2024/2025 budget development process.

DISCUSSION

An AMI system is composed of smart meters, collectors, and software to collect meter readings, analyze data, and provide water usage data to customers. The District has taken a measured approach to AMI implementation and began piloting AMI systems in the 1990s. The District's current AMI pilot includes five percent of the District's accounts. Black & Veatch will calculate the costs and evaluate the business case of three AMI alternatives so the District can understand the range of costs for implementing a District-wide AMI project.

Black & Veatch will lead five workshops with District staff to review considerations for AMI technologies, software, and staffing. A business case evaluation by an independent expert is advisable considering the high implementation cost and impact on District staffing. This item supports the District's Long-Term Financial Stability and Customer and Community Services Strategic Plan goals.

CONSULTANT SELECTION

A request for proposals was posted on the District's website and sent to 47 firms. Seven firms submitted proposals. Black & Veatch was selected based on their experience, superior project team, and approach.

Funds Available: FY22/23, CIP# 000738; Page 48	Budget Coding: 11/790/2012038/52310	Contract Equity Forms?
Originating Department	Department Director or Manager	Approved
Operations and Maintenance	David A. Briggs	General Manager
Attachment(s): P-035 P-061		

Advanced Metering Infrastructure Business Case Evaluation January 11, 2022 Page 2

SUSTAINABILITY

Economic

Funding for this work is available in the FY22/23 adopted capital budget for the Meter Replacements Project.

Social

Locals 21 and 2019 were notified of this agreement on September 15, 2021. Local 21 did not raise any specific issues related to this agreement. Local 2019's issues were addressed in a meeting on October 5, 2021 and resolved.

Environmental

Planned environmental benefits resulting from implementation of AMI include increased water conservation and reduced greenhouse gas emissions from reduced vehicle-based meter reading.

ALTERNATIVES

<u>Perform the work with District forces</u>. This alternative is not recommended because District forces do not have the expertise to perform this work.

<u>Do not authorize the agreement</u>. This alternative is not recommended because a detailed analysis of AMI's costs and benefits would be valuable to inform the decision making for a potential full AMI implementation.

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CONTRACT EQUITY PROGRAM SUMMARY (P-035) This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

TITLE Professional Services A	'LE Professional Services Agreement						DATE:						
Advanced Metering Infrastructure Business Case Evaluation								Decer	mber 29,	2021			
CONTRACTOR:						PERC	ENTAGE	OF CONTE	RACT DO	LLARS			
Black & Veatch Corporation Walnut Creek, CA 94597		Local Business			Ava	Availability Group		Contracting Objectives		Participation			
BID/PROPOSER'S	FIRM	'S OWNERS	HIP			White Me	en	25%	%	92.0)%		
PRICE:	Ethn	icity	Gen	der	v	Vhite Won	nen	6%	, D	8.0	%		
\$112,538	Wh	nite	Мє	en	Etl	nnic Mino	rities	25%	%	0.0	%		
		CONTRA	CT E	QUIT	Y PAR	TICIPAT	ION			l			
	ESTIMATED		GEN	DER			CONTRA	ACTING PARTI	CIPATION				
COMPANY NAME	AMOUNT	ETHNICITY	М	W	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign		
PRIME:													
Black & Veatch Corporation	\$103,538	White	Х		92.0%								
SUBS:													
ManageWater Consulting, Inc.	\$9,000	White		х		8.0%							
TOTAL		\$112,538			92.0%	8.0%	0.0%	0.0%	0.0%	0.0%	0.0%		
	CONTRAC	CTOR'S WO	RKF	ORC	E PRO	FILE (Fr	om P-025	Form)					
		White Me	en	٧	White Wo	men	Ethnic	Minorities	Tota	l Employe	ees		
No. of Emp	ployees:	3,641			1,506	6	2,	,327					
Percent of Total Emp	ployees:	48.7%		loyees: 48.7%			20.19	6	31.1%			7,474	
MSA Labor M	arket %:	39.0%			33.7%	6	27	7.2%					
MSA Labor Market L	MSA Labor Market Location: Total USA												
			CO	MIC	IENTS								
Contract Equity Participation -	- 92 0% Whi	te Men and	8 0%	Wh	ite Wor	an narti	cination						
contract Equity Funds patient	02.070 17111	to mon and	0.070			ian para	orpation.						
			l -		= =								
Workforce Profile & Statemer Submitte		rimination				itreach E nt Satisfi		•	Award App				
Submitted NA			Requirement Satisfied YES				Recommended						



(Completed by District)

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

Title:				Ethnic Min	ority Perce	ntages Fro	m U.S. Cer	nsus Data	
	Advanced Metering Infrastructure	Business Case			В	н	A/PI	AI/AN	TOTAL
	Evaluation		Natio	onal	10.5	10.7	3.7	0.7	27.3
		DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9
Profe	ssional Services Agreement	12/29/2021	Alameda/Co	C Counties	10.7	15.6	15.4	0.5	46.2
R=R	cmmd	12/20/2021			1			0.0	
P=Pr	ime S=Sub Composition of Ownership		ı	Number of E	thnic Mino	rity Employ	rees		
	pany Name, Owner/Contact Person, Address, and e Number		В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM: LBE	Company Wide	396	1,377	516	38	2,327	31.1%	27.3%
Black a	and Veatch Corporation	Manager/Prof	146	312	457	15	930	19.2%	
Katie J	ohnson	Technical/Sales	39	61	24	2	126	18.0%	
2999 C	ak Road, #490	Clerical/Skilled	164	711	27	15	917	61.6%	
Walnu	Creek, CA 94597	Semi/Unskilled	47	293	8	6	354	78.1%	
		Bay Area	1	9	23	0	33	34.7%	39.9%
816-45	8-8243	Co. Wide MSA:	Total USA		# Employee	s-Co. Wide:	7,474	Bay Area:	95
s	ww	Company Wide							
Manag	e Water Consulting, Inc	Manager/Prof	1						
Marga	et Laporte	Technical/Sales							
430 Ni	mitz Avenue	Clerical/Skilled			INFORMAT	ION NOT P	ROVIDED		
Redwo	od City, CA 94061	Semi/Unskilled	1						
		Bay Area	1						
650-72	2-7841	Co. Wide MSA:	1						
		 							
									,
									,
P	EMM: H	Company Wide	0	1	0	1	2	0.4%	42.4%
	Design Services	Company Wide	-		-			-	42.470
	han Thompson	Manager/Prof	0	1	0	1	2	1.5%	
	capital of Texas Hwy, Suite A-236	Technical/Sales Clerical/Skilled	0	0	0	0	0	0.0%	
	TX 78746	Semi/Unskilled	0	0	0	0	0	0.0%	
, tustiii,	17.70740	Bay Area	0	0	0	0	0	0.0%	39.9%
F40 70	4.4475	_	-	0		-			
512-79	1-1175 T	Co. Wide MSA:	Texas		# Employee	es-Co. Wide:	512	Bay Area:	0
				I	I	ı	ı		
Р	WM	Company Wide	1	0	2	0	3	7.7%	27.3%
	ce Companies, LLC	Manager/Prof	1	0	2	0	3	7.7%	
•	ootton	Technical/Sales	0	0	0	0	0	0.0%	
	8th Street	Clerical/Skilled	0	0	0	0	0	0.0%	
Boulde	r, CO 80303	Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
202 24	5-9168	Co. Wide MSA:	Total USA		# Employee	s-Co Wide	39	Bay Area:	0



(Completed by District)

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

Title:				Ethnic Min	ority Perce	ntages Fro	m U.S. Cer	sus Data	
	Advanced Metering Infrastructure Business Case Evaluation				В	н	A/PI	AI/AN	TOTAL
EV	aluation		Natio	onal	10.5	10.7	3.7	0.7	27.3
		DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9
Profession	onal Services Agreement	12/29/2021	Alameda/Co		10.7	15.6	15.4	0.5	46.2
R=Recmm	d	12/20/2021			1	I	I	0.0	1 .0.2
P=Prime S	=Sub Composition of Ownership		ı	Number of E	thnic Mino	rity Employ	rees		
Company I Phone Nur	Name, Owner/Contact Person, Address, and nber		В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %
Р	WM	Company Wide							
TMG Utility	Advisory Services, Inc.	Manager/Prof							
Steven Obc	osnenko	Technical/Sales							
388 Feather	rgrass Drive	Clerical/Skilled			INFORMAT	ION NOT P	ROVIDED		
Buda, TX 78	8610	Semi/Unskilled							
		Bay Area							
610-357-75	50	Co. Wide MSA:	i						
					†				
									1
]
Р	Foreign	Company Wide							
Uttil-Assist I	Inc.	Manager/Prof							
Sabina Foo	dolona	Technical/Sales	1						
470 Harry V	Valker Pkwy. South	Clerical/Skilled			INFORMAT	ION NOT P	ROVIDED		
	t, Ontario, Canada L3YOB3	Semi/Unskilled							
		Bay Area	1						
905-952-04	77 ext. 2224	Co. Wide MSA:	1						
									-
									-
									1
				<u> </u>		<u> </u>	<u> </u>	<u> </u>	<u> </u>
Р	WM: SBE	Company Wide	9	1	9	0	19	35.2%	48.4%
Utiligent LL0			9	1	9	0	19	35.2%	
Shannon Ha		Manager/Prof Technical/Sales	0	0	0	0	0	0.0%	-
	Karman Avenue, Suite 100	Clerical/Skilled	0	0	0	0	0	0.0%	1
Irvine, CA 9	'	Semi/Unskilled	0	0	0	0	0	0.0%	1
, 5		Bay Area	1	1	1	0	3	60.0%	39.9%
949-678-00	64	Co. Wide MSA:	California	'		s-Co. Wide:	54	Bay Area:	l
P	WM: SBE	Company Wide	Jamoina		pioyoc		<u> </u>	Day Alea.	
	De Partners, LLC		-						
vvest Monro	DE FAIRIEIS, ELU	Manager/Prof	-						
1000 Wilebi	re Blvd., Suite 1100	Technical/Sales Clerical/Skilled	-		INFORMAT		RU/IDED		
	es, CA 90017	Semi/Unskilled	-		IIVI OIXIVIAT	ION NOT P	NOVIDED		
Losa Angel	55, 57, 500 17		-						
040 004 40	00	Bay Area	4						
213-631-48	00 Male, WW=White Women, EM=Ethnic Minority (Eth	Co. Wide MSA:							





AGENDA NO.	6.
MEETING DATE	January 11, 2022

TITLE ONLINE LEARNING MANAGEMENT SYSTEM

TYPE	□Construction	☐General Services	☐Materials & Supplies	⊠Professional Services
	□CEQA	□Grants	□Water Supply Assessment	□OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Authorize an agreement beginning on or after January 11, 2022 with Cornerstone OnDemand, Inc. for \$40,000 for one year with two options to renew for additional one-year periods for a total amount, including option years, not to exceed \$125,481 for an online learning management system.

SUMMARY

The District is seeking to use Cornerstone OnDemand, Inc.'s Learning Management System (LMS) to improve its ability to deliver e-learning courses to District employees by providing learning content, tracking employee progress, and assessing qualification for classes.

DISCUSSION

This agreement will allow the District to offer e-learning courses for employees including the new hire orientation class, management courses, and general computer classes. Using an LMSprovides more accessible training opportunities, delivery and tracking of e-learning and blended learning options (live and virtual), minimizes employee travel, efficient use of time, and saves District resources.

This agreement requires the District to defend and indemnify Cornerstone OnDemand, Inc. in the event a third-party claims that content uploaded by the District to Cornerstone OnDemand, Inc.'s cloud platform violates another party's intellectual property rights. Cornerstone OnDemand, Inc. would provide reciprocal indemnity to the District in the event the District is claimed to have violated a third-party's intellectual property rights by using software or training modules offered by Cornerstone OnDemand, Inc.

This agreement supports the District's Workforce Planning and Development Strategic Plan goal.

Funds Available: FY22/23	Budget Coding: 8851300/4008513/52310	Contract Equity Forms? ☐ Yes ☐ No
Originating Department	Department Director or Manager	Approved
Information Systems	Andrew J. Levine	Clipped On General Manager
Attachment(s): P-035; P-061		

Online Learning Management System January 11, 2022 Page 2

CONSULTANT SELECTION

A request for proposals was sent to four firms with expertise in online LMSs. All firms submitted proposals and a short-list of three firms was established. Cornerstone OnDemand, Inc. was selected based on their product's features, including its ability to share data with the District's Training Management System.

SUSTAINABILITY

Economic

The FY22/23 adopted operating budget includes funding for the first two years of this multi-year agreement. Funding for the additional years will be considered as part of the associated budget development process and have annual increases of 4.5 percent.

ALTERNATIVE

<u>Do not procure the LMS.</u> This alternative is not recommended because the LMS will improve the efficiency and effectiveness of the District's training program which supports employee development.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\ISD\Online Learning Management Service.docx



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE **Professional Services Agreement** January 4, 2022 Online Learning Management Service PERCENTAGE OF CONTRACT DOLLARS CONTRACTOR: Cornerstone OnDemand, Inc. **Availability Group Contracting Objectives** Participation Santa Monica, CA 90404 FIRM'S OWNERSHIP White Men 25% 0.0% **BID/PROPOSER'S** PRICE: 0.0% Gender 6% Ethnicity White Women \$125,481 * Publicly Held **Ethnic Minorities** 25% 0.0% **CONTRACT EQUITY PARTICIPATION GENDER** CONTRACTING PARTICIPATION **ESTIMATED** ETHNICITY **COMPANY NAME** White-Publicly Gov't/Non **AMOUNT** White-**Ethnic** W М Unclassified Foreign Men Women Minorities Held Corp Profit PRIMES: Cornerstone OnDemand, Inc. \$125,481 Publicly Held 100.0% SUBS: None TOTAL \$125,481 0.0% 0.0% 0.0% 0.0% 100.0% 0.0% 0.0% CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form) White Women **Ethnic Minorities Total Employees** White Men No. of Employees: 438 304 495 35.4% 24.6% 40.0% **Percent of Total Employees:** 1,237 MSA Labor Market %: 20.2% 16.4% 63.5% Los Angeles-Long Beach **MSA Labor Market Location:** COMMENTS Contract Equity Participation: Zero Contract Equity participation since firm is Publicly Held.

Contract Duration: Three Years

*Total not to exceed: \$125,481

Workforce Profile & Statement of Nondiscrimination Submitted	Good Faith Outreach Efforts Requirement Satisfied	Award Approval Recommended
NA	NA	Reality



(Completed by District)

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

Title:				Ethnic Min	ority Perce	ntages Fro	m U.S. Cer	nsus Data	
Online Learning Management Servi		Service			В	н	A/PI	AI/AN	TOTAL
		National		10.5	10.7	3.7	0.7	27.3	
		DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9
Professional	Services Agreement	1/4/2022	Alameda/C		10.7	15.6	15.4	0.5	46.2
R=Recmmd P=Prime S=Sub	R=Recmmd P=Prime S=Sub Composition of Ownership		Number of Ethnic Minority Employees						
Company Name	r, Owner/Contact Person, Address, ber		В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	PHC	Company Wide	104	100	339	1	544	44.0%	63.5%
Cornerstone On	Demand, Inc.	Manager/Prof	101	85	327	1	514	49.0%	
Kimberly Cassa	dy	Technical/Sales	1	13	4	0	18	10.7%	
1 -	Blvd., Suite 600 South	Clerical/Skilled	2	2	8	0	12	63.2%	
Santa Monica, C		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
310-752-1736		AA Plan on File:	NA			contract with		NA	00.07
010-702-1700		Co. Wide MSA:	Los Angeles-	l ong Reach			1,237	Bay Area:	0
		Co. Wide MSA.	LOS Aligeles-	Long Beach	# Employee	s-co. wide.	1,237	Бау Агеа.	<u> </u>
Р	WM	Company Wide							
NeoGov		Manager/Prof	1						
Kimberly Goerlit	7	Technical/Sales	-						
1 -	da Blvd., Suite 2000	Clerical/Skilled	-	ı	NFORMAT	ION NOT P	ROVIDED		
El Segundo, CA		Semi/Unskilled	-	·	i di di divisi ti		. TO TIBLE		
Li Gegundo, Oz	1 30243		-						
(310) 658-5715		Bay Area	-						
(310) 036-3713		Co. Wide MSA:			1	1	I		
Р	Foreign	Company Wide							
Docebo		Manager/Prof							
Danniel Angulo		Technical/Sales							
600 N. Thomas	Street, Suite A	Clerical/Skilled		I	NFORMAT	ION NOT P	ROVIDED		
Athens, GA 306	01	Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							
<u> </u>		ì							
						<u> </u>			



AGENDA NO.	7.		
MEETING DATE	January 11, 2022		

TITLE AMEND THE CITY OF EMERYVILLE BILLING AND COLLECTION SERVICES FOR SEWER SERVICE CHARGE AGREEMENT – TO INSTITUTE CREDIT FOR CUSTOMER ASSISTANCE PROGRAM PARTICIPANTS

TYPE	□Construction	☐General Services	☐Materials & Supplies	□Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	⊠OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Authorize an amendment to the agreement previously authorized under Board Motion No. 079-13 with the City of Emeryville (Emeryville) to include a 35 percent sewer service charge credit for Emeryville customers participating in the District's Customer Assistance Program (CAP).

SUMMARY

The District bills sewer service charges for six cities in its service area including Oakland, Berkeley, and Emeryville. The city sewer service charge is significant and shows up on the District's customer bill. To ensure CAP customers receive additional financial relief, the District worked with Oakland, Berkeley, and Emeryville to implement a CAP credit for their charges. In June 2021, the District implemented a CAP credit for Oakland customers. In December 2021, Emeryville agreed to institute a CAP credit for its sewer service charge. This credit will be implemented on February 2, 2022 and CAP customers should begin seeing the credit on their bills beginning as early as February 2022, depending on their billing cycle.

DISCUSSION

The District has provided billing and collection services for sewer service charges on behalf of Emeryville for over 30 years. An extension to the agreement with Emeryville began on July 1, 2013 and ends on June 30, 2023. In Fiscal Year 2021, the District collected \$976,495 in sewer service charges from Emeryville customers and received approximately \$16,000 from Emeryville to reimburse the District for its costs to provide the billing and collection services.

Emeryville's sewer service charge represents a significant portion of the overall District bill, especially for CAP customers. To provide Emeryville CAP customers additional financial relief, staff worked with Emeryville to implement a CAP credit on its sewer service charges to mirror the District's CAP. On November 2, 2021, the Emeryville City Council passed a resolution to authorize a CAP component on its charges. Following the adoption of this resolution, staff completed negotiations of an amendment to the agreement to effectuate this CAP credit for Emeryville CAP customers on December 13, 2021. Through this amendment, Emeryville CAP customers will receive a 35 percent credit on the city's sewer service

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? ☐ Yes ☒ No
Originating Department	Department Director or Manager	Approved
Customer and Community Services	Andrew L. Lee	General Manager
Attachment(s): N/A		

Amend Emeryville Sewer Service Charge Agreement January 11, 2022 Page 2

charge, which would result in an approximately nine-dollar reduction on their bi-monthly water bill. This amendment supports the District's Customer and Community Services Strategic Plan goal.

SUSTAINABILITY

Economic

Economic impacts to the District are limited to programming changes to the billing system, which are minor.

Social

Implementing a CAP credit for Emeryville's sewer service charges will result in additional financial relief for Emeryville's CAP customers.

ALTERNATIVE

<u>Do not authorize the amendment to the agreement</u>. This alternative is not recommended because Emeryville customers will not receive additional financial relief on the city's sewer service charge.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\CCS - Amend Emeryville Sewer Service Collection Charge Credit for CAP.docx



AGENDA NO.	8.	
MEETING DATE	January 11, 2022	

TITLE AMEND POWER PURCHASE AGREEMENT FOR PHOTOVOLTAIC-GENERATED ELECTRICITY

<u>TYPE</u>	□Construction	⊠General Services	☐Materials & Supplies	☐Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	□OTHER
<u>ACTION</u>	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Authorize an amendment to the Power Purchase Agreement (PPA) previously authorized under Board Motion No. 118-20 with Solar Star Bear Creek, LLC (Solar Star) to increase the agreement amount by \$517,000 to a total amount not to exceed \$700,000 for Photovoltaic-generated electricity.

SUMMARY

On February 11, 2020, the Board approved and adopted the Final Mitigated Negative Declaration for the Duffel Photovoltaic (PV) Renewable Energy Project (Project) to develop a PV project of up to 4,570 kilowatts on watershed property in the City of Orinda through a PPA with Solar Star. An amendment to the agreement amount is necessary to implement environmental mitigation measures assigned to the District and to accommodate design changes imposed by regulatory agencies or actual site conditions. A presentation of the Project was provided to the Planning Committee on August 13, 2019 and February 11, 2020 and discussed at the April 28, 2020 and October 27, 2021 Sustainability/Energy Committee meetings.

DISCUSSION

The Project will significantly reduce carbon emissions associated with District operations and help achieve the District's emission goals set forth in Policy 7.07 – Energy. The City of Orinda conditionally approved the design produced by Solar Star in September 2020 which included several changes including additional gates, extension of the access road, and landscape design changes. Additionally, under the amended agreement, Solar Star may manage the construction of various permitting requirements not included in the original PPA and otherwise assigned to the District. This amendment supports the District's Water Quality and Environmental Protection Strategic Plan goal.

SERVICE PROVIDER SELECTION

Solar Star is best suited to implement permitting requirements as their staff will be onsite for construction and uniquely trained for environmental awareness.

Funds Available: FY22, CIP#1002593; Page 77	Budget Coding: 11/773/3100002/52370	Contract Equity Forms?				
Originating Department	Department Director or Manager	Approved				
Operations and Maintenance	David A. Briggs	Clipped Ou				
Attachment(s): P-035; P-061						

Amend the Power Purchase Agreement for Photovoltaic-Generated Electricity January 11, 2022 Page 2

SUSTAINABILITY

Economic

Funding for this expense is available in the FY22/23 adopted capital budget for the Enhanced Power Revenue Project. The net present value of the Project over the 25-year term of the PPA will exceed \$10 million.

Social

This type of work is not performed by District forces and consequently Union notification was not required.

Environmental

The Project is estimated to offset approximately 2,000 metric tons of greenhouse gas emissions annually and support emissions reduction goals as specified in District Policy 7.07 – Energy.

ALTERNATIVES

<u>Do not amend the PPA or authorize additional funds.</u> This alternative is not recommended because PPA amendments and additional funds are required to complete the Project.

<u>Do not proceed with the Project</u>. This alternative is not recommended because the Project will significantly lower the District's indirect emissions and will lower operating costs.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\OMD - Amend the Power Purchase Agreement for Photovoltaic-Generated Electricity.docx



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE General Services Agreement - Amendment January 5, 2022 Amend the Power Purchase Agreement for Photovoltaic-Generated Electricity PERCENTAGE OF CONTRACT DOLLARS CONTRACTOR: Local Business Solar Star Bear Creek, LLC **Availability Group Contracting Objectives** Participation Richmond, CA 94804 FIRM'S OWNERSHIP White Men 25% 0.0% **BID/PROPOSER'S** PRICE: 0.0% Gender 6% Ethnicity White Women \$517,000 * Publicly Held **Ethnic Minorities** 25% 0.0% **CONTRACT EQUITY PARTICIPATION** CONTRACTING PARTICIPATION **GENDER ESTIMATED** ETHNICITY **COMPANY NAME** White-Gov't/Non **AMOUNT** White-**Ethnic** Publicly W Unclassified Foreign Men Women Minorities Held Corp Profit PRIME: Solar Star Bear Creek, LLC \$517,000 PHC Χ 100.0% SUBS: None TOTAL \$517,000 0.0% 0.0% 100.0% 0.0% 0.0% CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form) White Men White Women **Ethnic Minorities Total Employees** 533 166 570 No. of Employees: 42.0% 13.1% 44.9% **Percent of Total Employees:** 1,269 39.0% 33.7% 27.3% MSA Labor Market %: Total USA **MSA Labor Market Location:** COMMENTS Contract Equity Participation - Zero Contract Equity participation since firm is a Publicly Held corporation.

*Total not to exceed: \$700,000 = \$183,000 (Original) + \$517,000 (Amendment)

Workforce Profile & Statement of Nondiscrimination Submitted	Good Faith Outreach Efforts Requirement Satisfied	Award Approval Recommended
NA	NA	Paraly



(Completed by District)

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

nend the Power Purchase Agre otovoltaic-Generated Electricit Services Agreement - nent Composition of Ownership Name, Owner/Contact Person, Address,		Natio		B 10.5	H 10.7	A/PI 3.7	AI/AN 0.7	TOTAL 27.3
Services Agreement - lent dd ==Sub	DATE:			10.5	10.7	3.7	0.7	27.2
tent Id Composition of Ownership Name, Owner/Contact Person, Address,		9 Bay Area	_			0.1	1 0.7 1	Z1.3
tent Id Composition of Ownership Name, Owner/Contact Person, Address,			Counties	5.5	16.2	14.2	0.4	39.9
Composition of Ownership Name, Owner/Contact Person, Address,		Alameda/Co	C Counties	10.7	15.6	15.4	0.5	46.2
Name, Owner/Contact Person, Address,								
		ı	Number of E	thnic Minor	ity Employ	ees		
Number		В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %
PHC: LBE	Company Wide	53	116	224	7	400	31.5%	27.39
Bear Creek, LLC	Manager/Prof	16	48	184	4	252	34.6%	
mson	Technical/Sales	20	53	40	2	115	29.6%	
our Way South, Suite 1901	Clerical/Skilled	17	15	0	1	33	21.9%	
CA 94804	Semi/Unskilled	0	0	0	0	0	0.0%	
(Local Office)	Bay Area	8	11	45	0	64	26.8%	39.9%
	AA Plan on File:	NA		Date of last	contract with	District:	NA	
551	Co. Wide MSA:	Total USA		# Employee	s-Co. Wide:	1.269	Bay Area:	239
						•		
		<u> </u>						
WALLIODE						0.4	00.00/	10.00
			-	-	-			46.29
	Technical/Sales	0	1	2	0	3	27.3%	
	Clerical/Skilled	7	3	3	0	13	54.2%	
CA 94710	Semi/Unskilled	0	0	0	0	0	0.0%	
	Bay Area	9	6	6	0	21	30.9%	39.9%
97 ext. 124	Co. Wide MSA:	Alameda/Con	tra Costa	# Employee	s-Co. Wide:	68	Bay Area:	68
WM	Company Wide	1	4	7	0	12	15.6%	27.3%
Solar Operations, LLC	Manager/Prof	1	4	6	0	11	14.9%	
ing	Technical/Sales	0	0	0	0	0	0.0%	
wn Road	Clerical/Skilled	0	0	1	0	1	50.0%	
NY 12309	Semi/Unskilled	0	0	0	0	0	0.0%	
	Bay Area	0	0	1	0	1	12.5%	39.9%
58	Co. Wide MSA:	Total USA		# Employee	s-Co. Wide:	77	Bay Area:	8
			<u> </u>					
			<u> </u>					
i 1	WM: L/SBE R Power nier r Avenue RA 94710 97 ext. 124 WM Solar Operations, LLC ing wn Road NY 12309	AA Plan on File: Co. Wide MSA: WM: L/SBE Company Wide R Power A Pow	AA Plan on File: Co. Wide MSA: Total USA WM: L/SBE Company Wide 9 An Plan on File: Co. Wide MSA: Total USA WM: L/SBE Company Wide 9 Manager/Prof 2 Technical/Sales 0 Clerical/Skilled 7 Semi/Unskilled 0 Bay Area 9 Co. Wide MSA: Alameda/Con WM Company Wide 1 Solar Operations, LLC ing wn Road NY 12309 Remi/Unskilled 0 Remi/Unskilled	AA Plan on File: Co. Wide MSA: Total USA WM: L/SBE Company Wide 9 6 8 Power siter Technical/Sales Colerical/Skilled Total USA WM Company Wide Total USA Total USA Total USA Total USA Total USA NA Total USA NA Total USA Total USA Alametalization Company Wide 9 6 Company Wide Totalization Clerical/Skilled Totalization Semi/Unskilled Totalization Company Wide Totalization Company Wide Totalization Manager/Prof Total USA Manager/Prof Total USA Alametalization Alametalization Company Wide Totalization Company Wide Totalizat	AA Plan on File:	AA Plan on File: NA	AA Plan on File: Co. Wide MSA: Total USA # Employees-Co. Wide: 1,269 WM: L/SBE Company Wide Manager/Prof Technical/Salles Colerical/Skilled Co. Wide MSA: Technical/Sales Co. Wide MSA: Bay Area WM Company Wide Manager/Prof Description Company Wide Description Technical/Salles Description Company Wide Description Technical/Salles Description Technical/Salles Description Technical/Skilled Description Technical/Skilled Technical/Skill	AA Plan on File: Co. Wide MSA: Total USA # Employees-Co. Wide: 1,269 Bay Area: Co. Wide MSA: Total USA # Employees-Co. Wide: 1,269 Bay Area:



AGENDA NO.	9a-b.		
MEETING DATE	January 11, 2022		

TITLE CONSTRUCTION MANAGEMENT INFORMATION SYSTEM

TYPE	□Construction	☐General Services	☐Materials & Supplies	⊠Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	□OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

- A. Authorize an agreement beginning on or after January 11, 2022 with Sage Method in an amount not to exceed \$338,395 for implementation services to replace the District's current construction management information system (CMIS).
- B. Authorize an agreement beginning on or after January 11, 2022 with Kahua, Inc for \$1,172,500 for five years with five options to renew for additional one-year periods for a total amount, including option years, not to exceed \$2,747,504 for software licensing and support for the CMIS.

SUMMARY

The District is seeking to replace its current CMIS that is reaching end-of-life and move to a modern CMIS that supports more efficient business processes.

DISCUSSION

The District must replace its CMIS, ProjectWise Construction Management (PWCM), because the software vendor, Bentley Systems, plans to retire the system within a few years. The District's agreement with Bentley Systems for PWCM expires in August 2023. Bentley Systems has no plans to make further enhancements to this software. The recommended action includes services for implementation of a replacement solution and includes software licensing support throughout the five-year term and optional extensions of the agreement. These agreements support the District's Long-Term Financial Stability Strategic Plan goal.

CONSULTANT SELECTION

A request for proposals was posted on the District's website and sent to more than 50 firms. Thirteen firms submitted proposals and a short-list of three firms was established. A joint proposal from the Sage Method and Kahua, Inc was selected based on their ability to best provide the required services and software functionality.

Funds Available: FY22/23, CIP#000437; Page 35	Budget Coding: WSC\570\VAR\VAR\52310	Contract Equity Forms? ☐ Yes ☐ No
Originating Department	Department Director or Manager	Approved
Information Systems	Andrew J. Levine	Clipped Ou
Attachment(s): P-035; P-061		

Construction Management Information System January 11, 2022 Page 2

SUSTAINABILITY

Economic

Funding for this work is available in the FY22/23 adopted capital budget for Treatment Plant Upgrades. Funding for the additional years will be considered as part of the associated budget development process.

Environmental

This project supports the District's efforts to use electronic documentation and minimize the use of paper.

ALTERNATIVE

<u>Do not replace the existing CMIS.</u> This alternative is not recommended because the existing system has reached end-of-life with the current vendor. The vendor does not intend to enhance the existing system and will retire it in the next few years.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\ISD\Construction Management Information System.docx



CONTRACT EQUITY PROGRAM SUMMARY (P-035) This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

Professional Services A	Agreement							DATE:			
Construction Manage	_	tion System (0	CMIS)						Decer	mber 29,	2021
CONTRACTOR:						PERC	ENTAGE	OF CONTR	RACT DO	LLARS	
Various Firms					Ava	ailability G	Group	Contracting (Objectives	Partici	pation
BID/PROPOSER'S	FIRM	'S OWNERS	HIP			White Me	n	25%	6	89.0	0%
PRICE:	Ethn	icity	Gen	der	v	Vhite Won	nen	6%	D	11.0	0%
\$3,085,899 *					Eti	hnic Mino	rities	25%	6	0.0%	
		CONTRA	CT E	QUIT	Y PAR	TICIPAT	ION			II	
	ESTIMATED		GEN	DER			CONTRA	CTING PARTI	CIPATION		
COMPANY NAME	AMOUNT	ETHNICITY	М	W	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIMES:											
Sage Method	\$338,395	White		Х		11.0%					
Kahua, Inc*	\$2,747,504	White	х		89.0%						
TOTAL		\$3,085,899	<u> </u>		89.0%	11.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	CONTRAC	CTOR'S WC	RKF	ORC	E PRO		om P-025	Form)			
		White Me			Vhite Wo	•		Minorities	Tota	al Employ	ees
No. of Em	plovees:			<u> </u>			<u>I</u>		I		
1101012	p.0,000.										
Percent of Total Em	ployees:										
MSA Labor M	larket %:					,	See P-06	1			
MSA Labor Market L	ocation:										
			C	MC	MENTS						
Contract Equity Participation	- 89.0% Whi	te Men and	11.0	% W	hite Wo	men par	ticipation.				
Contract terms: 5 years with 4 (One vear rene	wal ontions									
	j - u. 10110	551101101									
Workforce Profile & Statemer		rimination	(ıtreach E nt Satisf			Award Ap		
NA	eu			ĸe		ES	ieu	Sente	Leconiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiii	silueu	



(Completed by District)

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

1	Title:			Ethnic Minority Percentages From U.S. Census Data								
Construction Management Information System					В	Н	A/PI	AI/AN	TOTAL			
	ŭ	•	Natio	onal	10.5	10.7	3.7	0.7	27.3			
		DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9			
Profes	ssional Services Agreement	12/29/2021	Alameda/C0		10.7	15.6	15.4	0.5	46.2			
R=Rec	cmmd	12/20/2021	<u> </u>									
P=Prir	me S=Sub Composition of Ownership		ľ	Number of E	thnic Mino	rity Employ	ees					
Company Name, Owner/Contact Person, Address, and Phone Number			в н		A/PI AI/AN		TOTAL PERCENT		MSA %			
RP	WW: SBE	Company Wide	1	0	0	0	1	0.0%	27.3%			
Sage M	ethod	Manager/Prof	1	0	0	0	0	0.0%				
Carl Stie		Technical/Sales	0	0	0	0	0					
	W Disk Drive, Suite 250	Clerical/Skilled	0	0	0	0	0					
Bend, C	Pregon	Semi/Unskilled	0	0	0	0	0					
		Bay Area						0.0%	39.9%			
816-458	3-8243	Co. Wide MSA:	Total USA		# Employee	s-Co. Wide:	10	Bay Area:	0			
Р	WM	Company Wide	0	3	6	0	9	0.1%	34.2%			
Kahua,	Inc	Manager/Prof	0	1	6	0	7	0.1%				
Sally Gu	unter	Technical/Sales	0	2	0	0	2	0.3%				
10000 F	Avalon Blvd, Suite 600	Clerical/Skilled	0	0	0	0	0	0.0%				
Alphare	tta, GA 30009	Semi/Unskilled	0	0	0	0	0	0.0%				
		Bay Area	0	0	0	0	0	0.0%	39.9%			
770-641	1-9994	Co. Wide MSA:	Caaraia		# Employee	s-Co. Wide:	111					
			Georgia		# Employee			Bav Area:	0			
		-	Georgia		# Employee	3-00. WIGC.		Bay Area:	0			
			Georgia		# Employee	S-GO. WILC.		Bay Area:	0			
			Georgia		# Employee	S-CO. WIGE.		Bay Area:	0			
			Georgia		# Employee	S-OO. WIGE.		Bay Area:	0			
			Georgia		# Employee	3-00. Wite.		Bay Area:	0			
			Georgia		# Employee	3-00. Wide.		Bay Area:	0			
			Georgia		# Employee	S CO. WILL.		Bay Area:	0			
			Georgia		# Employee	Soo. Mide.		Bay Area:	0			
			Georgia		# Employee	S GO. MIG.		Bay Area:	0			
			Georgia		# Employee	S GO. MIG.		Bay Area:	0			
			Georgia		# Employee	S GO. MILE.		Bay Area:	0			
			Georgia		# Employee	S GO. WILL		Bay Area:	0			
			Georgia		# Employee			Bay Area:	0			
			Georgia		# Employee			Bay Area:	0			
			Georgia		# Employee			Bay Area:	0			
			Georgia		# Employee			Bay Area:	0			
			Georgia		# Employee			Bay Area:	0			
			Georgia		# Employee			Bay Area:				
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			Georgia		# Employee			Bay Area:				
			Georgia		# Employee			Bay Area:				



AGENDA NO.	10.
MEETING DATE	January 11, 2022

TITLE ORACLE DATABASE TECHNICAL SUPPORT SERVICES

TYPE	□Construction	⊠General Services	☐Materials & Supplies	□Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	□OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Authorize an agreement with Dynamic Systems, Inc. for Oracle database software and hardware technical support services during the period of January 2022 to July 2023 with one option to renew for an additional one-year period for a total amount, including the option year, not to exceed \$1,650,000.

SUMMARY

This agreement provides manufacturer technical support services for the District's Oracle database software and hardware, including access to security updates, software updates (patches) and version upgrades. This agreement will provide continuity of technical support services for 19 months and allow the District to co-terminate agreements for multiple support services closer to fiscal-year boundaries for improved financial management.

DISCUSSION

Since 2005, the District has relied upon Oracle database technology to support all its core business information systems. In addition to the licenses required to operate Oracle databases, the District needs on-going annual technical support services to ensure that staff has access to product experts when resolving complex information system issues and responding to operational problems. Regular updates are important to apply security patches and ensure compatibility of Oracle databases with other software products. This agreement supports the District's Long-Term Financial Stability Strategic Plan goal.

SERVICE PROVIDER SELECTION

California Public Contract Code, Section 10299, specifically allows agencies such as EBMUD to purchase directly from State competitively awarded contracts without pursuing separate competitive bidding. Dynamic Systems, Inc. holds State Contract number 1-19-70-19O for Oracle technical support services. The District will utilize this contract to benefit from the economies-of-scale and preferred pricing afforded to the state.

Funds Available: FY22/23	Budget Coding: WSO/252/8854700/52430	Contract Equity Forms? ☐ Yes ☐ No
Originating Department	Department Director or Manager	Approved
Information Systems	Andrew J. Levine	Clipped On General Manager
Attachment(s): P-035; P-061		

Oracle Database Technical Support Services January 11, 2022 Page 2

SUSTAINABILITY

Economic

Funding for these services is available in the FY22/23 adopted operating budget.

Social

This type of work is not performed by District forces and consequently, Union notification was not required. These agreements increase operational reliability by ensuring access to the knowledge and resources to support Oracle products.

ALTERNATIVES

<u>Select a different enterprise database product</u>. This alternative is not recommended because there are no alternative enterprise database systems compatible with the District's inventory of software applications. It would be a costly and time-consuming project to migrate to another database.

<u>Do not procure technical support and software updates</u>. This alternative is not recommended because staff requires access to technical support to resolve database management issues and needs software updates to ensure that any newly discovered security vulnerabilities can be addressed. Without technical support and software updates, the reliability of the District's mission-critical information systems could be compromised.

 $I:\Sec\2022\ Board\ Related\ Items\011122\ Board\ Agenda\ Items\ISD\Oracle\ Database\ Technical\ Support\ Services. docx$



CONTRACTOR:

General Services Agreement

Oracle Database Technical Support Services

TITLE

CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

January 4, 2022

PERCENTAGE OF CONTRACT DOLLARS

State Contract Dynamic Systems, Inc. **Availability Group Contracting Objectives** Participation El Segundo, CA 90245 FIRM'S OWNERSHIP White Men 25% 0.0% **BID/PROPOSER'S** PRICE: Gender White Women 6% 100.0% **Ethnicity** \$1,650,000 * White Women **Ethnic Minorities** 25% 0.0% **CONTRACT EQUITY PARTICIPATION GENDER** CONTRACTING PARTICIPATION **ESTIMATED** ETHNICITY COMPANY NAME White-Gov't/Non **AMOUNT** White-**Ethnic** Publicly W Unclassified Foreign Men Women Minorities Held Corp Profit PRIMES: Х Dynamic Systems, Inc. \$1,650,000 100.0% White \$1.650.000 0.0% 100.0% 0.0% 0.0% TOTAL 0.0% 0.0% CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form) White Women **Ethnic Minorities** White Men **Total Employees** 7 No. of Employees: 35 19 **Percent of Total Employees:** 57.4% 31.1% 11.5% 61 MSA Labor Market %: 39.0% 33.7% 27.3% Total USA **MSA Labor Market Location: COMMENTS** Contract Equity Participation: 100%White Women participation. Contract Duration: 18 months with 1 One-Tear Renewal Option. *Total not to exceed: \$1,650,000 **Workforce Profile & Statement of Nondiscrimination Good Faith Outreach Efforts Award Approval Requirement Satisfied Submitted** Recommended NA NA



(Completed by District)

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

Title:				Ethnic Min	nority Percentages From U.S. Census Data						
Oracle Database Technical Support Services					В	Н	A/PI	AI/AN	TOTAL		
			Natio	onal	10.5	10.7	3.7	0.7	27.3		
Camaral Car	ndaa Assamant	DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9		
General Services Agreement		1/4/2022	Alameda/C	C Counties	10.7	15.6	15.4	0.5	46.2		
R=Recmmd P=Prime S=Sul	b Composition of Ownership		İ	Number of E	thnic Minority Employees						
Company Name, Owner/Contact Person, Address, and Phone Number			В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %		
RP	ww	Company Wide	2	3	2	0	7	11.5%	27.3%		
Dynamic Syste	ms, Inc.	Manager/Prof	2	2	2	0	6	15.4%			
Dean Dierks		Technical/Sales	0	0	0	0	0	0.0%			
880 Parkview D	Orive, North	Clerical/Skilled	0	1	0	0	1	16.7%			
El Segundo, CA	A 90245	Semi/Unskilled	0	0	0	0	0	0.0%			
		Bay Area	0	0	0	0	0	0.0%	39.9%		
310-337-4400		AA Plan on File:	NA		Date of last	contract with	District:	NA			
		Co. Wide MSA:	Total USA		# Employee	s-Co. Wide:	61	Bay Area:	0		
1											
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			<u> </u>	<u> </u>			<u> </u>	<u> </u> 			
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AGENDA NO.	11a-b.
MEETING DATE	January 11, 2022

TITLE WELDING SERVICES

TYPE	□Construction	⊠General Services	☐Materials & Supplies	□Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	□OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

A. Authorize agreements with the service providers listed below for welding services during the period January 12, 2022 to June 30, 2023, in an aggregate amount not to exceed \$250,000.

Eyeball Enterprise, Inc. Ferguson Welding Service, Inc. John Arthur Welding, Inc. Larsson Welding Mid Mountain Mechanical, Inc. Nicole Welding, Inc. Woods Welding

B. Authorize additional agreements for welding 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.

SUMMARY

The District uses welding services primarily for welding steel pipelines and appurtenances during the repair, replacement, or expansion of the District's water distribution system. District welder staffing levels are set to meet base workload needs. The District uses welding services to augment staff resources during peak periods when work exceeds in-house capabilities.

DISCUSSION

The District has been utilizing welding services since 1975 to augment staff resources during peak workload. The welders must meet industry standard requirements (ANSI/AWWA C200) for steel pipe with six inch or larger diameter. These services are used to support new and replacement pipeline projects, and for leak repair.

Funds Available: FY22/23 CIP# 000554, Page 21; CIP# 000108, Page 22; CIP# 000104, Page 23; CIP# 000110 Page 24	Budget Coding: various/various	Contract Equity Forms? ☑ Yes □ No
Originating Department	Department Director or Manager	Approved
Maintenance and Construction	Michael R. Ambrose	Clipped On General Manager
Attachment(s): P-035; P-061		

Welding Services January 11, 2022 Page 2

These agreements do not obligate the District to use these services and use may be adjusted at any time. This work supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

SERVICE PROVIDER SELECTION

A request for proposals (RFP ESS 0320) was posted on the District's website and sent to five potential proposers. Seven firms that meet minimum requirements were selected. These requirements include holding an American Welding Society 6G welding certification and passing an EBMUD field welding test with the test sample analyzed by an independent laboratory. Service providers on this list will be assigned work opportunities on a rotational basis to ensure a fair and equitable distribution of the total workload.

SUSTAINABILITY

Economic

Funding for this work is available in the FY22/23 adopted operating and capital budgets.

Social

Local 444 was notified of this agreement on November 12, 2021. Local 444 issues were addressed at a meeting on November 16, 2021 and resolved.

ALTERNATIVES

<u>Do not authorize these agreements for welding services</u>. This alternative is not recommended because welding services are critical to District operations and pipeline installation.

<u>Add staff and equipment to reduce the need for services</u>. This alternative is not recommended because the projected long-term workload is insufficient to justify the addition of full-time welding staff. The need for these services will decrease in the future as the District transitions to pipe materials other than steel.

 $I:\Sec\2022\ Board\ Related\ Items\011122\Board\ Agenda\ Items\OMD-Welding\ Services.docx$



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

General Services A	greement							DATE:				
Welding Services									November 23, 2021			
CONTRACTOR:						PERC	ENTAGE	OF CONTE	RACT DO	LLARS		
Various Firms See Below		Small Businesses				Availability Group			Contracting Objectives		Participation	
BID/PROPOSER'S	FIRM	'S OWNERS	HIP			White Me	en	25%	6	57.1%		
PRICE:	Ethn	icity	Ger	der	v	Vhite Won	nen	6%	1	0.0	%	
\$250,000 *	See I	Below		-	Et	hnic Mino	rities	25%	6	42.9	9%	
		CONTRA	CT E	QUIT	TY PAR	TICIPAT	ION			11		
	ESTIMATED		GEN	DER			CONTRA	ACTING PARTIO	CIPATION			
COMPANY NAME	AMOUNT	ETHNICITY	М	w	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign	
PRIMES:												
Eyeball Enterprise, Inc.	\$35,714	White	Х		14.3%							
Ferguson Welding Service, Inc.	\$35,714	White	х		14.3%							
Mid Mountain Mechanical, Inc.	\$35,714	White	х		14.3%							
Woods Welding	\$35,714	Black	х				14.3%					
Nicole Welding, Inc.**	\$35,714	Hispanic	Х				14.3%					
Larsson Welding	\$35,714	White	Х		14.3%							
John Arthur Welding, Inc.***	\$35,714	Black		Х			14.3%					
TOTAL		\$250,000			57.1%	0.0%	42.9%	0.0%	0.0%	0.0%	0.0%	
	CONTRAC	CTOR'S WC				•		· · · · · · · · · · · · · · · · · · ·				
		White Me	en	١	White Wo	men	Ethnic	Minorities	Tota	l Employ	ees	
No. of Em												
Percent of Total Em	ployees:					See Atta	ached For	m P-061				
MSA Labor N	larket %:											
MSA Labor Market L	ocation:				1EVEA							
			C(/IENTS							
0.4.4.5.4.5.4.5.41	== 40/ NA/II :/				0.00/ =::							

Contract Equity Participation - 57.1% White Men participation and 42.9% Ethnic Minority participation.

*Total not to exceed: \$250,000

**Vendor Add-on

***Subcontractor add-on to Larsson Welding

Workforce Profile & Statement of Nondiscrimination Submitted	Good Faith Outreach Efforts Requirement Satisfied	Award Approval Recommended
NA	NA	Boules



(Completed by District)

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

Title:				Ethnic Min	ority Perce	ntages Fro	m U.S. Cer	nsus Data	
	Welding Services				В	Н	A/PI	Al/AN	TOTAL
			Natio	onal	10.5	10.7	3.7	0.7	27.3
C	ol Comicae American	DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9
Genei	al Services Agreement	11/23/2021	Alameda/Co	C Counties	10.7	15.6	15.4	0.5	46.2
R=Re- P=Pri	cmmd me S=Sub Composition of Ownership		ı	Number of E	thnic Mino	rity Employ	rees		
	any Name, Owner/Contact Person, Address, hone Number		В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM: SBE	Company Wide	1	1	0	0	2	50.0%	48.4%
Eyeball	Enterprise, Inc.	Manager/Prof	1	0	0	0	1	33.3%	
Miriam	Bresnyan	Technical/Sales	0	0	0	0	0	0.0%	
21779 E	Eighth Street East	Clerical/Skilled	0	1	0	0	1	100.0%	
Sonoma	a, CA 95487	Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
		AA Plan on File:	NA		Date of last	contract with	District:	NA	
707-338	3-7517	Co. Wide MSA:	California		# Employee	es-Co. Wide:	4	Bay Area:	0
RP	WM: L/SBE	Company Wide	0	1	2	0	3	27.3%	53.9%
			_			_	_		JJ.8%
Ū	on Welding Service, Inc.	Manager/Prof	0	0	1	0	1	25.0%	
	Ferguson	Technical/Sales	0	0	0	0	0	0.0%	
	ndustriall Pkwy. SW	Clerical/Skilled	0	1	1	0	2	28.6%	
Haywar	d, CA 94544	Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	1	2	0	3	27.3%	39.9%
510-48	7-5906	Co. Wide MSA:	Alameda		# Employee	es-Co. Wide:	11	Bay Area:	11
RP	WM: SBE	Company Wide	1	0	0	0	1	50.0%	48.4%
Mid Mo	untain Mechanical, Inc.	Manager/Prof	0	0	0	0	0	0.0%	
David F	lushour	Technical/Sales	0	0	0	0	0	0.0%	
4415 O	live Avenue	Clerical/Skilled	1	0	0	0	1	100.0%	
Fairfield	I, CA 94533	Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	-	0	0	0	0	0.0%	39.9%
707-372	2-8652	Co. Wide MSA:	California		# Employees-Co. Wide:		2	Bay Area:	0
RP	EMM: B - L/SBE	Company Wide	2	0	0	0	2	100.0%	38.5%
Woods	Welding	Manager/Prof	2	0	0	0	2	100.0%	
Elveste	r Woods Jr.	Technical/Sales	0	0	0	0	0	0.0%	
3569 M	arkley Creek Drive	Clerical/Skilled	0	0	0	0	0	0.0%	
Antioch	, CA 94509	Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	2	0	0	0	2	100.0%	39.9%
925-470	0-6995	Co. Wide MSA:	Contra Costa		# Employee	es-Co. Wide:	2	Bay Area:	2
RP	WM: SBE	Company Wide	0	3	0	0	3	50.0%	37.3%
Larssor	n Welding	Manager/Prof	0	0	0	0	0	0.0%	
Jeanne	Larsson	Technical/Sales	0	0	0	0	0	0.0%	
8971 C	oan Lane	Clerical/Skilled	0	3	0	0	3	50.0%	
Orange	vale, CA 95662	Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
916-20	1-3387	Co. Wide MSA:	Sacramento		-	es-Co. Wide:	6	Bay Area:	0
S	EMW: B - L/SBE	Company Wide			F700				
	thur Welding, Inc.	Manager/Prof	1						
	McCune	Technical/Sales	1						
	arbler Drive,	Clerical/Skilled	-		INFORMAT	ION NOT P	ROVIDED		
	, CA 94509	Semi/Unskilled	-	'	OIWAI	.5.1101 F			
	(Add-on subcontractor 11/23/21)	Bay Area							
925-57	·	Co. Wide MSA:	-						
			k H=Hisnanic Δ/P						



(Completed by District)

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

itle:		Ethnic Minority Percentages From U.S. Census Data									
Welding Services				ВН		A/PI	AI/AN	TOTAL			
		Natio	onal	10.5	10.7	3.7	0.7	27.3			
	DATE:	9 Bay Area	Bay Area Counties		16.2	14.2	0.4	39.9			
General Services Agreement	11/23/2021	Alameda/C	C Counties	5.5 10.7	15.6	15.4	0.5	46.2			
R=Recmmd							l	ı			
P=Prime S=Sub Composition of Ownership	Number of Ethnic Minority Employees										
Company Name, Owner/Contact Person, Address, and Phone Number		В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %			
P EMM: H - L/SBE	Company Wide										
licole Welding, Inc.	Manager/Prof										
/ictor Nicole	Technical/Sales										
0 Broadway Lane	Clerical/Skilled		İ	NFORMAT	ION NOT P	ROVIDED					
Daklaey, CA 94561	Semi/Unskilled										
(Vendor Add-on 11/23/21)	Bay Area										
25-679-9636	Co. Wide MSA:	-									
20-019-9000	Co. Wide WSA:										
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WM=White Male, WW=White Women, EM=Ethnic Mi											





AGENDA NO.	12.1.
MEETING DATE	January 11, 2022

TITLE AMEND FUEL SYSTEM IMPROVEMENTS PROJECT DESIGN SERVICES AGREEMENT

TYPE	□Construction	☐General Services	□Materials & Supplies	☑Professional Services
	□CEQA	□Grants	□Water Supply Assessment	□OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Authorize an amendment to the agreement previously authorized under Board Motion No. 066-19 with Tait Environmental Services, Inc. (Tait) to increase the agreement amount by \$1,558,270 to a total amount not to exceed \$2,502,056 for engineering support during construction and construction oversight under the Fuel System Improvements Project.

SUMMARY

On April 23, 2019, the Board authorized an agreement for \$943,786 with Tait to design regulatory-required and safety improvements to the District's fuel dispensing facilities. This amendment authorizes Tait's optional scope of work to provide engineering support services during construction. In addition, the District has determined that specialized experience in construction and installation of fuel systems is needed for construction oversight to complete the Fuel System Improvements Project.

DISCUSSION

The project will upgrade 21 fuel dispensing locations to meet current and future state and federal regulations and ensure the District is able to meet its expanding operational needs and reliability goals. The District's existing fuel dispensing facilities are between 25 to 30 years old and repeated maintenance and repair decreases operational efficiency. Fourteen of these facilities support District maintenance and optional services and seven of these facilities are operated by concessionaires at reservoir recreational facilities.

Tait developed design drawings and specifications and will perform engineering support services during construction for all dispensing locations. The project scope includes upgrading fleet and retail dispensers, resizing or relocating aboveground storage tanks, replacing tank monitoring systems and wiring, removing unused equipment, addressing fall safety, and improving tertiary containment. The project supports the District's Water Quality and Environmental Protection and Long-Term Infrastructure Investment Strategic Plan goals.

Budget Coding: 11/734/2012774/52310	Contract Equity Forms? ☐ Yes ☐ No			
Department Director or Manager	Approved			
David A. Briggs	Clipped Ou			
	Department Director or Manager			

Amend Fuel System Improvements Project Design Services Agreement January 11, 2022 Page 2

CONSULTANT SELECTION

A request for proposals for the original agreement was sent to eight firms with expertise in fuel dispensing facilities design and construction. Two proposals were received. Tait was selected based on their qualifications and experience in fuel system design and construction.

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 the Department of Industrial Relations (DIR) of the State of California. The consultant, Tait, is licensed to perform work in California, and is not on the State DIR debarment list. Tait is properly registered with the State DIR.

SUSTAINABILITY

Economic

Funding for this work is available in the FY22/23 adopted capital budget for the Fuel System Improvements Project. The project will provide long term reliability benefits and support the District's Fuel Emergency Mitigation Plan.

Social

Local 2019 was notified of this amendment on September 29, 2021 and did not raise any specific issues related to this amendment.

Environmental

Upgrades to fueling systems will reduce the likelihood of fuel spills and other hazards to the environment.

A California Environmental Quality Act Notice of Exemption was filed with the Alameda, Amador, and Contra Costa county clerks on January 7, 2020, and filed with the Calaveras and San Joaquin county clerks on January 6, 2020.

ALTERNATIVE

<u>Perform the work with District forces.</u> This alternative is not recommended because staff does not have the necessary experience and expertise for the design, maintenance and/or construction of fuel storage and dispensing facilities.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\0MD - Amend Fuel System Improvements Project Design Services Agreement.docx



CONTRACT EQUITY PROGRAM SUMMARY (P-035) This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

Professional Service	ces Aareemen	t - Amendme	ent					DATE:			
Amend Fuel System Improvements Project Design Services A						Agreem	nent	January 4, 2022			
CONTRACTOR:						PERC	ENTAGE	OF CONTR	RACT DO	LLARS	
Tait Environmental Services, Inc. Santa Ana, CA 92705					Ava	ailability G	Group	Contracting Objectives		Participation	
BID/PROPOSER'S	FIRM	'S OWNERS	HIP			White Me	en	25%	6	100.0%	
PRICE:	Ethn	icity	Gen	der	White Women			6%		0.0%	
\$1,558,270 *	Wh	nite	Me	en	Ethnic Minorities		25%		0.0%		
		CONTRA	CT E	QUIT	TY PAR	FICIPAT	ION				
COMPANY NAME	ESTIMATED	ETHNICITY	GENDER				CONTRA	CTING PARTIC	CIPATION		
COMPANY NAME	AMOUNT	ETHNICITY	М	w	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIME:											
Tait Environmental Services, Inc.	\$1,558,270	White	х		100.0%						
SUBS:											
None											
TOTAL		\$1,558,270			100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	CONTRAC	CTOR'S WO	RKF	ORC	E PRO	FILE (Fr	om P-025	Form)			
		White Me	en	V	White Wo	men	Ethnic	Minorities	Tota	al Employe	ees
No. of En	nployees:	38			10			71			
Davisont of Total Fr		31.9%			0 40/		59.7%				
Percent of Total En	npioyees:	31.9%	8.4%			38	39.7 %		119		
MSA Labor Market %: 39.0%			1	33.7%			7.3%				
MSA Labor Market Location:						Total USA					
			C	amc	/IENTS						
Contract Equity Participation	- 100.0% Whit	e Men partici	pation								
*Total not to exceed: \$2,502,05	6 = \$943,786 (Original) + \$1	,558,2	270 (<i>A</i>	Amendme	ent)					
W 16 - 5 - 5					 -						
Workforce Profile & Statement of Nondiscrimination Submitted					Faith Ou quireme				Award Ap Recomm		
NA					N	Α		Baraly			
			•					•			



(Completed by District)

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

Title:			Ethnic Minority Percentages From U.S. Census Data								
Amend Fuel System Improvements Project		nts Project			В	Н	A/PI	AI/AN	TOTAL		
Design Services Agreement			Nati	onal	10.5	10.7	3.7	0.7	27.3		
Professional Services Agreement - Amendment R=Recmmd		DATE:	9 Bay Area Counties Alameda/CC Counties		5.5	16.2	14.2	0.4	39.9		
		1/4/2022			10.7	15.6	15.4	0.5	46.2		
			<u> </u>								
P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees									
Company Name, Owner/Contact Person, Address, and Phone Number		ı	В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %		
RP	WM	Company Wide	1	67	3	0	71	59.7%	39.9%		
Tait Environmenta	l Services, Inc.	Manager/Prof	1	19	0	0	20	54.1%			
James Streitz		Technical/Sales	0	2	2	0	4	100.0%			
701 Parkcenter Dr	ive	Clerical/Skilled	0	11	0	0	11	61.1%			
Santa Ana, CA 92	705	Semi/Unskilled	0	35	1	0	0	0.0%			
		Bay Area	0	11	0	0	11	50.0%	39.9%		
714-560-8696		AA Plan on File:	NA		Date of last	contract with	District:	12/24/2019			
		Co. Wide MSA:	Total USA		# Employee	s-Co. Wide:	119	Bay Area:	22		
					1				 		
_			_	_	T -	_					
P	WM	Company Wide	0	9	3	0	12	52.2%	27.3%		
Technology		Manager/Prof	0	1	2	0	3	27.3%			
Fabian Grijalva		Technical/Sales	0	4	1	0	5	71.4%			
21700 Oxnard Stre		Clerical/Skilled	0	0	0	0	0	0.0%			
Woodland Hills, C	A 91367	Semi/Unskilled	0	4	0	0	4	100.0%			
		Bay Area	0	9	3	0	12	52.2%	39.9%		
800-394-4228		Co. Wide MSA:	9 Bay Area C	ounties	# Employee	s-Co. Wide:	23	Bay Area:	23		
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			1					<u> </u>			
	/W=White Women FM=Ethnic Minorit										



AGENDA NO.	12.2.
MEETING DATE	January 11, 2022

TITLE FUEL SYSTEM IMPROVEMENTS

TYPE	⊠Construction	□General Services	☐Materials & Supplies	□Professional Services
	□CEQA	□Grants	□Water Supply Assessment	□OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Award a contract to the lowest responsive/responsible bidder, Mitchell Engineering, in the amount of \$15,499,000 for construction of Fuel System Improvements under Specification 2147.

SUMMARY

Work includes furnishing all work, equipment, and labor to replace and upgrade 21 fuel dispensing systems at various locations on District property in the counties of Alameda, Amador, Calaveras, Contra Costa, and San Joaquin.

DISCUSSION

The project will upgrade the District's 21 fuel dispensing locations to meet current and future state and federal regulations and ensure the District is able to meet its expanding operational needs and reliability goals. The District's existing fuel dispensing facilities are between 25 to 30 years old and require significant maintenance and repair to support efficient operations. Fourteen of these facilities support District maintenance and optional services and seven of these facilities are operated by concessionaires at reservoir recreational facilities.

The work includes installation of fuel dispensers, aboveground storage tanks, monitoring systems, canopies and related appurtenant instrumentation, electrical systems, and equipment. The work covers the demolition and removal of existing fuel dispensers, aboveground and underground storage tanks, and performing related required work at various locations on District property. In April 2019, under Board Motion No. 066-19 an agreement was authorized with Tait Environmental Services, Inc. (Tait) to design the Fuel System Improvements. Under a separate action, the Board will be asked to consider an amendment to Tait's design services agreement to provide engineering support during construction and construction oversight.

The project supports the District's Water Quality and Environmental Protection and Long-Term Infrastructure Investment Strategic Plan goals.

Funds Available: FY22/23, CIP 1002589; Page 79	Budget Coding: 11/570/2012774/55610	Contract Equity Forms? ☐ Yes ☐ No
Originating Department	Department Director or Manager	Approved
Operations and Maintenance	David A. Briggs	Clipped Our General Manager
Attachment(s): P-035; P-061; Bid Summary; Location M	ар	

Fuel System Improvements January 11, 2022 Page 2

BID RESULTS

Bid documents were posted on the District's website and issued to 21 resource organizations and 29 prospective bidders. Three bids were received, ranging from \$15,499,000 to \$21,562,000. The bid summary is attached. The engineer's estimate for this work is \$9,590,000. Bids were higher than the engineer's estimate due to the increase in cost of materials and operational costs for the contractor, and market uncertainty.

The lowest responsive/responsible bidder, Mitchell Engineering, is licensed to perform work in California, and is not on the State Department of Industrial Relations (DIR) debarment list. Mitchell Engineering and its listed subcontractors are properly registered with the State DIR. In the past five years, Mitchell Engineering has not filed a Government Code Claim nor initiated any litigation against the District.

SUSTAINABILITY

Economic

Funding for this work is available in the FY22/23 adopted capital budget for the Fueling Facility Upgrades project.

Social

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

Environmental

A California Environmental Quality Act Notice of Exemption was filed with the Alameda, Amador, and Contra Costa county clerks on January 7, 2020, and with the Calaveras and San Joaquin county clerks on January 6, 2020.

ALTERNATIVES

<u>Perform the work with District forces.</u> This alternative is not recommended because staff does not have the necessary experience and expertise for the construction of fuel storage and dispensing facilities.

<u>Do not perform the work.</u> This alternative is not recommended because the work is required to maintain regulatory compliance and to improve employee safety.

I:\SEC\2022 Board Related Items\011122 Board Agenda Items\OMD\Fuel System Improvements.docx



TITLE

CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

SPECIFICATION NO.: 2147 January 4, 2022 Fuel System Improvements PERCENTAGE OF CONTRACT DOLLARS CONTRACTOR: Mitchell Engineering **Small Business Availability Group Contracting Objectives** Participation San Francisco, CA 94124 FIRM'S OWNERSHIP White Men 25% 100.0% **BID/PROPOSER'S** PRICE: 0.0% Gender 9% Ethnicity White Women \$15,499,000 White Men **Ethnic Minorities** 25% 0.0% **CONTRACT EQUITY PARTICIPATION GENDER** CONTRACTING PARTICIPATION **ESTIMATED** ETHNICITY **COMPANY NAME** White-Gov't/Non **AMOUNT** White-**Ethnic** Publicly W Unclassified Foreign Men Women Minorities Held Corp Profit PRIME: Mitchell Engineering \$10,673,750 White Χ 68.9% SUBS: Balch Petroleum Contractors and \$2,805,000 Χ 18.1% White Builders, Inc. Jeffco Painting & Coating, Inc. \$100,000 White Х 0.6% Accelerated Construction and Metal. \$577,000 White Χ 3.7% IEC Services \$1,343,250 Χ 8.7% White TOTAL \$15,499,000 100.0% 0.0% 0.0% 0.0% 0.0% 0.0% 0.0% CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form) White Women **Ethnic Minorities** White Men **Total Employees** 11 2 47 No. of Employees: 18.3% 3.3% 78.3% **Percent of Total Employees:** 60 MSA Labor Market %: 28.0% 23.6% 48.4% **MSA Labor Market Location:** California **COMMENTS** Contract Equity Participation - 100% White Men participation. **Workforce Profile & Statement of Nondiscrimination Good Faith Outreach Efforts Award Approval Requirement Satisfied Submitted** Recommended NA YES



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title:				Ethnic Min	ority Perce	ntages Fro	m U.S. Cei	nsus Data	
Fuel	System Improvements				В	Н	A/PI	AI/AN	TOTAL
			Natio	onal	10.5	10.7	3.7	0.7	27.3
		DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9
Spec. No.:	2147	1/4/2022	Alameda/C	C Counties	10.7	15.6	15.4	0.5	46.2
R=Recmmd P=Prime S=Sub	Composition of Ownership			Number of E	thnic Mino	rity Employ	ees		
	ne, Owner/Contact Person, Address, mber		В	Н	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM: SBE	Company Wide	4	40	2	0	46	76.7%	48.4%
Mitchell Engine	eering	Manager/Prof	1	3	0	0	4	30.8%	
Thelma Welch		Technical/Sales	0	0	0	0	0	0.0%	
1395 Evans Av	enue enue	Clerical/Skilled	0	10	2	0	12	80.0%	
San Francisco,	CA 94124	Semi/Unskilled	3	27	0	0	30	93.8%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
415-227-1040		AA Plan on File:	NA		Date of last	contract with	District:	NA	
		Co. Wide MSA:	California		# Employee	s-Co. Wide:	60	Bay Area:	0
s	WM: SBE	Company Wide	0	6	1	0	7	50.0%	52.1%
Balch Petroleui Inc.	m Contractors and Builders	Manager/Prof	0	1	1	0	2	28.6%	
Tom Balch		Technical/Sales	0	0	0	0	0	0.0%	
930 Ames Ave	nue	Clerical/Skilled	0	2	0	0	2	66.7%	
Milpitas, CA 95	5035	Semi/Unskilled	0	3	0	0	3	75.0%	
		Bay Area	0	6	1	0	7	50.0%	39.9%
408-942-8686		Co. Wide MSA:	San Jose		# Employee	s-Co. Wide:	14	Bay Area:	14
s	WM: DVBE	Company Wide	3	25	2	0	30	52.6%	39.9%
Jeffco Painting	& Coating, Inc.	Manager/Prof	0	2	0	0	2	28.6%	00.070
Matt Eggley	a coating, inc.	Technical/Sales	0	0	0	0	0	0.0%	
	Avenue, Bldg. 750	Clerical/Skilled	3	20	2	0	25	54.3%	
Vallejo, CA 945		Semi/Unskilled	0	3	0	0	3	75.0%	
• •		Bay Area	3	25	2	0	30	52.6%	39.9%
707-562-1911		Co. Wide MSA:	9 Bay Area C		# Employee		57	Bay Area:	57
	WM: SBE		_		1				
S		Company Wide	0	13	0	1	14	36.8%	28.6%
	onstruction and Metal, LLC	Manager/Prof	0	1	0	0	1	20.0%	
Bruce Elliott 2548 Paulson F	Pood Suito A	Technical/Sales Clerical/Skilled	0	8	0	0	5 8	50.0% 34.8%	
Turlock, CA 95	,	Semi/Unskilled	0	0	0	0	-	0.0%	
ranoon, o, too			0	0	0	0	0	0.0%	39.9%
200 946 7009		Bay Area		0					
209-846-7998	WM. L/ODE	Co. Wide MSA:	Stanislaus			es-Co. Wide:	38	Bay Area:	0 07.00/
S	WM: L/SBE	Company Wide	0	2	3	0	5	12.8%	37.3%
IEC Services		Manager/Prof	0	0	0	0	0	0.0%	
Rachel Moses 4901 Warehou	oo May	Technical/Sales	0	0	0	0	0	0.0%	
Sacramento, C	,	Clerical/Skilled Semi/Unskilled	0	1	3	0	4	11.1% 20.0%	
Sacramento, C	A 93020			1	0				20.00/
040 000 0040		Bay Area	0	0		0	0	0.0%	39.9%
916-993-6312		Co. Wide MSA:	Sacramento		# Employee	s-Co. Wide:	39	Bay Area:	0
			Ick H=Hispanic A/						

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and Al/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.

_				Ethnic Min	ority Perce	ntages Fro	m U.S. Cer	sus Data	
F	Fuel System Improvements				В	Н	A/PI	AI/AN	TOTAL
			Natio	onal	10.5	10.7	3.7	0.7	27.3
		DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9
Spec. I	No.: 2147	1/4/2022	Alameda/Co	C Counties	10.7	15.6	15.4	0.5	46.2
R=Recm			1					I I	
P=Prime S=Sub	e Composition of Ownership			Number of E	thnic Minor	rity Employ	rees		
	ny Name, Owner/Contact Person, Address,		_		T				
	one Number		В	Н	A/PI	Al/AN	TOTAL	PERCENT	MSA %
Р	EMM: H	Company Wide	5	32	1	0	38	33.0%	48.4%
Sierra Mo	ountain Construction, Inc.	Manager/Prof	0	6	0	0	6	24.0%	
Tanya Be	enton	Technical/Sales	0	0	0	0	0	0.0%	
13919 Mc		Clerical/Skilled	5	23	1	0	29	37.2%	
Sonora, C	•	Semi/Unskilled	0	3	0	0	3	25.0%	
			0	0	0	0	0	0.0%	39.9%
000 000	4000	Bay Area	-	0					
209-928-	1900	Co. Wide MSA:	California		# Employee	s-Co. Wide:	115	Bay Area:	0
			1						
Р	WM: LBE	Company Wide	25	207	16	2	250	54.0%	39.9%
C. Overa					-				33.370
		Manager/Prof Technical/Sales	5	10	9	2	26	25.2%	
Maggie W			0	4	1	0	5	83.3%	
200 Parr		Clerical/Skilled	12	114	6	0	132	54.5%	
Richmond	d, CA 94801	Semi/Unskilled	8	79	0	0	87	77.7%	
		Bay Area	25	207	16	0	248	53.6%	39.9%
510-234-0	0926	Co. Wide MSA:	9 Bay Area C	ounties	# Employee	s-Co. Wide:	463	Bay Area:	463
.									
		ì	İ		İ				
			1					l	

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



EAST BAY MUNICIPAL UTILITY DISTRICT SPECIFICATION 2147

Fuel System Improvements

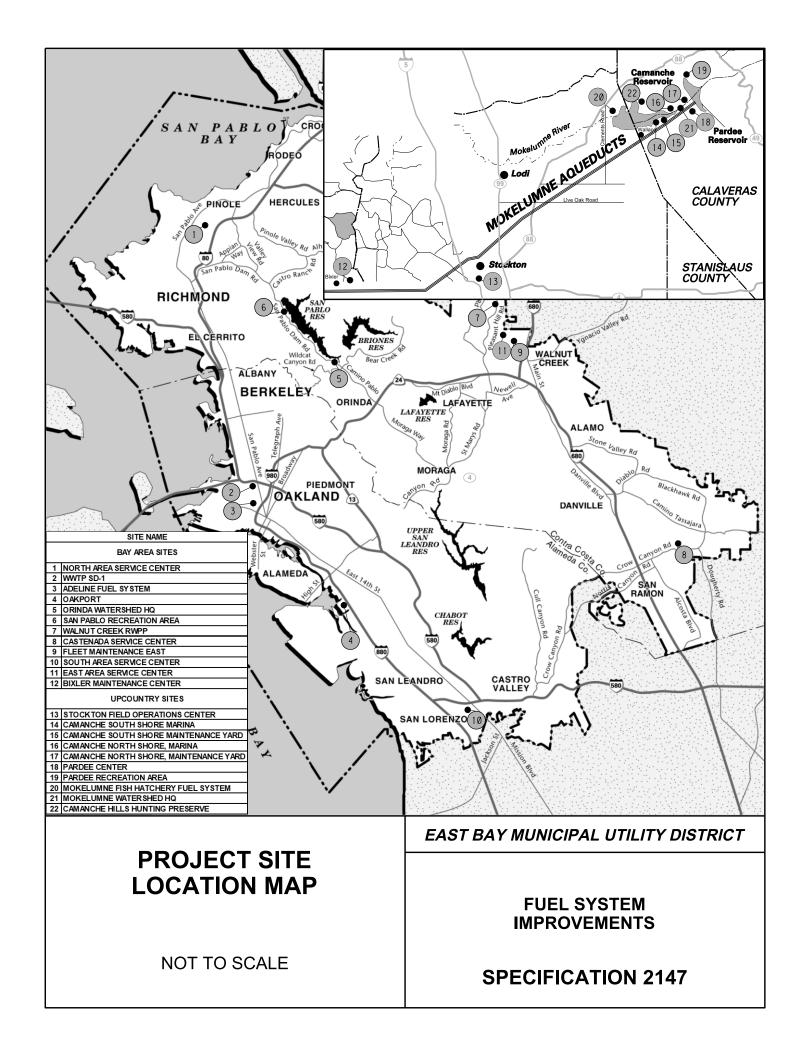
Bids Opened December 15, 2021

	BIDDER	TOTAL AMOUNT BID
1.	Mitchell Engineering (SBE/DVBE) 1395 Evans Ave. San Francisco, CA 94124 (415) 227-1040	\$15,499,000 / \$15,349,000*
2.	Sierra Mountain Construction, Inc. 13919 Mono Wy. Sonora, CA 95370 (209) 928-1900	\$15,960,000
3.	C. Overaa & Co. 200 Parr Blvd. Richmond, CA 94801 (510) 234-0926	\$21,562,000

SBE/DVBE – Small Business Enterprise or Disabled Veteran Business Enterprise

Engineer's Estimate: \$9,590,000

^{*}Effective Bid Amount due to SBE/DVBE discount (7% of the low bid amount, not to exceed \$150,000)





AGENDA NO.	13.	
MEETING DATE	January 11, 2022	

TITLE TEMPORARY WATER TRANSFER OPTION AGREEMENT BETWEEN CONTRA COSTA WATER DISTRICT, EAST BAY MUNICIPAL UTILITY DISTRICT, AND YUBA COUNTY WATER AGENCY

TYPE	□Construction	☐General Services	☐Materials & Supplies	□Professional Services
	□CEQA	□Grants	□Water Supply Assessment	⊠OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Authorize the General Manager to execute a one-year temporary water transfer option agreement with Yuba County Water Agency (YCWA) and Contra Costa Water District (CCWD). This agreement provides EBMUD the option to purchase up to 10 thousand acre-feet (TAF) of transfer water from YCWA in calendar year 2022 plus any additional YCWA water which becomes available to EBMUD, and to spend up to \$300,000 to prepare for the potential water transfer, while reserving for the Board the authority to determine whether to exercise the water purchase option at a future public meeting.

SUMMARY

In calendar year 2022, YCWA has the potential to offer EBMUD and CCWD 15 TAF or more transfer water in the spring (spring water from April 1 through June 30) and 10 TAF or more in the summer transfer window (summer water from July 1 to November 30). CCWD would have priority to purchase the first 15 TAF of spring water available at \$500 per acre-foot (AF), while EBMUD would have priority to purchase the summer water at \$600 per AF. EBMUD would also have the ability to purchase any water offered by YCWA but not bought by CCWD in the spring at \$500 per AF.

By entering into this agreement, the Board would also authorize expenditures up to \$300,000 to prepare for the potential water transfer, including documentation in support of a Warren Act Contract (WAC) with the U.S. Bureau of Reclamation (USBR) to move the transfer water from YCWA through the Folsom South Canal and reimbursement for certain expenses incurred by YCWA to prepare for the transfer. Should EBMUD staff recommend the purchase of the transfer water, staff will return to the Board at a future public meeting to seek approval for authorizing and funding a transfer purchase of a specific quantity of water. The Board was last updated on the agreement on December 14, 2021.

Funds Available: FY22, CIP #000460; Page #93	Budget Coding: 11.875.1420.8471900.52420.0000	Contract Equity Forms? ☐ Yes ☒ No
Originating Department	Department Director or Manager	Approved
Water and Natural Resources	Michael T. Tognolini	Cirpot Ou General Manager
Attachment(s): N/A		

Temporary Water Transfer Option Agreement between CCWD, EBMUD, and YCWA January 11, 2022 Page 2

DISCUSSION

On April 27, 2021, EBMUD's Board of Directors declared a Stage 1 drought, established a voluntary water use reduction goal of ten percent, declared the need to purchase supplemental supplies, and directed further measures to promote water conservation. Consistent with that direction, EBMUD, CCWD, and YCWA have negotiated the terms for a one-year water transfer option agreement which may potentially allow EBMUD to purchase water stored in YCWA's New Bullards Bar Reservoir that would be released to the lower Yuba River for rediversion at the Freeport Regional Water Facility intake on the Sacramento River under terms of the Yuba Accord. Under this agreement YCWA would offer 15 TAF or more in spring 2022 and 10 TAF or more in summer 2022 to CCWD and EBMUD to the extent that water is available under the Yuba Accord for an out-of-basin transfer in 2022. CCWD would have first priority to purchase up to 15 TAF in the spring and EBMUD would have first priority to purchase the summer transfer water. Either prospective buyer could purchase water offered by YCWA and declined by the other prospective buyer.

While the recent storms in December 2021 have significantly improved the District's water supply forecast for the end of the water year (September 30, 2022), it is still possible for the District's water supply to end the water year below 500 TAF if the hydrology returns to a dry pattern. Therefore, this agreement is a necessary component of the District's dry year preparation. EBMUD would have until May 15, 2022 to notify YCWA if EBMUD intends to purchase the summer transfer water.

In preparation for the potential water purchase, EBMUD will be responsible for: 1) consultant costs of up to \$150,000 for preparing the WAC for USBR's review and approval; 2) USBR fees of up to \$100,000 for reviewing and approving the WAC; and 3) reimbursements to YCWA for administrative expenses up to \$50,000. EBMUD needs to execute a WAC with USBR to transport the transfer water from the Freeport Regional Water Project through the Folsom South Canal to the EBMUD service area. In the event that a WAC is not approved by USBR, EBMUD will work collaboratively with CCWD to attempt to use CCWD's facilities for diverting, conveying, and storing the transfer water. The agreement includes the option for EBMUD to store at least 10 TAF and potentially up to 25 TAF of its water in Los Vaqueros Reservoir, to be returned to EBMUD under specific terms and conditions.

This transfer supports the District's Long-Term Water Supply Strategic Plan goal.

SUSTAINABILITY

Economic

The total cost for the option to prepare for the potential purchase of transfer water in 2022 under this agreement is not-to-exceed \$300,000 and will be funded from EBMUD's operating reserves.

Social

In the event dry conditions persist in 2022 and EBMUD's Central Valley Project (CVP) allocation is reduced, this transfer could be a critical component of EBMUD's supplemental water supply in 2022.

Temporary Water Transfer Option Agreement between CCWD, EBMUD, and YCWA January 11, 2022
Page 3

Environmental

Entering into the proposed option agreement is not subject to the California Environmental Quality Act (CEQA) because this action does not commit EBMUD to a definite course of action. EBMUD retains full discretion under the agreement on whether to exercise or decline any offer of transfer water that may be made, and the agreement does not constitute any binding commitment by EBMUD to purchase the water or foreclose alternatives. In the event EBMUD staff recommends the purchase of the transfer water in 2022, it will ensure that all requisite CEQA and National Environmental Policy Act compliance is completed before proposing a water purchase for the Board's consideration.

ALTERNATIVE

<u>Do not enter into the option agreement</u>. This alternative is not recommended because under the declared Stage 1 drought, EBMUD has identified the need to procure supplemental supplies through water purchases in 2022, if the dry conditions persist. EBMUD's 2022 CVP allocation may potentially be less than the 2021 allocation of 25 percent (i.e., 33,250 AF), leaving a significant shortfall of water supplies.

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AGENDA NO.	14.	
MEETING DATE	January 11, 2022	

TITLE ASSIGNMENT OF CONTRACT SECURITY SERVICES AGREEMENT

TYPE	□Construction	⊠General Services	□Materials & Supplies	□Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	□OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Approve the assignment of the agreement previously authorized under Board Motion No. 124-19 from G4S Secure Solutions (USA), Inc. to Universal Protection Service LP dba Allied Universal Security Services for contract security services.

SUMMARY

On April 5, 2021, Allied Universal Security Services (AUS) acquired G4S Secure Solutions (USA), Inc. (G4S) for contract security services. The acquisition includes the assumption of the agreement previously entered by the District with G4S. All G4S contractual obligations with the District remain in full force and effect with AUS. The assignment will not materially affect performance of the agreement.

DISCUSSION

The District entered into an agreement with G4S on August 1, 2019 to supply security guard services for three years with two options to renew for additional one-year periods in an amount not to exceed \$18,274,555. As part of the District's Security Plan, and in accordance with the District's 2003 Security Vulnerability Assessment, the District requires security guards to work with the District's centralized security system to provide a high level of protection for District employees, critical infrastructure, facilities, property, and equipment. These services will continue to be provided by AUS staff. This assignment supports the District's Long-Term Infrastructure Investment and Workforce Planning and Development Strategic Plan goals.

SUSTAINABILITY

Economic

There is no fiscal impact because of this assignment. AUS will continue to provide services under the same terms and conditions as the existing agreement.

Funds Available: FY22/23	Budget Coding: 11/782/8873100/4008731/52350	Contract Equity Forms? ☑ Yes □ No
Originating Department	Department Director or Manager	Approved
Operations and Maintenance	David A. Briggs	General Manager
Attachment(s): P-035; P-061	·	·

Assignment of Contract Security Services Agreement January 11, 2022 Page 2

Social

This type of work is not performed by District forces and consequently Union notification was not required or necessary due to the assignment.

ALTERNATIVE

<u>Terminate the current agreement and rebid</u>. This alternative is not recommended because initiating a new request for proposals to authorize an agreement with a new or same company would result in higher pricing.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\OMD - Assignment of General Security Guard Services Agreement.docx



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

General Services Ag	reement - Ass	signment						DATE:			
Assignment of Gen	eral Security	Guard Serv	/ices	Agre	ement				Decer	mber 16,	2021
CONTRACTOR:						PERC	ENTAGE	OF CONTE	RACT DO	LLARS	
Universal Protection Service LF Allied Universal Security Servic Santa Ana, CA 92705					Ava	ailability G	Group	Contracting (Objectives	Partici	pation
BID/PROPOSER'S	FIRM	'S OWNERS	HIP			White Me	n	25%	6	100.	.0%
PRICE:	Ethr	icity	Ger	nder	V	Vhite Won	nen	6%)	0.0	%
\$18,274,555 **	WI	nite	M	en	Etl	hnic Mino	rities	25%	6	0.0	%
		CONTRAC	CT E	QUIT	Y PART	ICIPAT	ION				
COMPANIVAME	ESTIMATED	ET INIOITY	GEN	DER			CONTRA	ACTING PARTIC	CIPATION		
COMPANY NAME	AMOUNT	ETHNICITY	М	w	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIME: Universal Protection Service LP dba Allied Universal Security Services	\$18,074,555	White	х		98.9%						
SUBS: Vforce Security, Inc.	\$200,000	White	х		1.1%						
TOTAL		\$18,274,555	•		100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	CONTRAC	TOR'S WO	RKF	ORC	E PROF	FILE (Fr	om P-025	Form)	1		
		White Mo	en	۷	Vhite Wo	men	Ethnic	Minorities	Tota	al Employ	ees
No. of Em	62,712	2		18,01	8	17	8,565				
Percent of Total Employees: 2			2% 6.9%			, D	68	3.9%		259,295	
MSA Labor Market %: 39.0%			ı		33.7% 27.3%			7.3%			
MSA Labor Market L	ocation:			1			Total US	4	1		
			CC)MM	IENTS						

Contract Equity Participation - 100% White Men participation

Contract Duration: Three-year contract with 2 One-year renewal options.

*Previous Contractor - G4S Secure Solutions (USA)

**Total not to exceed: \$18,274,555 = \$3,496,718 (Year 1), \$3,573,861 (Year 2), \$3,652,934 (Year 3), \$3,733,983 (Year 4),

\$3,817,059 (Year 5)

I	Workforce Profile & Statement of Nondiscrimination	Good Faith Outreach Efforts	Award Approval
	Submitted	Requirement Satisfied	Recommended
Ī	NA	NA	Bearing



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title:				Ethnic Mir	nority Perce	ntages Fro	m U.S. Cer	sus Data	
Assignment of General Security Guard					В	Н	A/PI	Al/AN	TOTAL
Services Agreement		Natio	onal	10.5	10.7	3.7	0.7	27.3	
Inate-		DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9
General Servic	es Agreement	12/16/2021	Alameda/C	C Counties	10.7	15.6	15.4	0.5	46.2
R=Recmmd				N		·····			
P=Prime S=Sub	P=Prime S=Sub Composition of Ownership			Number of E	tnnic Mino	rity Employ	yees		
Company Name, Ov Phone Number	wner/Contact Person, Address, and		В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM	Company Wide	23,370	44,641	18,426	0	86,437	33.3%	27.3%
Universal Protection Allied Universal Sec		Manager/Prof	1,740	1,383	346	52	3,521	38.0%	
Melinda Bishop	curity Services	Technical/Sales	53	57	72	5	187	33.9%	-
1551 N. Tustin Ave	nue, Suite650	Clerical/Skilled	918	555	124	19	1,616	47.8%	1
Santa Ana, CA 927	05	Semi/Unskilled	20,659	42,646	17,884	19	81,208	33.1%	1
		Bay Area	3970	3068	2760	132	9,930	76.5%	39.9%
561-310-5803		AA Plan on File:	NA	1	Date of last	contract with	District:	7/23/2019	
		Co. Wide MSA:	Total USA		# Employee	s-Co. Wide:	259,295	Bay Area:	12,975
s	WM: LBE	Company Wide						•	
Vforce Security, Inc	<u> </u>	Manager/Prof	1						
Mani Kontokanis		Technical/Sales	•						
1100 11th Street, S	Suite 10	Clerical/Skilled			INFORMAT	ION NOT F	ROVIDED		
Sacramento, CA 95	5814	Semi/Unskilled	1						
			1						
866-306-7506		Co. Wide MSA:	1						
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WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and Al/AN=American Indian/Alaskan Native)



AGENDA NO.	15.
MEETING DATE	January 11, 2022

TITLE ASSIGNMENT AND TRANSFER OF AGREEMENT FOR SPECIALIZED LEGAL SERVICES

TYPE	□Construction	☐General Services	☐Materials & Supplies	☑Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	□OTHER
<u>ACTION</u>	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Approve the assignment and transfer of the agreement previously authorized under Board Motion No. 205-07 from Ginn & Crosby, LLP to GinnLaw, PC for specialized legal services related to construction, public contracts and procurement, claims, and litigation.

DISCUSSION

The District entered into an agreement with the Law Offices of David W. Ginn, in April 2006 to assist the Office of General Counsel in matters related to construction, public contracts and procurement, claims, and related litigation matters. The firm's name subsequently changed to Ginn & Crosby, LLP. On December 8, 2021, Ginn & Crosby, LLP, informed the District that it was dissolving and transferring the practice to a new professional corporation known as GinnLaw, PC. The District will need to assign and transfer the existing legal services with Ginn & Crosby, LLP, to GinnLaw, PC. All Ginn & Crosby, LLP contractual obligations with the District remain in full force and effect with GinnLaw, PC. The assignment will not materially affect performance of the agreement.

SUSTAINABILITY

Economic

There is no fiscal impact because of this assignment and transfer. GinnLaw, PC will continue to provide services under the same terms and conditions as the existing agreement.

I:\SEC\2022 Board Related Items\011122 Board Agenda Items\OGC - GinnLaw, PC.docx

Funds Available: FY22	Budget Coding: 130 4008511 5231	Contract Equity Forms?
Originating Department	Department Director or Manager	Approved
Office of General Counsel	Derek McDonald	Clipped On General Manager
Attachment(s): P-035; P-061		





CONTRACT EQUITY PROGRAM SUMMARY (P-035) This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

TITLE Professional Service	as Agreemen						- 47 1	DATE:				
Authorize Employn	•	•		cializ	zed Lega	al Servic	es		Janı	uary 4, 20)22	
CONTRACTOR:						PERC	ENTAGE	OF CONTE	RACT DO	LLARS		
GinnLaw, PC Walnut Creek, CA 94597		Direct A Local / Smal			Ava	ailability G	Group	Contracting	Objectives	Participation		
BID/PROPOSER'S	FIRM	'S OWNERS	HIP			White Me	en	25%	6	100.0%		
PRICE:	Ethn	icity	Gen	der	v	Vhite Won	nen	6%)	0.0	%	
\$130,000 *	Wh	nite	Me	en	Etl	nnic Mino	rities	25%	%	0.0	%	
		CONTRA	CT E	QUIT	TY PAR	TICIPAT	ION					
COMPANY NAME	ESTIMATED	ETHNICITY	GEN	DER		T		ACTING PARTI		1		
COMI ANT NAME	AMOUNT	LITIMOTT	М	w	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign	
PRIME:												
GinnLaw, PC	\$130,000	White	Х		100.0%							
SUBS:												
None												
TOTAL		\$130,000		<u> </u>	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
	CONTRAC	CTOR'S WO	RKF	ORC	E PRO	F ILE (Fi	rom P-025	Form)				
		White Me	en	V	White Wo	men	Ethnic	Minorities	Tota	l Employe	ees	
No. of Em	ployees:	1			0			2				
										-		
Percent of Total Em	ployees:	33.3%			0.0%		66.7%		3			
MSA Labor M	arket %:	28.9%	28.9%		24.9% 40		46	46.2%				
MSA Labor Market Location:						Distr	ict of Colu	ımbia				
			C	MC	MENTS							
Contract Equity Participation -	- 100.0% Whit	e Men partici	pation	l_								
		paraor										
*Total not to exceed: \$130,000												
				_				T.	_			
Workforce Profile & Statemer Submitt		rimination	9		Faith Ou quireme				Award App Recomme			
NA					_	A	-	Feed				
NA NA				IVA				1300				



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Authorize Employment of GinnLaw, PC, for Specialized Legal Services B H A/PI AI/AN TOT	Title:				Ethnic Min	ority Perce	ntages Fro	m U.S. Cer	sus Data	
National 10.5 10.7 3.7 0.7 27	Authorize Employment of GinnLaw, PC, for Specialized Legal Services				В	Н	A/PI	AI/AN	TOTAL	
Assignment			National		10.5	10.7	3.7	0.7	27.3	
Assignment			DATE:	9 Bay Area	Counties	5.5	16.2	14.2	0.4	39.9
R=Recmmd		ices Agreement -				1				46.2
B H A/PI AI/AN TOTAL PERCENT MSA	R=Recmmd			l		II				_
RP WM: L/SBE Company Wide 0	P=Prime S=Sub	Composition of Ownership			Number of E	thnic Mino	rity Employ	rees		
SinnLaw, PC		wner/Contact Person, Address, and		В	н	A/PI	AI/AN	TOTAL	PERCENT	MSA %
David. W. Ginn Technical/Sales 0 0 0 0 0 0 0 0 0	RP	WM: L/SBE	Company Wide	0	1	0	0	1	33.3%	46.2%
1485 Treat Blvd., Suite 200 Clerical/Skilled 0 1 0 0 1 100.0% Walnut Creek, CA 94597 Semi/Unskilled 0 0 0 0 0 0 0.0% Bay Area 0 2 0 0 0 0.0% 38 925-256-4466 AA Plan on File: NA Date of last contract with District: NA	GinnLaw, PC		Manager/Prof	0	0	0	0	0	0.0%	
Walnut Creek, CA 94597 Semi/Unskilled 0 0 0 0 0 0.0% Bay Area 0 2 0 0 0 0.0% 39 925-256-4466 AA Plan on File: NA Date of last contract with District: NA			Technical/Sales	0	0	0	0	0	0.0%	
Bay Area 0 2 0 0 0 0.0% 35 925-256-4466 AA Plan on File: NA Date of last contract with District: NA			Clerical/Skilled	0	1	0	0	1	100.0%	
925-256-4466 AA Plan on File: NA Date of last contract with District: NA	Walnut Creek, CA	94597	Semi/Unskilled	0	0	0	0	0	0.0%	
			Bay Area	0	2	0	0	0	0.0%	39.9%
Co. Wide MSA: Nameda-Contra Costa	925-256-4466		AA Plan on File:	NA		Date of last	contract with	District:	NA	
			Co. Wide MSA:	Alameda-Cor	ntra Costa	# Employee	s-Co. Wide:	3	Bay Area:	3
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WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: **B**=Black, **H**=Hispanic, **A/PI**=Asian/Pacific Islander, and **Al/AN**=American Indian/Alaskan Native)



AGENDA NO.	16.
MEETING DATE	January 11, 2022

TITLE QUARRY SITE RESTORATION PROJECT CONDITIONAL USE PERMIT INDEMNIFICATION

TYPE	□Construction	□General Services	□Materials & Supplies	□Professional Services
	□CEQA	□Grants	□Water Supply Assessment	図OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Approve indemnification of Alameda County as part of the conditional use permit (CUP) application for the Quarry Site Restoration Project (Project).

SUMMARY

The proposed action approves indemnification of Alameda County as part of the CUP standard application required to be submitted for the Project.

DISCUSSION

The Project involves completion of site studies, including constructability and phasing analysis to determine the viability of the Quarry Site Property (Property) for long-term economical and sustainable disposal of District trench soils and site restoration. The Property is located in unincorporated Alameda County (County) between Lake Chabot Regional Park and the City of San Leandro at 13575 Lake Chabot Road, as shown on the attached Location Map. In September 2019, a three-year option agreement with the San Leandro Rock Company, owners of the Property, was authorized under Board Motion No. 151-19, to allow assessment of the viability of purchasing the Property for permanent trench soils storage. The three-year option allows the District time to complete an analysis of any potential impacts under the California Environmental Quality Act (CEQA) and obtain any necessary permits prior to committing to the purchase of the Property.

The Project is not exempt under Section 53091 of the California Government Code from local zoning ordinances as the Project does not involve facilities for the production, generation, storage, treatment, or transmission of water. Consequently, District staff reviewed the Project with the County, who concluded that a CUP application is required under the Alameda County Zoning Ordinance allowing for conditional use of the Property. The County's standard CUP application includes an indemnification clause that all applicants are required to sign. Under the indemnification clause, the District would indemnify the County for any costs the County incurs in any proceeding challenging the County's

Funds Available: FY22, CIP #000652; Page 48	Budget Coding: 522/2012609/2013519:01/ 7000042	Contract Equity Forms? ☐ Yes ☒ No
Originating Department	Department Director or Manager	Approved
Engineering and Construction	Olujimi O. Yoloye	Clipped On General Manager
Attachment(s): Location Map		

Quarry Site Restoration Project Conditional Use Permit Indemnification January 11, 2022 Page 2

actions with respect to the Project. This is standard County language, but because it involves the District indemnifying another agency and does not fall within prior Board delegations of indemnity authority, Board approval is required.

SUSTAINABILITY

Economic

Costs include an application fee of \$3,000 and the potential for additional fees once the application is processed. Funding for these fees is available in the FY22 adopted capital budget for the Trench Soils Storage Sites project.

Environmental

Staff is preparing a CEQA Environmental Impact Report (EIR) for the Project and will continue to coordinate with the County as part of the CUP application and solicit input from other local agencies and the community during the EIR process. As part of the Project, the District will implement feasible mitigation measures to reduce environmental impacts to the community.

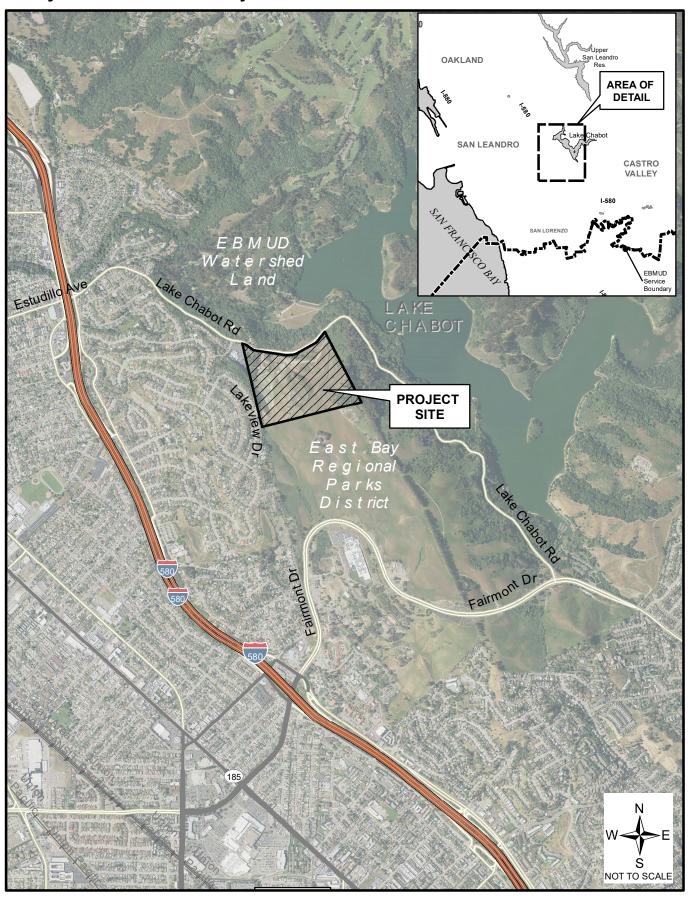
ALTERNATIVE

<u>Do not approve indemnification of Alameda County for the Project CUP application.</u> This alternative is not recommended because the Project is not exempt under Section 53091 of the California Government Code as the Project does not involve facilities for the production, generation, storage, treatment, or transmission of water and requires a CUP from the County.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\ECD - Quarry Site Restoration Project Conditional Use Permit Indemnification.docx

Quarry Site Restoration Project

LOCATION MAP







AGENDA NO.	17.
MEETING DATE	January 11, 2022

TITLE APPOINTMENT OF MANAGER OF DISTRIBUTION MAINTENANCE AND CONSTRUCTION

TYPE	□Construction	☐General Services	□Materials & Supplies	□Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	⊠OTHER
ACTION	□MOTION	⊠RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Appoint Marisa R. Boyce to the position of Manager of Distribution Maintenance and Construction effective January 17, 2022.

DISCUSSION

Ms. Boyce is recommended for appointment as the Manager of Distribution Maintenance and Construction. This position is exempt from the civil service provisions of the Municipal Utility District Act in accordance with Section 12055(e), which exempts this position from "District civil service" upon the recommendation of the General Manager approved by the Board of Directors.

Ms. Boyce has been a Senior Civil Engineer in the District's Pipeline Infrastructure Division since 2018. She joined the District in November 2000 as a Junior Engineer and has worked on the planning, design, construction, and repair of water distribution pipelines throughout her tenure. Prior to joining the District, she worked as a consultant providing environmental, health, and safety services.

Ms. Boyce is a registered Civil Engineer in the state of California and has a Bachelor of Science degree in Environmental Engineering from the University of California, Riverside.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\HRD\Appointment of Manager of Distribution Maintenance and Construction.docx

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? ☐ Yes ☒ No
Originating Department	Department Director or Manager	Approved
Human Resources	Winnie W. Anderson	Clipped Ou
Attachment(s): Resolution		

Draft Prepared
Office of General Counsel

|--|

APPOINTING MARISA R. BOYCE AS MANAGER OF DISTRIBUTION MAINTENANCE AND CONSTRUCTION

Introduced by Director	; Seconded by Director
WHEREAS, the Board of Directors has establic Maintenance and Construction, and such position Management Salary Plan established for Distribution and certain civil service classes; and	1 0
	ntenance and Construction position is exempt from alifornia Public Utilities Code section 12055; and
WHEREAS, the General Manager has recommas Manager of Distribution Maintenance and C	nended that Marisa R. Boyce be appointed to serve Construction;
NOW, THEREFORE, BE IT RESOLVED by Utility District that it hereby appoints Marisa F Maintenance and Construction effective January	
ADOPTED this 11 th day of January, 2022 by the	he following vote:
AYES:	
NOES:	
ABSENT:	
ABSTAIN:	
ATTEST:	President
Secre	tary
APPROVED AS TO FORM AND PROCEDU	URE

General Counsel

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 6, 2022

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager

FROM: Marlaigne Dumaine, Manager of Legislative Affairs

SUBJECT: Federal Initiatives for 2022

The following issues are being referred to the Legislative/Human Resources Committee for review and recommendation to the Board of Directors for action, as appropriate, on January 11, 2022.

BACKGROUND

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

OVERVIEW

The second session of the 117th Congress convenes in January 2022. The Biden administration priorities continue to include delivering economic and health-related legislation to address the pandemic, climate change, and overall infrastructure needs. Within these broad priorities, Congress is expected to consider several issues relevant to EBMUD's operations and policy objectives. These include climate change resiliency, contaminants of emerging concern, cybersecurity, funding for infrastructure and other needs, and water supply reliability and natural resources protection. Additionally, it is anticipated that the Biden administration will implement several new policies of direct relevance to EBMUD, such as the Buy American rule, directing federal funding to disadvantaged communities, and implementing a new Waters of the United States (WOTUS) rule.

EBMUD's 2022 federal initiatives have been developed based on known congressional priorities at this time and are consistent with EBMUD's mission to provide reliable, high-quality water and wastewater services, and to preserve and protect the environment for future generations. The federal initiatives are focused on addressing areas of opportunity, need, and risk for EBMUD in the context of the Biden administration's and expected congressional priorities.

Federal Initiatives for 2022 Board of Directors Meeting January 6, 2022 Page 2

NEXT STEPS

For 2022, the Office of Intergovernmental Affairs is proposing five federal initiatives listed in alphabetical order below and in the summary table. Detailed evaluations of each initiative are included in the attachment.

- 1. Climate Change Resiliency Actively assess and seek opportunities to engage in climate change policies and potential funding opportunities that promote EBMUD priorities to ensure safe, reliable, and resilient water services.
- Contaminants of Emerging Concern Advance EBMUD's interests in discussions on contaminants of emerging concern in the context of water supply and wastewater treatment.
- 3. Cybersecurity Advance EBMUD's interests in discussions on cybersecurity-related legislation and policies in the water and wastewater sectors.
- 4. Funding to Support Infrastructure Investment and Ratepayer Assistance Pursue direct federal funding opportunities for EBMUD projects and infrastructure through new and existing federal programs, including national infrastructure initiatives.
- 5. Water Supply Reliability and Natural Resources Protection Advance EBMUD's interests in water supply reliability and supporting the Mokelumne River fishery.

In addition to the issues discussed above, the Biden administration continues to focus on racial equity and justice issues and on incorporating racial equity and civil justice provisions into administrative policies, processes, and programs. For example, the U.S. Environmental Protection Agency is updating its strategic plan to embed climate and environmental justice in all its work, with final adoption expected in spring of 2022. Appropriate District staff has engaged in this effort and will continue to monitor efforts and update the Board in the context of District priorities, including EBMUD's Diversity, Equity, and Inclusion Strategic Plan.

Federal Initiative		2022 RECOMMENDATIONS		
1.	Climate Change Resiliency	 Proceed - Actively assess and seek opportunities to engage in climate change policies and potential funding opportunities that promote EBMUD priorities to ensure safe, reliable, and resilient water services. 1. Pursue opportunities to advance EBMUD's interests in efforts to address forest and watershed health and wildfire preparedness and identify potential opportunities for EBMUD to engage, particularly on federal lands and through its role in UMRWA. 2. Seek funding opportunities consistent with EBMUD's Climate Action Plan to mitigate and adapt to climate change. 3. Support expanded federal grants assistance to encourage water and wastewater sector workforce development and transition. 		
2.	Contaminants of Emerging Concern	 Proceed - Advance EBMUD's interests in discussions on contaminants of emerging concern in the context of water supply and wastewater treatment. 1. Continue to work through relevant water and wastewater industry associations to ensure appropriate standards are established under the Safe Drinking Water Act; Clean Water Act; and Superfund and to support efforts to eliminate the use of PFAS, establish producer responsibility, and seek expanded federal assistance for PFAS treatment in the water and wastewater sectors, as appropriate. 		
3.	Cybersecurity	Proceed - Advance EBMUD's interests in discussions on cybersecurity-related legislation and policies in the water and wastewater sectors. 1. Staff will advance EBMUD's interests directly and via relevant national water and wastewater associations as Congress seeks to address water and wastewater system cybersecurity.		
4.	Funding to Support Infrastructure Investment and Ratepayer Assistance	 Proceed - Pursue direct federal funding opportunities for EBMUD projects and infrastructure through new and existing federal programs, including national infrastructure initiatives. 1. Continue to advance EBMUD's comprehensive water and wastewater infrastructure funding needs via current and any relevant new federal funding avenues, including identifying and pursuing funding opportunities through the IIJA or the Build Back Better plan, as appropriate. 2. Pursue additional opportunities for congressionally directed spending and/or seek funding off existing authorizations for EBMUD projects, as appropriate. 3. Monitor ratepayer assistance discussions and bring relevant legislative proposals to the Board for discussion and consideration, as appropriate. 		

Federal Initiatives for 2022 Board of Directors Meeting January 6, 2022 Page 4

5.	Water Supply
	Reliability and
	Natural
	Resources
	Protection

Proceed - Advance EBMUD's interests in water supply reliability and supporting the Mokelumne River fishery.

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

CCC:MD/DM

Attachment

I:\SEC\2022 Board Related Items\011122 LegHRCmte and Regular Mtg\OGM - Federal Initiatives for 2022

FEDERAL INITIATIVES – 2022

INITIATIVE #1: CLIMATE CHANGE RESILIENCY

Congressional focus on climate change will remain a top priority in 2022, particularly in light of the numerous extreme weather events in 2021 that included megafires, atmospheric rivers, and continuing drought. Although the breadth and scope of climate change and resiliency discussions are not yet clear, topics relevant to EBMUD such as water supply reliability, fisheries, infrastructure, forest and watershed health, renewable energy, and workforce transition and development viewed through the lens of climate change are likely.

Climate change has the potential to affect every aspect of EBMUD's work including water supply, water quality, ecosystem health, infrastructure resiliency, and workforce. To address these impacts, EBMUD is preparing for more frequent and severe droughts and wet weather events, reduced snowpack, warmer weather, longer wildfire seasons, increased water demand, and rising sea levels. On the mitigation front, EBMUD is investing in renewable energy production, using alternative fuel vehicles, and setting aggressive goals for greenhouse gas (GHG) reductions. EBMUD has also incorporated adaptation strategies into plans and operations for water supply, water quality, environmental protection, long-term infrastructure investment and financial stability, as well as workforce planning and resilience.

Wildfire Prevention and Forest and Watershed Health

Given the destructive wildfire season in 2021, Congress will likely seek to continue to fund forestry needs through infrastructure assistance as well as under the annual appropriations process, thereby maintaining focus on forest and watershed health. In 2021, Congress provided significant funding for wildfire needs through the Infrastructure Investment and Jobs Act with a specific focus on federal lands. Additional forest management funding opportunities and policy discussions may be relevant to forested areas near EBMUD's facilities and in the Mokelumne River watershed, including those on federal lands.

The 2021 fire season marked the second year that the U.S. Forest Service was able to access federal disaster funding for wildfire suppression activities on federal lands. Commonly referred to as the "wildfire-funding fix," this allows additional non-fire resources to be used to address the wildfires rather than depleting forest management funds. This enabled Congress to shift its attention to forest management to help mitigate wildfire risks. The focus has been on management activities adjacent to roads, utility lines, and communities and has included efforts to protect critical watersheds, support for water infrastructure for fire suppression in wildland urban interface areas, and federal assistance to harden community water facilities.

EBMUD has been working through the Upper Mokelumne River Watershed Authority (UMRWA) on forest-related issues in the Mokelumne River watershed. Of note and as a result of a stewardship agreement between UMRWA and the U.S. Forest Service signed in 2016, UMRWA has procured multi-year contracts for forest health actions and now nearly 4,000 acres

in the watershed have been or are being improved by forest thinning or other methods to reduce catastrophic fire risk and/or protect water quality. UMRWA will continue to pursue grant funding and, when grants are secured, administer and implement those grant projects. There may be opportunities to secure funding for these types of projects. In addition, there may be opportunities to highlight the need to address tree mortality and urban interface issues, including in EBMUD's service area.

Staff was asked about potential federal solutions to help manage excess timber generated during forest management practices. Prior congressional efforts to expand the market for this wood to include international markets were strongly opposed by the environmental community on the basis that it could result in the unintended consequence of creating an unsustainable demand for federal timber and failed to advance. Staff will monitor congressional discussions relevant to the timber management issue and bring forward relevant proposals, as appropriate.

Efforts to Mitigate and Adapt to Climate Change

EBMUD continues to pursue greening its vehicle fleet and increase the use of renewable energy through the District's own generation of electricity from hydropower, solar, and biogas. EBMUD's Climate Action Plan affirms EBMUD's commitment to make water operations carbon neutral by 2030, and eliminate indirect GHG emissions and reduce direct emissions by 50 percent for the wastewater system by 2040. EBMUD is also actively increasing water conservation efforts. EBMUD's adaptation strategies include diversification of water supplies, enhanced water quality and ecosystem protection, and investment in resilient infrastructure to augment responses to sea level rise, floods, changes in water quality, and drought conditions.

Congress is expected to continue discussions on providing assistance to local governments, including public agencies, to mitigate and adapt to climate change. Areas under discussion may include hardening of critical infrastructure, including water and wastewater infrastructure, and addressing energy needs.

Workforce Development and Transition

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

NEXT STEPS

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

1. Pursue opportunities to advance EBMUD's interests in efforts to address forest and watershed health and wildfire preparedness and identify potential opportunities for EBMUD to engage, particularly on federal lands and through its role in UMRWA.

- 2. Seek funding opportunities consistent with EBMUD's Climate Action Plan to mitigate and adapt to climate change.
- 3. Support expanded federal grants assistance to encourage water and wastewater sector workforce development and transition.

INITIATIVE #2: CONTAMINANTS OF EMERGING CONCERN

Congress and the Biden administration continue to discuss approaches to address contaminants of emerging concern, such as perfluoroalkyl or polyfluoroalkyl substances (PFAS) and plastics, in drinking water supplies and wastewater treatment discharges. In 2022, Congress is expected to consider PFAS-related legislation, including efforts to require the U.S. Environmental Protection Agency (U.S. EPA) to designate PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund). In addition, the U.S. EPA will continue efforts to implement its 2021 PFAS Strategic Roadmap (Roadmap), including developing drinking water standards for PFAS, restricting PFAS discharges at the source, reducing PFAS discharges to waterways, considering whether regulation of PFAS in biosolids is appropriate, and pursuing designation of PFAS as hazardous substances under Superfund.

The PFAS proposals being considered by Congress and the administration could impact water and wastewater treatment facility compliance and costs associated with water treatment. For example, designating PFAS as hazardous substances could impact wastewater treatment facilities, such as EBMUD's, by requiring that biosolids containing PFAS be considered hazardous waste and disposed of as such. The hazardous waste designation would also potentially subject wastewater treatment facilities to liability for PFAS present in biosolids.

NEXT STEPS

Staff will monitor the development of emerging contaminant-related legislation and policies at the federal level, work with the appropriate national associations to ensure EBMUD's interests are effectively communicated and look for opportunities to support efforts to eliminate the use of PFAS.

1. Continue to work through relevant water and wastewater industry associations to ensure appropriate standards are established under the Safe Drinking Water Act; Clean Water Act; and Superfund and to support efforts to eliminate the use of PFAS, establish producer responsibility, and seek expanded federal assistance for PFAS treatment in the water and wastewater sectors, as appropriate.

INITIATIVE #3: CYBERSECURITY

There is increasing interest in cybersecurity, including the water and wastewater sectors, at the administrative and congressional levels. In 2021, President Biden issued an executive order to modernize federal government information system defenses and improve the security of technology. The president also directed the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency and the Department of Commerce's National Institute of Standards and Technology to develop cybersecurity performance goals for critical infrastructure that may include baseline security practices that owners and operators of critical infrastructure should follow.

A topic of interest at congressional hearings in 2021, various cybersecurity provisions were also included in the Infrastructure Investment and Jobs Act. Discussions are expected to continue in 2022 and could include topics such as cybersecurity hardening for critical infrastructure including water and wastewater systems; new regulatory compliance requirements for the private and public sectors; and what role, if any, federal funding and other means of support could play to assist owners and operators of critical infrastructure with cybersecurity needs.

NEXT STEPS

Staff will monitor the development of cybersecurity-related legislation and policies at the federal level for the water and wastewater sectors, and work to ensure EBMUD's interests are effectively communicated.

 Staff will advance EBMUD's interests directly and via relevant national water and wastewater associations as Congress seeks to address water and wastewater system cybersecurity.

INITIATIVE #4: FUNDING TO SUPPORT INFRASTRUCTURE INVESTMENT AND RATEPAYER ASSISTANCE

In 2022, Congress is expected to continue efforts to provide funding for infrastructure and other water and wastewater utility needs in several areas. These areas include implementation of the Infrastructure Investment and Jobs Act (IIJA), efforts to move President Biden's Build Back Better plan forward, discussions on a permanent low-income ratepayer assistance program for water and wastewater customers, and the expected continuation of congressionally directed spending (earmarks) through the budget and the Water Resources Development Act (WRDA).

<u>Infrastructure</u>

On November 15, President Biden signed the \$1.2 trillion IIJA into law. The measure, focused on transportation, energy, broadband, water and wastewater infrastructure, is a combination of new spending and a repurposing of unspent COVID-19 funds, with approximately \$550 million representing new spending above current baseline funding. This is the first large-scale bipartisan

infrastructure funding package in recent years and marks a return to recognizing water and wastewater infrastructure as an integral part of the nation's infrastructure. Of the total amount, the IIJA includes nearly \$50 billion nationwide for drinking water and wastewater programs administered by the U.S. EPA. Other provisions of direct interest to the District in the IIJA include wildfire risk reduction, cybersecurity, and an expansion of the Buy American rule. Though there are limited potential funding opportunities for the District, there are some areas of potential eligibility. Staff will identify and pursue those opportunities as appropriate and continue to engage with the administration and Congress on future water and wastewater infrastructure-related actions.

In November 2021, the House passed a \$1.9 trillion budget reconciliation package known as the Build Back Better plan, a key part of the Biden administration's agenda. It is unclear at this time when such efforts will advance and what the final package might contain of interest to the District.

Existing and Future Earmark Opportunities

The first session of the 117th Congress saw a return to congressionally directed spending, otherwise known as earmarks, after a long absence. EBMUD advanced its Upper San Leandro Water Treatment Improvement Project, which continues to move forward as part of the yet-to-be-finalized spending bill package.

Along with an opportunity to pursue another project earmark in 2022, EBMUD also has an existing \$25 million authorization in the 2007 WRDA bill for "recycled water treatment facilities within the EBMUD service area." Though no funding has been appropriated yet due to the long-standing earmark ban that was recently removed, there may be an opportunity to pursue an appropriation in 2022.

Buy American Rule

The IIJA establishes new, overarching Buy American rules that permanently apply to a wide range of federal infrastructure support programs, including the State Revolving Funds (SRFs) and Water Infrastructure Finance and Innovation Act (WIFIA). Most notably, this change will expand those programs' Buy American mandates to cover not only iron and steel products, but also any manufactured products used in water and wastewater projects. U.S. EPA and other federal agencies are permitted to grant waivers to the Buy American rule on a case-by-case basis, but only after publishing the proposed waiver online and collecting public comment for at least 15 days. Future funding earmarks may be impacted too, though the timing of applicability is unclear.

Ratepayer Assistance

The IIJA contains provisions to establish a needs assessment for nationwide rural and urban low-income community water assistance. The Administrator of the U.S. EPA is tasked with conducting the assessment to examine the prevalence of households who use a disproportionate

amount of their income on access to drinking water or wastewater services across rural, medium, and large water service providers. The Rural and Water Low-Income Assistance Pilot Program, established by the IIJA but without corresponding funding, will provide 40 grants per year to utilities to assist low-income ratepayers. Discussions on this topic at both the administration and congressional levels are ongoing.

NEXT STEPS

As Congress discusses infrastructure policy, staff will continue to communicate to EBMUD's congressional delegation the importance of EBMUD projects and how those projects and the local communities would benefit from funding. Staff will work with federal agencies and EBMUD's delegation to pursue any funding that may become available for EBMUD's funding needs, including any permanent rate assistance programs.

- 1. Continue to advance EBMUD's comprehensive water and wastewater infrastructure funding needs via current and relevant new federal funding avenues, including identifying and pursuing funding opportunities through the IIJA or the Build Back Better plan, as appropriate.
- 2. Pursue additional opportunities for congressionally directed spending and/or seek funding from existing authorizations for EBMUD projects, as appropriate.
- 3. Monitor ratepayer assistance discussions and bring relevant legislative proposals to the Board for discussion and consideration.

INITIATIVE #5: WATER SUPPLY RELIABILITY AND NATURAL RESOURCES PROTECTION

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

NEXT STEPS

Staff will work to:

- 1. Protect EBMUD's Mokelumne River water supplies and seek to preserve EBMUD's access to water transfers and its CVP contract supplies.
- 2. Work with other Municipal and Industrial (M&I) CVP contractors to safeguard CVP policies that support M&I contractors, including access to adequate water supplies.

- 3. Protect EBMUD's regional water supply programs and projects, including the Freeport Regional Water Project.
- 4. Protect the Mokelumne River fishery, including working to ensure that any policy or program revision, or project or project-related activity that is likely to affect the Mokelumne River fishery includes mitigation for the impacts by the responsible parties.





AGENDA NO.	19.	
MEETING DATE	January 11, 2022	

TITLE ADOPT A RESOLUTION CONTINUING VIRTUAL MEETINGS OF THE BOARD

TYPE	□Construction	□General Services	☐Materials & Supplies	□Professional Services
	□CEQA	□Grants	□Water Supply Assessment	⊠OTHER
ACTION	□MOTION	⊠RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

Make requisite findings and adopt a Resolution to continue to hold meetings of the Board of Directors (Board) via teleconference under Government Code section 54953(e) until the State of Emergency resulting from the COVID-19 pandemic no longer impacts the ability of Board members to meet safely in person.

SUMMARY

Section 54953(e) of the Ralph M. Brown Act allows governing bodies of local public agencies to use teleconferencing for meetings of governing bodies, as long as a State of Emergency is in effect and either state or local officials have imposed or recommended measures to promote social distancing or the governing body has determined that because of the emergency, meeting in person presents imminent risks to the health or safety of attendees. At its September 28, 2021 meeting, the Board made the requisite findings and adopted Resolution No. 35249-21. Staff recommends that the Board make findings to continue the practice of meeting via teleconference during the COVID-19 pandemic State of Emergency.

DISCUSSION

On September 16, 2021, the Governor signed AB 361 into law, which amended section 54953 of the Brown Act to allow governing bodies to hold meetings solely via teleconference so long as:

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

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? ☐ Yes ☒ No
Originating Department	Department Director or Manager	Approved
Office of General Counsel	Derek McDonald	Clipped On General Manager
Attachment(s): Resolution		

Adopt A Resolution Continuing Virtual Meetings of the Board January 11, 2022 Page 2

Government Code section 54953(e)(1)(B) allows the governing body of a public agency to meet initially to determine, by majority vote, whether as a result of a State of Emergency, meeting in person would present imminent risks to the health or safety of attendees. Thereafter, a governing body may continue to hold meetings via teleconference, subject to the requirement that the governing body renews the emergency findings every 30 days or less.

At the September 28, 2021 Board meeting, the Board made the requisite findings under section 54953(e)(1)(B) and adopted Resolution No. 35249-21. Pursuant to section 54953(e)(3), Resolution No. 35249-21 requires the Board to meet no less than every 30 days to renew the findings supporting the continued use of teleconferencing. The Board renewed its findings at the October 26, November 23 and December 14, 2021 Board meetings.

The District's Board meetings, closed session meetings, committee meetings, special meetings, workshops, and ad hoc committee meetings are attended by District staff and the general public. Currently, the COVID-19 pandemic State of Emergency remains in effect, and state and local health authorities still recommend social distancing. There is still no statewide mandate requiring persons to be vaccinated to enter public facilities and the Brown Act precludes the Board from requiring meeting attendees to be vaccinated as a condition of attendance.

There has been a recent surge in COVID-19 infections at the District and in the District's service area, possibly due to the highly transmissible Omicron variant. Since it is not possible to predict how many persons will attend a Board meeting to allow for social distancing and other safety measures, staff recommends the Board continue to utilize its authority under the Brown Act to provide for teleconferencing for all Board meetings, closed session meetings, committee meetings, special meetings, workshops, and ad hoc committee meetings.

ALTERNATIVE

<u>Do not make findings and adopt a resolution to continue meetings via teleconference</u>. This alternative is not recommended because the District cannot require members of the public who wish to attend the Board meetings to be vaccinated, and the District's service area is experiencing a surge in COVID-19 infections.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\OGC - Adopt Resolution Continuing Virtual Meetings.docx

Office of General Counsel

RESOLUTION NO.

AUTHORIZING CONTINUED UTILIZATION OF TELECONFERENCING FOR MEETINGS OF THE EAST BAY MUNICIPAL UTILITY DISTRICT BOARD OF DIRECTORS

Introduced by Director

; Seconded by Director

WHEREAS, Government Code section 54953(e) provides that a governing body of a local public agency may conduct public meetings via teleconferencing in any of the following circumstances: (A) the governing body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing; or (B) the governing body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or (C) the governing body holds a meeting during a proclaimed state of emergency and has previously determined, by majority vote, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency under the California Emergency Service Act in response to the threat of the COVID-19 pandemic; and

WHEREAS, Governor Newsom's March 4, 2020, proclamation of a State of Emergency is still in effect; and

WHEREAS, both the California Department of Industrial Relations, Division of Occupational Safety and Health, and the Alameda County Public Health Department are currently recommending measures to promote social distancing at worksites; and

WHEREAS, East Bay Municipal Utility District (District) Board meetings, committee meetings, closed session meetings, special meetings, ad hoc committee meetings, and workshops are attended by District Board members, District employees and members of the public; and

WHEREAS, on September 28, 2021, the District Board of Directors (Board) met under California Government Code section 54953(e)(1)(B) to determine whether, as a result of the State of Emergency, meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, at the September 28, 2021, Board meeting, the Board made the requisite findings under Section 54953(e)(1)(B) and adopted Resolution No. 35249-21, which provides that the District may hold meetings via teleconference during the declared State of Emergency; and

WHEREAS, pursuant to Section 54953(e)(3), Resolution No. 35249-21 requires the Board to meet not less than every 30 days to renew the findings supporting continued use of teleconferencing; and

WHEREAS, on October 26, November 23 and December 14, 2021, the Board met and considered the circumstances of the State of Emergency and renewed its findings under Section 54953(e)(3)

and Resolution No. 35249-21 in order to continue to hold meetings via teleconferencing; and

WHEREAS, at the Board meeting on January 11, 2022, staff has presented the Board with current information on the COVID-19 pandemic and its impacts within the District's service area and has recommended that the Board continue to utilize its authority under the Brown Act to provide for teleconferencing for all Board meetings, committee meetings, closed session meetings, special meetings, ad hoc committee meetings and workshops;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Municipal Utility District hereby finds and determines as follows:

- 1. The Board has considered the circumstances of the State of Emergency declared by Governor Newsom; and
- 2. As a result of the State of Emergency, meeting in person would present imminent risks to the health or safety of meeting attendees.

BE IT FURTHER RESOLVED that, based on the findings above, all District Board meetings, committee meetings, closed session meetings, special meetings, ad hoc committee meetings and workshops will continue to be held via teleconference in accordance with the provisions of California Government Code section 54953(e).

ADOPTED this 11th day of January, 2022 by the following vote:
AYES:
NOES:
ABSENT:
ABSTAIN:
ATTEST: Presiden
Secretary
APPROVED AS TO FORM AND PROCEDURE:
General Counsel

{00068478;2}



AGENDA NO.	20.1-20.2.	
MEETING DATE	January 11, 2022	

TITLE RESPONSE TO DECLARATION OF EMERGENCY FOR THE REPAIR OF THE SOUTH INTERCEPTOR

TYPE	□Construction	☐General Services	☐Materials & Supplies	☐Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	⊠OTHER
<u>ACTION</u>	□MOTION	⊠RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

- 1. Ratify the General Manager's January 4, 2022 declaration of a District emergency in accordance with Policy 7.03 Emergency Preparedness/Business Continuity because of a catastrophic failure of a portion of the District's South Interceptor.
- 2. Authorize expenditure of sums as needed in response to such emergency.

SUMMARY

On January 3, 2022, the City of Oakland notified the District of a sinkhole in the parking lot at the Oakland Coliseum and within five feet of the Elmhurst Creek bank. Staff immediately responded to the site and reported that a portion of the South Interceptor had collapsed and confirmed a sinkhole approximately 12 feet deep from grade to the top of the collapsed interceptor. The South Interceptor is 63-inches in diameter in this area. There was no indication of wastewater spilling out of the pipe or of infiltration or inflow of creek water into the pipe.

On January 4, 2022, to expedite stabilization of the sinkhole and repairs to the damaged interceptor, the General Manager, in consultation with the Board President, declared a "District Emergency" in accordance with Policy 7.03. The policy authorizes suspension of the competitive bid process and allows the award of contracts not to exceed \$500,000 per contract and further requires the General Manager to report expenditures and contracts awarded under \$500,000, made under the emergency declaration, to the Board of Directors.

DISCUSSION

The South Interceptor serves the Oakland International Airport and a portion of East Oakland. This pipeline provides essential wastewater conveyance for critical customers. Immediate stabilization of the sinkhole is necessary to help prevent further damage to the parking lot, the South Interceptor, and to avoid potential damage to the banks of Elmhurst Creek. In addition, immediate repairs to restore the portion of the pipe that collapsed are necessary. During storm events, this pipe is typically surcharged due to

Funds Available: FY22/23, CIP 7000341; Pg. 64	Budget Coding: 927/7000341/2003268:00/55610	Contract Equity Forms? ☐ Yes ☒ No
Originating Department	Department Director or Manager	Approved
Wastewater	Eileen M. White	Clipped On General Manager
Attachment(s): Resolution		

Response to Declaration of Emergency for Repairs to a Portion of the South Interceptor January 11, 2022
Page 2

excessive inflow and infiltration from the satellite agencies' (Albany, Alameda, Emeryville, Berkeley, Piedmont, Oakland, and Stege Sanitary District) collections system and private sewer laterals. Immediate repair of the pipe will ensure that the elevated flows during wet weather events will remain within the pipe system, thereby preventing a sanitary sewer overflow.

Section 12753 of the California Municipal Utility District Act (MUD Act) provides that in case of any great emergency, the Board may, by resolution passed by a five-sevenths vote of the Board, declare and determine that the emergency exists and authorize expenditure of sums or enter into contracts involving the expenditure of any sums needed in the emergency without observing provisions requiring contracts, bids, or notice. Therefore, in addition to ratification of the General Manager's action, the Board is being asked to declare an emergency directly under the MUD Act and to authorize the General Manager to expend any funds necessary above the \$500,000 per contract limit in Policy 7.03 to fully respond to the emergency.

Since the General Manager's emergency declaration, the District has secured a contractor with the expertise and resources to immediately stabilize the sinkhole, clean the debris (pieces of pipe and soil) out of the pipe, and repair the collapsed portion of the pipeline. District staff is preparing a contract for this work. Updates on any additional contracts awarded and the contractor's work will be made at the January 11, 2022 Board meeting.

SUSTAINABILITY

Economic

The repair costs are estimated to be more than \$500,000. Funding for this work is available in the FY22/23 adopted capital budget for the General Wastewater Project.

Social

Stabilization of the sinkhole will minimize additional damage to the Coliseum's parking lot, which is frequently used for large public events. Immediate repairs to the damaged pipe will ensure protection of public health during rain events by ensuring that the flows in the interceptor system do not create a sanitary sewer overflow and will also allow the District to backfill the excavation as soon as possible for public safety when the Coliseum facility is in use.

Environmental

Stabilization of the sinkhole will minimize the possibility of failure of the banks of Elmhurst Creek. Repairs to the damaged pipe will reduce the likelihood of sanitary sewer overflows in the vicinity of the damaged pipe. These actions protect the environment and help ensure compliance with all regulatory permits.

ALTERNATIVE

<u>Do not ratify the General Manager's declaration of an emergency.</u> This alternative is not recommended because stabilization of the sinkhole and pipe repairs are needed immediately to minimize additional damage in the area, ensure the flow capacity in the South Interceptor for managing wet weather flows, and ensure public safety on the Coliseum property.

Office of General Counsel
RESOLUTION NO.____

RATIFYING GENERAL MANAGER'S DECLARATION OF THE EXISTENCE OF A DISTRICT EMERGENCY AND AUTHORIZING EXPENDITURE OF SUMS AS NEEDED IN RESPONSE TO SUCH EMERGENCY

Introduced by Director

; Seconded by Director

WHEREAS, East Bay Municipal Utility District (District) Policy 7.03, "Emergency Preparedness/Business Continuity," empowers the General Manager, in consultation with the President of the Board of Directors, to declare a District emergency condition that necessitates immediate action to minimize damage and inconvenience and to enter into emergency contracts not to exceed \$500,000 per contract, without bids or notice, after a District-declared emergency; and

WHEREAS, Section 12753 of the California Municipal Utility District Act provides that in case of any great emergency, the Board may, by resolution passed by a five-sevenths vote of the Board, declare and determine that such emergency exists, and thereupon proceed to expend sums or enter into contracts involving the expenditure of any sums needed in such emergency without observance of the provisions requiring contracts, bids, or notice; and

WHEREAS, on January 3, 2022, a sinkhole was discovered in the parking lot of the Oakland Coliseum in Oakland, California, within five feet of the banks of Elmhurst Creek; and

WHEREAS, upon investigation, District staff discovered that a portion of the top of the District's South Interceptor had collapsed and created the sinkhole, which is approximately 12 feet deep from grade to the top of the Interceptor; and

WHERAS, the South Interceptor is a crucial District facility providing essential wastewater conveyance for District customers, and in this area serves the Oakland Airport and a portion of east Oakland; and

WHEREAS, immediate stabilization of the sinkhole is necessary to help prevent further damage to the parking lot and to avoid potential damage to the banks of Elmhurst Creek; and

WHEREAS, immediate repairs to restore the portion of the South Interceptor that collapsed are necessary because the Interceptor is typically surcharged during storm events due to excessive inflow and infiltration from satellite collections systems and private sewer laterals; and

WHEREAS, immediate repair of the Interceptor will ensure that any elevated flows during wet weather events will remain within the surcharged pipe system, thereby preventing a sanitary sewer overflow; and

WHEREAS, on January 4, 2022, in order to begin stabilization of the sinkhole and repairs to the Interceptor as quickly as possible and to ensure that the affected area is not further impacted, the General Manager, in consultation with the Board President, declared the existence of a District emergency arising from the collapse of the top of the South Interceptor; and

WHEREAS, District Policy 7.03 provides that following the General Manager's declaration of a District emergency, the Board shall meet to ratify the General Manager's declaration as soon as possible after the declaration, but no later than 14 days following such declaration; and

WHEREAS, the Board does hereby find that the aforesaid conditions did warrant and necessitate the proclamation of the existence of a District emergency; and

WHEREAS, a report has been made to the Board summarizing all expenditures made and contracts executed in response to said emergency in compliance with District Policy 7.03; and

WHEREAS, periodic reports shall be generated at the direction of the Board until the emergency is concluded in compliance with District Policy 7.03;

NOW, THEREFORE, BE IT RESOLVED the Board finds that an emergency exists as a result of the collapse of the top of the South Interceptor.

BE IT FURTHER RESOLVED that the declaration of a District emergency, as issued by the General Manager, is hereby ratified by the Board.

BE IT FURTHER RESOLVED that the General Manager is hereby authorized to proceed to expend sums or enter into contracts involving the expenditure of any sums needed in response to this emergency without observance of the provisions requiring contracts, bids, or notice.

ADOPTED this 11th day of January, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE

General Counsel

{00068522;2}



AGENDA NO.	21a-b.	
MEETING DATE	January 11, 2022	

TITLE CONSIDER ACCEPTING REDISTRICTING PROPOSAL 1 AND SETTING PUBLIC HEARINGS

TYPE	□Construction	☐General Services	☐Materials & Supplies	□Professional Services
	□CEQA	□Grants	☐Water Supply Assessment	⊠OTHER
ACTION	⊠MOTION	□RESOLUTION	□ORDINANCE	

RECOMMENDED ACTION

- A. Consider and accept Redistricting Proposal 1 (Proposal 1) as recommended by the Redistricting Ad Hoc Committee for review and presentation at upcoming noticed public hearings.
- B. In accordance with California Elections Code section 22001, set a public hearing for February 8, 2022, to present Proposal 1 as recommended by the Redistricting Ad Hoc Committee for public review and comment, and a public hearing for March 8, 2022, where the Board of Directors will consider adopting Proposal 1 to establish the East Bay Municipal Utility District ward boundaries as a result of the 2020 federal census.

SUMMARY

The East Bay Municipal Utility District (EBMUD) is legally required to adjust its ward boundaries to accommodate population shifts reflected in the federal decennial census, and to keep its wards as equal as possible in population. The 2020 census data indicates the total population of EBMUD's service area is 1,477,418, and the target population for each ward is 211,060. The Redistricting Ad Hoc Committee met on October 26, 2021 and November 23, 2021, to review three redistricting proposals to adjust the District's ward boundaries so that each ward is reasonably within the target population. The Redistricting Ad Hoc Committee recommended the Board accept Proposal 1 for review and comment during public hearings in February and March 2022.

DISCUSSION

In February 2021, the U.S. Census Bureau announced that due to COVID-19 pandemic related delays, redistricting data would not be released until September 30, 2021 instead of by March or April 2021. This delay shortened the District's timeline for conducting redistricting efforts. On May 11, 2021, the Board established a Redistricting Ad Hoc Committee (Committee). The Committee met on June 22 and August 24 and established redistricting guidelines; the Board adopted the guidelines on September 14.

Funds Available: NA	Budget Coding: NA	Contract Equity Forms? ☐ Yes ☒ No
Originating Department	Department Director or Manager	Approved
Office of the Secretary	Rischa S. Cole	Clipped On General Manager
Attachment(s): Redistricting Proposal Maps		

Consider Accepting Redistricting Proposal 1 and Setting Public Hearings January 11, 2022 Page 2

On September 28, the Committee met and agreed to use a target population deviation percentage of three percent to develop redistricting plans. On October 26, staff presented final ward population data based on final census data released by the U.S. Census Bureau on September 30.

Compared to 2010, the District's service area population increased from 1,337,782 to 1,477,418 and the target ward population increased from 191,112 to 211,060. The final census data indicates Ward 5 (cities of Alameda and San Lorenzo; West Oakland and Oakland Airport Area, and a portion of San Leandro) with a ward population of 217,878 is above the adopted deviation at 3.23 percent and that Ward 7 (Castro Valley; portions of San Leandro and Hayward; communities of Cherryland and Fairview; and a portion of San Ramon) with a ward population of 207,016 has the second highest deviation at -1.92 percent. All other District wards remain within the target ward population deviation of three percent (+/- 6332 or between 204,728 and 217,392). Staff presented three proposals (maps attached) to the Committee to adjust the boundaries between Wards 5 and 7 to bring both wards within three percent of the target ward population of 211,060:

- **Proposal 1:** move an area of San Lorenzo that is east of Highway 880 from Ward 5 to Ward 7. This area is south of San Lorenzo Creek between 880 and the Southern Pacific Railroad and has a population of 4,637. This proposal would decrease the Ward 5 population from 217,878 to 213,241 and increase the Ward 7 population from 207,016 to 211,653.
- **Proposal 2:** move an area of San Lorenzo that is east of Highway 880 and south of Lansing Way from Ward 5 to Ward 7. This area is a subset of Proposal 1 and would move one census block with a population of 508 from Ward 5 to Ward 7. This proposal would decrease the Ward 5 population from 217,878 to 217,370 and increase the Ward 7 population from 207,016 to 207,524.
- **Proposal 3:** move the Greenhouse Marketplace area in San Leandro from Ward 5 to Ward 7 which extends along San Lorenzo Creek. The City of San Leandro is already divided between Wards 5 and 7 by Highway 880. This proposal would decrease the Ward 5 population from 217,878 to 217,271 and increase the Ward 7 population from 207,016 to 207,623.

At its October 26 meeting, the Committee agreed to present Proposal 1 for consideration at the November 23 Regular Board meeting. To provide the public an additional opportunity to review and comment on the three proposals, staff scheduled an additional Committee meeting on November 23 and conducted targeted outreach to residents in San Leandro/San Lorenzo that live in or near the Proposal 1 area and posted information on Nextdoor for the entire service area. At this meeting, the Committee reaffirmed its decision to recommend Proposal 1 for Board consideration.

The District was originally required to complete its 2021-2022 redistricting efforts and submit legal ward boundaries and maps to Alameda and Contra Costa counties by May 12, 2022 for the November 2022 elections. However, Senate Bill 594 (Glazer) revised the deadline and requires all special districts to submit legal ward boundaries and maps to the counties by April 17, 2022. If the Board accepts Proposal 1, staff will schedule a public hearing on February 8, 2022 for the public to review and comment on Proposal 1. At the public hearing on March 8, 2022, the Board will consider adopting Proposal 1 to establish the District's ward boundaries. Staff will notify local elected and appointed officials as well as other stakeholders about the public hearings. Notices will also be published in newspapers of general circulation in the District's service area, and information will be posted on the redistricting webpage, Nextdoor, and Twitter. The legal ward boundaries and final ward map will be presented for Board review

Consider Accepting Redistricting Proposal 1 and Setting Public Hearings January 11, 2022
Page 3

and approval at its April 12, 2022 meeting for submission to Alameda and Contra Costa counties to meet their April 17, 2022 deadline for the November 2022 elections.

SUSTAINABILITY

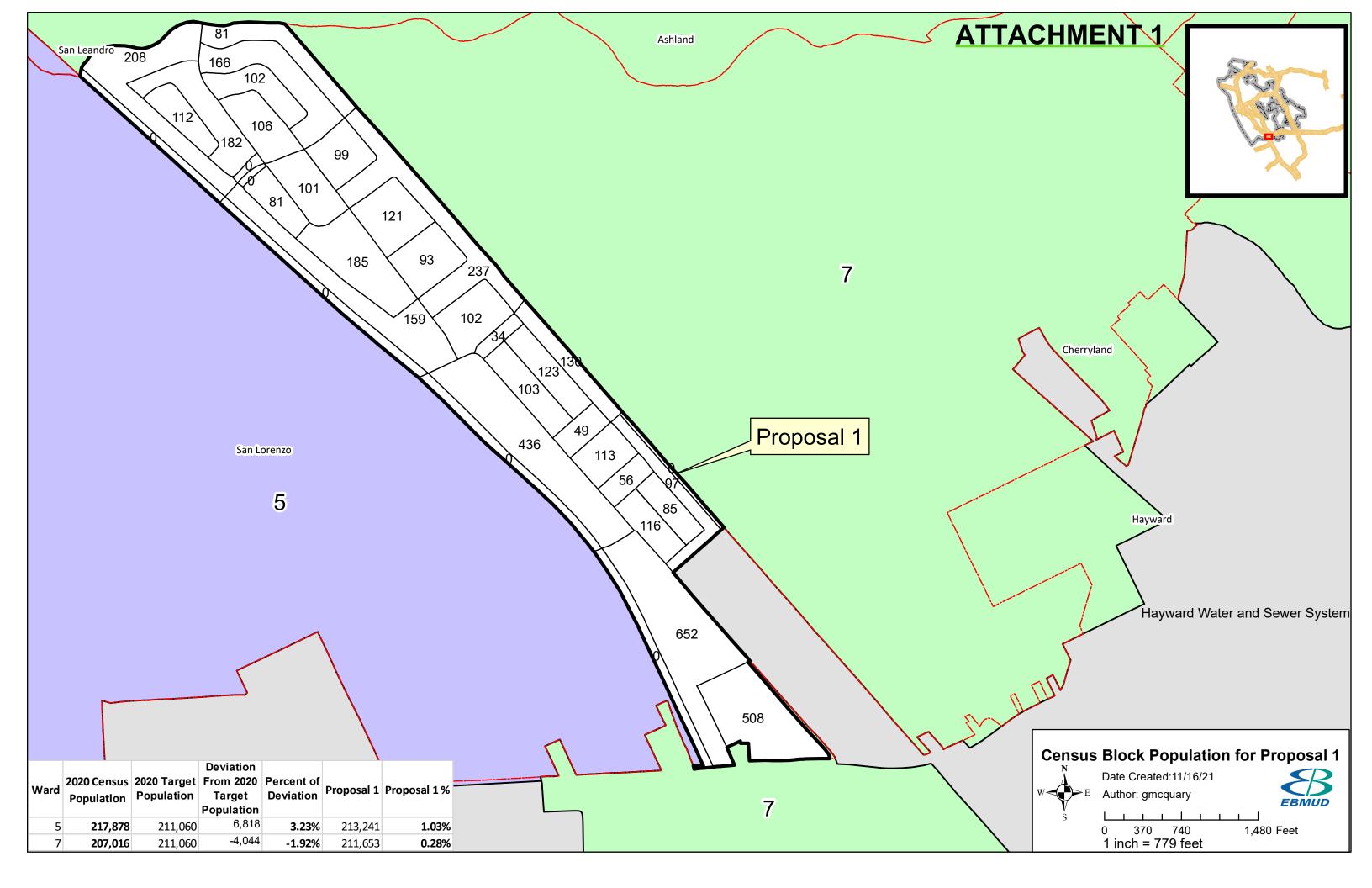
Social

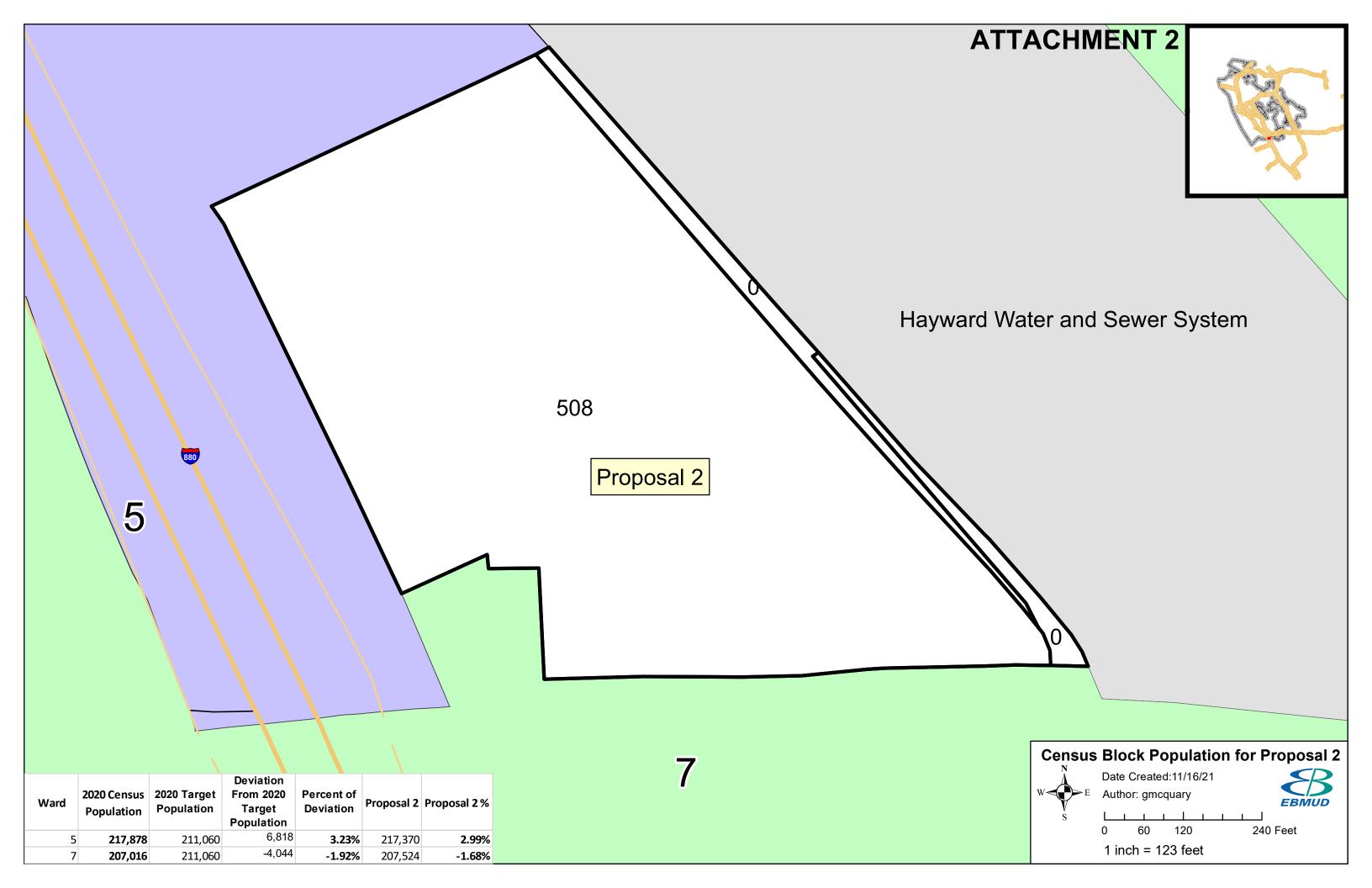
Elections Code section 22000 requires districts to adjust boundaries based on the federal decennial census so divisions, as far as practical, are equal in population. Adjusting the boundaries in Wards 5 and 7 will bring both ward populations within three percent of the target ward population of 211,060 and make the populations of the District's wards near equal.

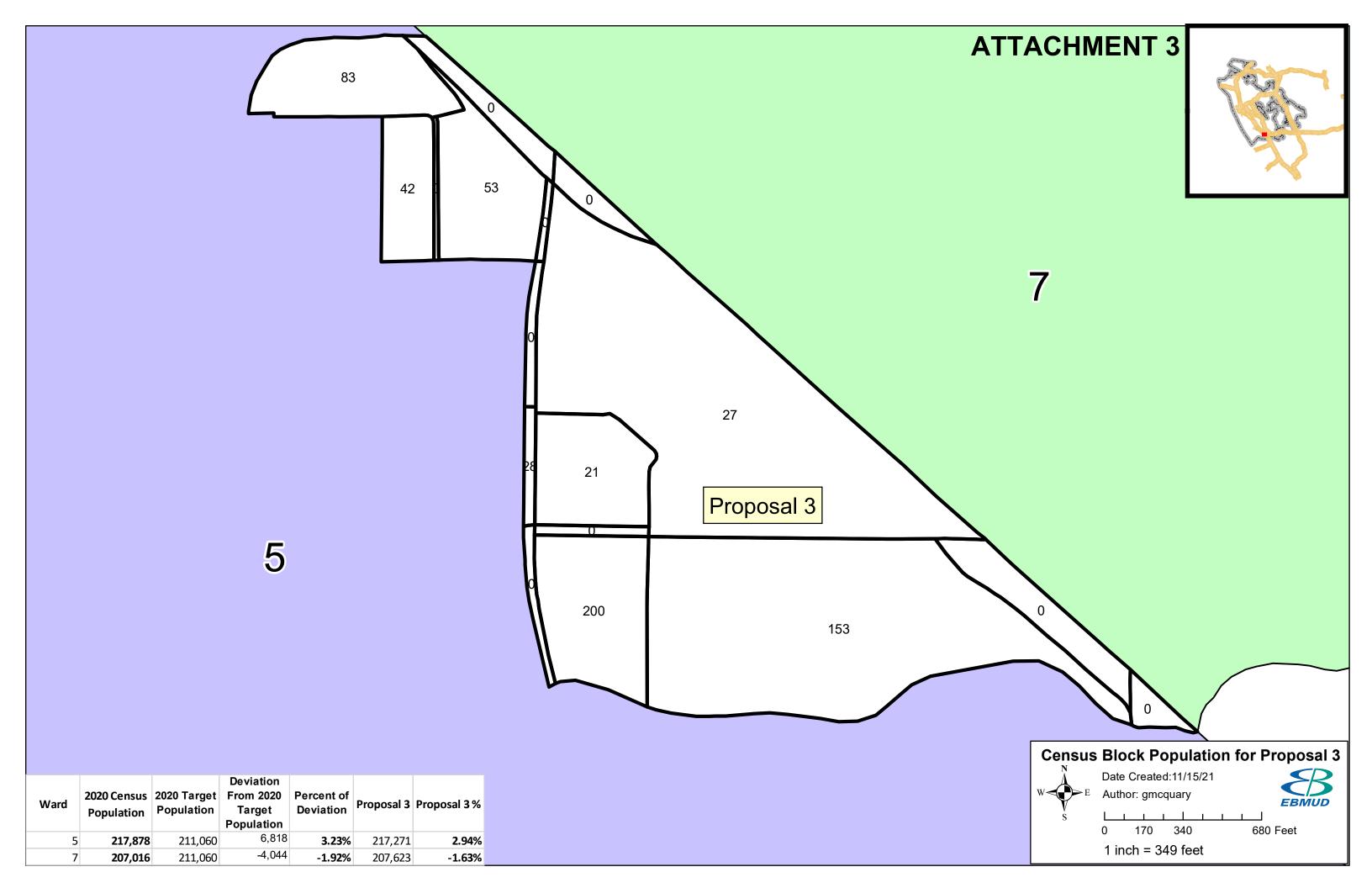
ALTERNATIVE

<u>Do not accept Redistricting Proposal 1 for public review.</u> This alternative is not recommended. The Committee reviewed three proposals and recommended Proposal 1 as the ideal proposal to adjust the boundaries between Wards 5 and 7 so that the populations in those wards are within the target ward population of three percent and all District wards are, as far as practical, equal in population.

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\Redistricting Proposal 1 and Set Public Hearings.docx







ITEM 22

WATER SUPPLY UPDATE

WILL BE PROVIDED AS AN ORAL REPORT



EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 11, 2022

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager

FROM: Kelly A. Zito, Special Assistant to the General Manager 13

SUBJECT: EBMUD Biennial Report for Fiscal Years (FY) 2020-2021

The attached FY20-21 biennial report highlights historical accomplishments and recognizes the District's milestones achieved amid the coronavirus pandemic as we fulfill our mission to provide reliable, high-quality water and wastewater services for East Bay customers. To best reach our community and tell our story, this report will be available on ebmud.com for the first time as a digital flipbook with videos.

"On the Front Lines: A Report to our Community" features achievements in water quality, infrastructure, innovations, sustainability and resilience, planning and preparedness, customer service and financial management. Most importantly, this report prominently features our essential workforce, who have been on the front lines during the pandemic.

During the past two years, the District met its commitment to ensure reliable service and respond to the most vital issues of our time. More than \$700 million was invested to upgrade critical infrastructure over the past two years. To protect our community and public health, the District was among the first agencies in California to cease water shutoffs, and we advanced research and testing of wastewater to detect COVID-19 among large populations. During this era of social distancing, the District harnessed more virtual tools to deepen our connection with our customers. These and many other achievements are among the highlights included in this report.

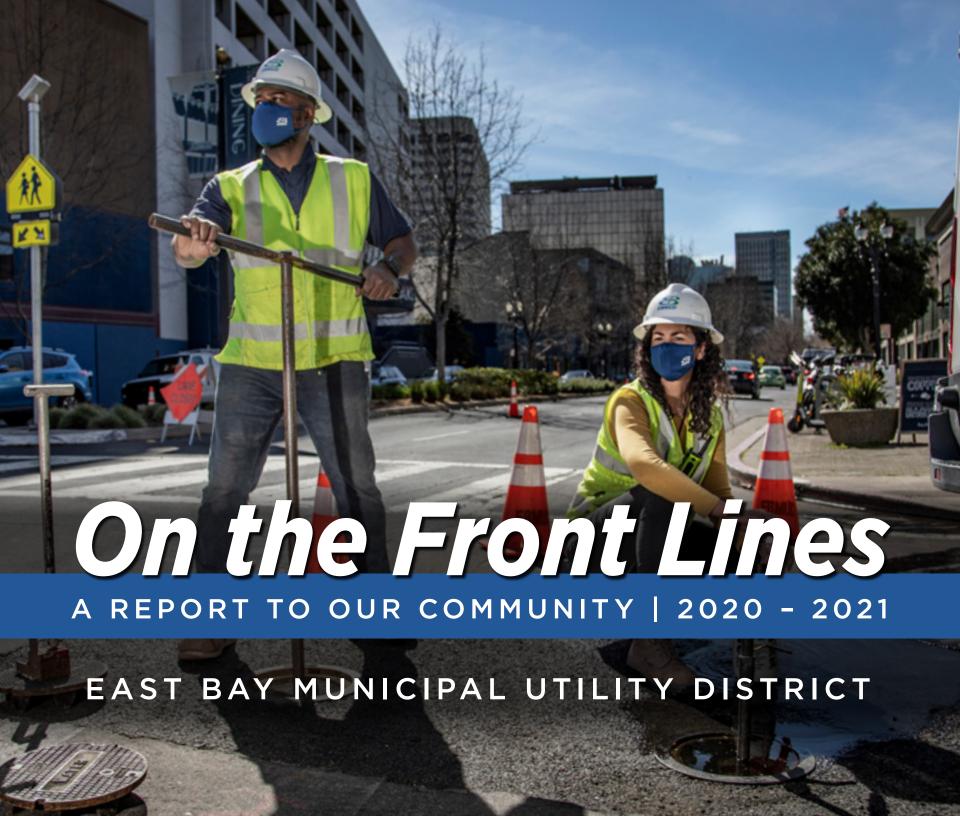
This digital report will be made available in mid-January at ebmud.com/BiennialReport, shared on social media, distributed to customers via Watersmart, and emailed to stakeholders and elected officials.

CCC:KAZ:tm

Attachment

I:SEC\2022 Board Related Items\Board Packets 2022\011122 Board Meeting\OGM - Biennial Report.doc





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1¢

average cost per gallon of water delivered



90%

of the water customers use comes from the Mokelumne Watershed in the Sierra Nevada



11.5 billion

gallons of water delivered from the Sacramento River during drought



50 million

gallons of wastewater treated daily



4,200 miles

of pipes maintained throughout the system



57,000 acres

of watershed land managed for the public



140 million

gallons of water delivered daily



MESSAGE FROM THE GENERAL MANAGER



A Blueprint for the Next Century

Grit. Forethought. Vision. This is how our founders mapped out a bold plan to bring reliable, high-quality water from the Sierra Nevada to the East Bay. As the East Bay Municipal Utility District approaches its

100th birthday, we're proud to be a public agency that drives change in a changing world.

EBMUD is on the front lines responding to the greatest issues of our time: the COVID-19 pandemic, climate change, racial justice and equality, access to water and aging infrastructure. Water is vital to the health of our community, economy and environment. These truths became even more evident during the pandemic as our essential employees provided continuous operations to protect public health. During the COVID-19 emergency, EBMUD not only worked to keep the water on, but was among the first agencies in California to cease water shutoffs to ensure water service for all.

EBMUD advanced projects to operate, maintain and repair the District's water system, and protect San Francisco Bay. More than \$700 million was invested in water and wastewater system improvements over the last two years. To advance climate actions, we've set ambitious greenhouse gas reduction targets. We're also partnering with UC Berkeley to advance infrastructure research and advance utility innovations.

EBMUD is on the front lines, responding to the greatest issues of our time.

There are no simple solutions when it comes to forging an equitable and inclusive organization, but our employees are spearheading important work to reduce and eliminate racial and gender bias within EBMUD. Until this happens, we will not rest.

EBMUD has a history of solving problems and we'll tap the same determination, innovation and vision that made this agency what it is today as we work to unlock solutions for the future.

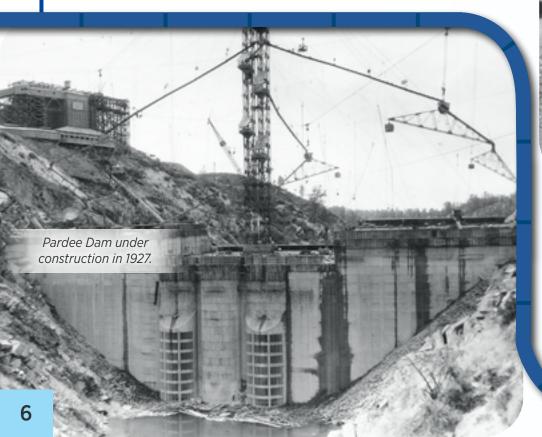
Clypra con

CLIFFORD C. CHAN, General Manager

History of EBMUD

1920s

▶ In 1923, frustrated by poor water quality and an unreliable water supply, residents voted to form the East Bay Municipal Utility District. ▶ Our founders secured water rights to the Mokelumne River and crews built Pardee Dam—the highest in the world at that time—and the Mokelumne Aqueduct, to bring water from the Sierra Nevada to the East Bay. ▶ The first water deliveries occurred on June 23, 1929.







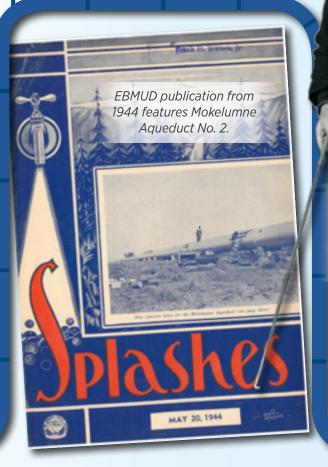
1930s

▶ Pardee Reservoir is filled for the first time on March 4, 1930. ▶ In 1936, EBMUD sold approximately 1,900 acres to the East Bay Regional Park District, which would become the Park District's original three parks at Upper Wildcat Canyon (Tilden), Temescal, and Roundtop (Sibley).

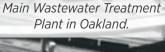
▶ The second of three Mokelumne Aqueducts, spanning 90 miles from the Sierras to the East Bay, is completed. ▶ EBMUD acquired Camanche water rights to the Mokelumne River. ▶ To address pollution in San Francisco Bay, voters called on EBMUD to provide wastewater treatment for cities along the eastern edge of the bay.

1950s

 Wastewater treatment operations commenced. ▶ Pardee Reservoir is opened to the public for recreation.



More women joined EBMUD's workforce during World War II, working as meter readers, bookkeepers and switchboard operators.



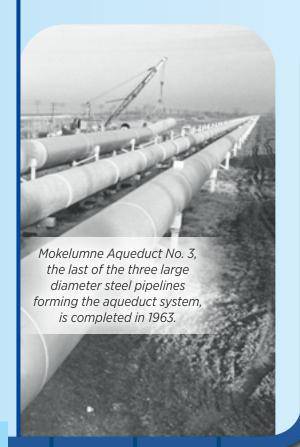
➤ The third and final Mokelumne
Aqueduct is completed. ➤ Camanche
Dam, in the Sierra foothills, and
Briones Reservoir Dam, in the East
Bay, are constructed. ➤ Lafayette
and Chabot Reservoirs are opened
to the public. ➤ EBMUD signed an
agreement with the U.S. Bureau of
Reclamation, opening the door for
supplemental water supplies.

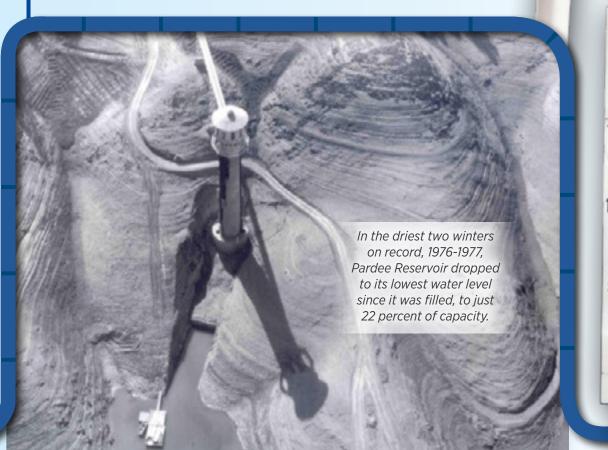


▶ 1977 was the driest year on record since Pardee Dam was constructed.

To manage the severe drought, EBMUD implemented the first mandatory water rationing in its history.
 ▶ EBMUD customers voted to add fluoride to the water.
 ▶ San Pablo Reservoir grounds opened for public recreation.

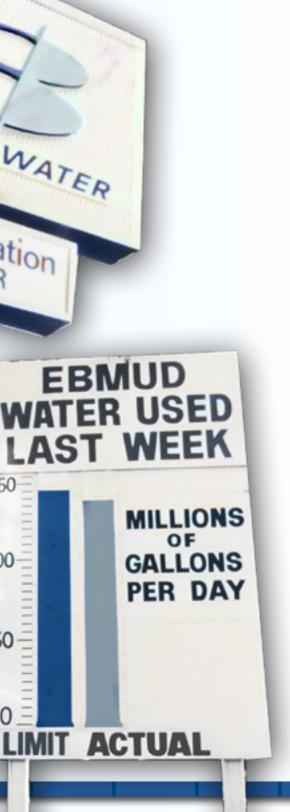
Secondary wastewater treatment facilities began operating at the Main Wastewater Treatment Plant.





EAST BAY

Administra CENTER



▶ EBMUD recorded the wettest year on record in 1983. EBMUD began generating hydropower at Pardee Dam in the Sierra foothills and producing renewable energy at the wastewater plant. A wet weather program was initiated to minimize sewer overflows. ▶ EBMUD's first Urban Water Management Plan was adopted. ▶ A policy to advance minority and women-owned businesses was adopted. ▶ A drought in 1988 leaves Camanche Reservoir at 2 percent of capacity. ▶ The Loma Prieta earthquake struck the Bay Area on October 17, 1989.



► The Seismic Improvement Program was adopted to strengthen the water system over 10 years. ►

EBMUD converted from chlorine to chloramine as the distribution system disinfectant. ▶ The North Richmond Water Reclamation Plant began recycled water service for industrial cooling. ▶ Strategic plans were adopted to safeguard future and current water supplies and protect the East Bay watershed and preserve habitats. ▶ A Joint Settlement Agreement was established between EBMUD, U.S. Fish and Wildlife Service, and California Department of Fish and Wildlife, which set flow criteria and water quality requirements on the Lower Mokelumne River. ▶ The Wet Weather Program was completed. ▶ Contract Equity Program adopted.



2000s

▶ EBMUD pioneered actions to protect water supplies from drought and natural disasters. EBMUD and its Sacramento County partners broke ground on the Freeport Regional Water Project. ▶ EBMUD installed the 11-mile Southern Loop emergency pipeline and completed the Claremont Tunnel seismic retrofit.

▶ Innovations in wastewater treatment resulted in a patent for processing biosolids. ▶ EBMUD and its customers managed through another drought.



Now



WATER CONSERVATION

The East Bay's wate

and into



RECYCLED WATER

EBMUD's recycled

the future



EBMUD, Contra



▶ EBMUD experienced extreme dry and wet years within this decade. ▶ Freeport Regional Water Project is completed and used for the first time to augment Mokelumne River water supplies. ▶ EBMUD helped advance federal legislation to remove lead from drinking-water plumbing. ▶ The Safe Harbor Agreement between EBMUD and U.S. Fish and Wildlife is signed, covering 28,000 acres of Mokelumne watershed. ▶ 37 miles of the Mokelumne River received California's Wild and Scenic River designation. ▶ Pichmond Advanced Provided Expansion (PARE)

▶ Richmond Advanced Recycled Expansion (RARE) facility increases recycled water capacity.

2020s

► EBMUD adapted operations and safety measures in response to the coronavirus pandemic, providing continuous service to protect public health. ► Vice President Kamala Harris, accompanied by Governor Gavin Newsom, toured the Upper San Leandro Water Treatment Plant in Oakland. EBMUD's Climate Action Plan outlined goals to reduce water and wastewater emissions by 2030. ► UC Berkeley and EBMUD launched the Center for Smart Infrastructure, a research hub that will apply cutting-edge technology



to address infrastructure challenges.

r usage is at or below 1970's levels, even though our population has increased about 34%.

water system, serving large irrigators and businesses, will reach six more cities by 2040.

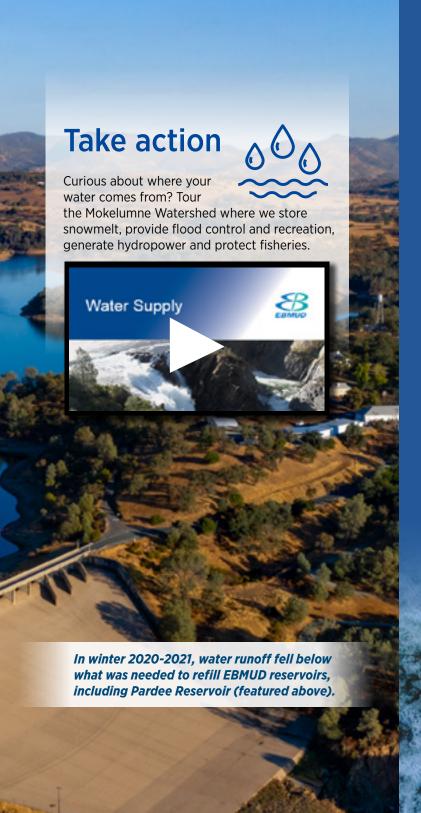
Costa Water District and other Bay Area water agencies are exploring expanding Los Vaqueros Reservoir to increase regional water supply.

Upholding High Water Quality

The science of H₂O

One of the most amazing things about the EBMUD water you drink is what's not in it. Bacteria, viruses, metals, dirt—these can all be naturally present in the water from the Sierra Nevada, Sacramento River and the East Bay before EBMUD collects it, treats it and sends it to your tap. Using ever-advancing science, technology and engineering, EBMUD filters out particles from raw water, disinfects it and distributes it through miles of pipes to your faucet.

Just think: EBMUD delivers about 140 million gallons of clean and safe water every day. Our treatment plant operators work 24 hours a day, seven days a week running specialized equipment. Monitoring equipment detects impurities, and a sequence of steps that include aeration, sedimentation, filtration, chemical disinfection and ozonation remove impurities or adjust water composition so that when it reaches your tap, our water meets regulatory and water quality guidelines. Teams of chemists, analysts and microbiologists perform more than 20,000 laboratory tests annually to ensure your drinking water is safe. Next time you take a sip from the faucet, remember—it's what's not in the water that makes it wonderful.



Major milestones

- In 2020 and 2021, your drinking water was consistently the highest quality, surpassing every public health requirement set by state and federal requirements. Read the annual water quality report at ebmud.com/waterquality.
- Low precipitation made Rain Year 2021 the driest year in the East Bay and the second driest year in the Mokelumne River Watershed. In April, EBMUD declared a Stage 1 drought, asking customers to voluntarily conserve 10 percent. From July to October 2021, EBMUD customers met the goal, conserving 10 percent compared to 2020.
- In October 2021, EBMUD began drawing about 11.5 billion gallons of water from the Sacramento River via the Freeport Regional Water Project, under our contract with the U.S. Bureau of Reclamation to provide supplemental supplies in dry years.
- In 2021, two key documents were updated and adopted.
 The Urban Water Management Plan updated EBMUD's
 projected water supplies versus water demands over the
 next 30 years, and the Water Shortage Contingency Plan
 provided a framework for prolonged drought response.
- In June 2021, the Mokelumne River became a cold water refuge for fish from the American River. About 500,000 fingerling steelhead from the American River were transferred to the Mokelumne River Fish Hatchery as a refuge from high temperatures, until they could safely return home. EBMUD partnered with the U.S. Bureau of Reclamation and the California Department of Fish and Wildlife to make this move possible.
- EBMUD biologists are continuously improving the natural habitat of the Mokelumne River to protect Chinook salmon and steelhead.

 Over the last two years, EBMUD created 2.26 acres of restored floodplain, planted 528 native trees and added 1,815 cubic yards of fish spawning gravel into the Mokelumne River. Three diversion screens were installed in 2021 to protect migrating juvenile salmon from entering into irrigation pumps as they travel to the ocean.

URBAN WATER

Infrastructure Investments

Investments you can taste

Following the last drought, EBMUD upgraded its treatment plants to improve the way we treat water from other sources outside of the Mokelumne River Watershed. Our facilities were ready just in time to treat supplemental water from the Sacramento River during the current drought.

EBMUD recently completed the \$46 million infrastructure upgrade to Upper San Leandro and Sobrante Water Treatment Plants – where approximately 11.5 billion gallons of Sacramento River water will be treated. The new systems are equipped with greater ozone capacity to treat different water sources and address taste and odor issues that may occur from warming temperatures that cause algae blooms. The upgrades are more energy efficient and reduce carbon emissions too.

Our Capital Improvement Program is focused on keeping up with the demands of drought, climate change and aging infrastructure. Expect more work to come. EBMUD spends roughly two-thirds of its annual budget on capital investments to stay ahead and keep our system running smoothly to better serve you. Construction projects are never easy, but they are worth it as we prepare for changing times ahead.



Major milestones Capital Investments in Fiscal Years 2020 & 2021



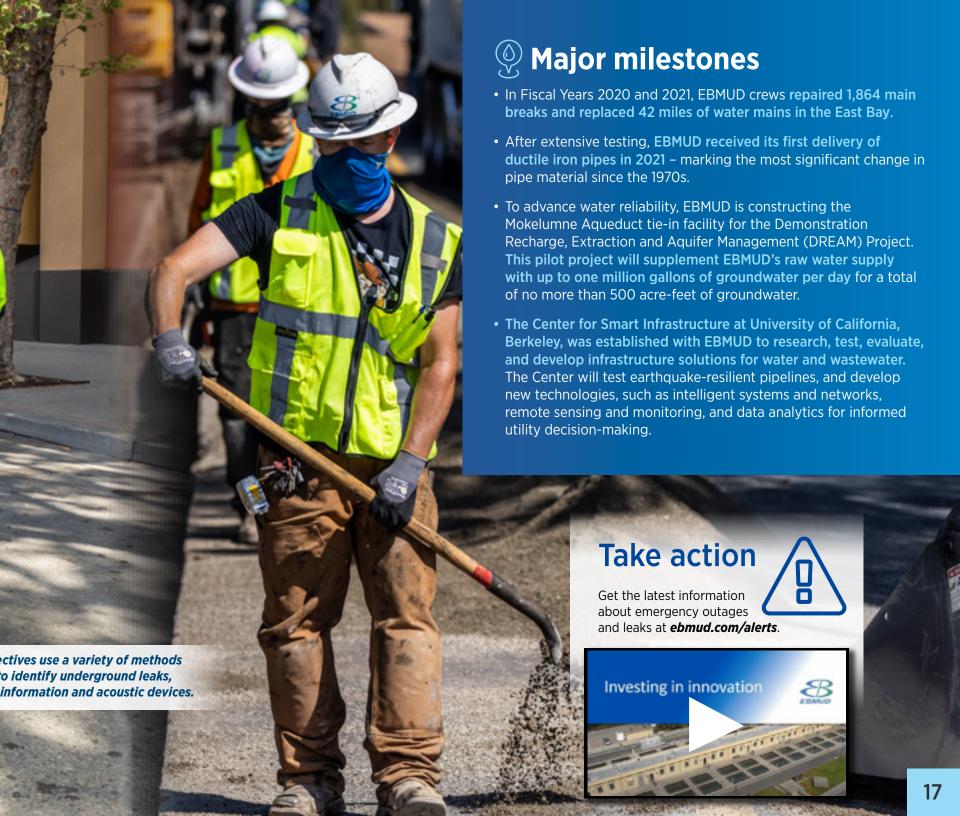






Main Wastewater Treatment Plant
Systems improved: 5 | Investment: \$22.5 million





Innovations in Wastewater

COVID-19 clues in wastewater

Researchers have long known that wastewater can provide health insights into a community. When the pandemic began, researchers mobilized and partnered with wastewater agencies including EBMUD.

In 2020, EBMUD began providing wastewater samples to Stanford University, UC Berkeley and the University of South Carolina to measure the concentration of the virus that causes COVID-19. These samples helped researchers develop ground-breaking methods to detect the coronavirus in wastewater. By analyzing wastewater, changes in disease prevalence in hundreds of thousands of individuals is assessed all in one sample.

EBMUD is part of a Bay Area epidemiology group which unites wastewater utilities, public health officers, and laboratories to analyze regional wastewater samples. EBMUD, along with wastewater utilities nationwide, contributed to a U.S. Department of Health and Human Services sampling program to help public health and medical experts make decisions regarding resources, shelter-in-place orders and outreach. EBMUD is a proud partner in this national effort, which takes our mission to protect public health to a whole new level.

Improving the way we treat wastewater

EBMUD uses this same ingenuity and creativity to address other significant issues, including recovering wastewater as a resource; adapting to climate change; finding cost-effective methods to reduce nutrient contributions to the San Francisco Bay; advancing the science on carbon sequestration through biosolids land application; using machine learning to identify sources of infiltration; and exploring new fuels and products from biogas.





Major milestones

- In 2021, EBMUD completed an Integrated Master Plan for the Main Wastewater Treatment Plant to address aging infrastructure, alleviate capacity constraints, prepare for new regulations, and adapt to a changing climate.
- In 2021, EBMUD's Resource Recovery Program celebrated its 20th anniversary. This program recycles organic waste, produces soil amendment and generates renewable electricity. The program has reduced greenhouse gas emissions equivalent to removing 22,000 cars from the road.
- EBMUD invested \$17 million to rehabilitate over one mile of large diameter sewer pipe in Oakland, which will ensure longterm reliability and keep rising groundwater out.
- Through Fiscal Year 2021, certified 540 miles of leak-free private sewer laterals to reduce inflow and infiltration during storms.



Sustainability and Resilience

E-mission possible

Our mission (statement) should we choose to accept it is "to manage the natural resources with which the District is entrusted." Mission accepted! In September 2020, EBMUD adopted an aggressive greenhouse gas emissions target by setting out to be carbon neutral for water operations by 2030 — 10 years prior to previous targets. To do this, we will reduce direct emissions, purchase and develop renewable energy sources, and operate more efficiently.

With green design in mind, we incorporated a solar (photovoltaic) system at Carisbrook Reservoir and Skyline Pumping Plant in Oakland.

In Orinda, we're developing our largest photovoltaic project, capable of generating approximately 5-megawatts (enough to offset about 8 percent of our total energy use). This project reached a major milestone in September 2021 – approval from the City of Orinda Planning Commission. The project design is expected to be completed in winter 2021 and construction to start in spring 2022. The project will provide zero emission electricity to District facilities throughout the service area.

These efforts add to our continuing achievements. The Main Wastewater Treatment Plant captures biogas and converts it into renewable energy. On the Mokelumne River, we generate renewable hydropower. EBMUD is setting ambitious emissions goals, seizing technologies and investing in green infrastructure – because we can't afford to wait.





Major milestones

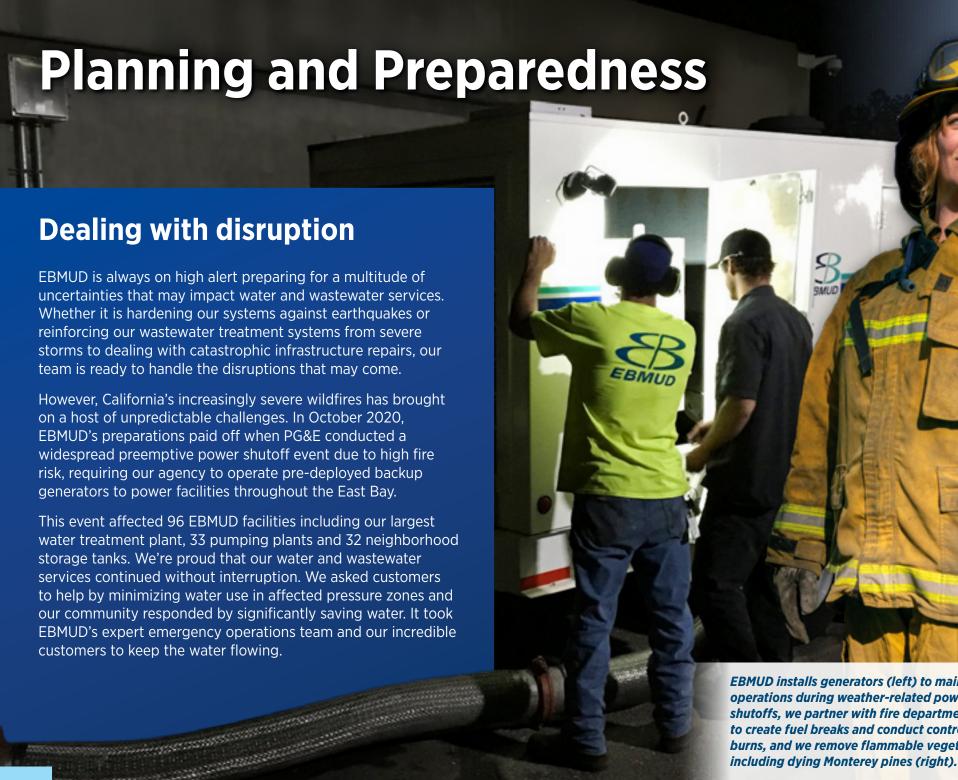


passenger vehicles are hybrid or all-electric, and we're using in most medium and heavy-duty vehicles. We're also the first ater utility to join CALSTART, an organization advancing clean and the first utility within our industry to sign the Drive to Zero advance zero- and near-zero-emission commercial vehicles.



EBMUD continued to convert irrigation sites to receive recycled water including a golf course in San Ramon and landscaped areas in Emeryville, offsetting drinking water use. EBMUD has the capability to serve 9 million gallons of recycled water daily to parks, golf courses, school grounds, refineries, construction sites and other non-potable uses.







Major milestones

- In November 2021, EBMUD purchased five portable generators to provide support at critical pumping plants and to offset future rental costs when Public Safety Power Shutoffs occur due to severe weather. The portable generators will be available for deployment for any power emergency.
- In December 2020, the Grizzly Peak Fuel Reduction Project was completed six years ahead of schedule. This \$800,000 project reduced fire fuels across 20 acres in the East Bay.
- EBMUD is escalating efforts to remove vegetation that can contribute to fuel load. We're responding to tree die-offs by removing 100 dead trees per week in fall and winter 2021, and we're collaborating with Moraga-Orinda Fire District via a CalFire grant to remove vegetation at an increased rate. All the while, taking into consideration sensitive habitats and protected species.
- All of EBMUD's state and federally regulated dams were inspected in 2020 and 2021, and the dams were found to be safe for operations. EBMUD also updated its Emergency Action Plans for Pardee and Camanche dams and held a virtual seminar and emergency stakeholder drill.
- Emergency Action Plans for EBMUD's local reservoirs were updated and approved by the state, which included updates to flood inundation maps for state regulated dams.
 Failure of any EBMUD dam is extremely unlikely. However, the maps provide information about a hypothetical failure of a dam or its related structures, such as a spillway or outlet, to assist in emergency preparedness and planning.

Customer Service

Get the help you need

There is no question about it—living in the East Bay can be expensive. Housing, food and services come at a premium. Utility costs add up, too. During the pandemic, tough times got even tougher. That's why EBMUD took action during the COVID-19 emergency to help our must vulnerable customers by suspending water shutoffs and restoring water service to all customers who were shutoff due to non-payment; and we did this before the governor required this of all water utilities. Looking beyond the pandemic, EBMUD is implementing a new policy to keep the water on to meet basic needs of customers severely behind on their water bills.

We also expanded enrollment in our Customer Assistance Program (CAP), which provides discounts on water and wastewater rates to income eligible households. If you qualify, the CAP can reduce your water bill by up to 50 percent and your wastewater bill by up to 35 percent. Our CAP has been proudly serving our community for nearly 35 years, where we have helped nearly 9,000 eligible households with their water bills.

Our priority is to ensure reliable water and wastewater services for our community, while keeping rates affordable. Even so, some customers may need extra help and that's where we come in. Give us a call at 866-403-2683, Monday-Friday, 8 a.m.-4:30 p.m., or visit **ebmud.com/CAP**.



1,220

water-saving devices and 678 conservation rebates provided



9,000

enrollees in the Customer Assistance Program



224,000

calls fielded by customer service representatives



Face time via screen time

While in-person activities like fairs and classroom visits took a back seat during the pandemic, new ways to connect and serve our customers took center stage.

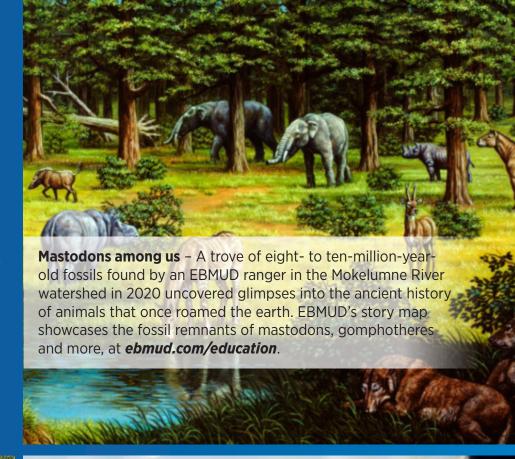
H₂O know – In 2020, EBMUD began email notifications to customers affected by emergency water outages. Sign up to receive emails by logging into your account and updating your email at *ebmud.com*.

Water-side chat - In 2021, EBMUD kicked off a "Water Wednesdays Speaker Series" to connect with the community on topics such as drought, wildfires, water quality and more. More than 700 participants tuned in. Watch the replays at ebmud.com/waterwednesday.

All aboard – In person Board of Directors meetings moved online in 2020, ensuring public access to water and wastewater policy discussions vital to the region. Meetings occur every 2nd and 4th Tuesday of the month at **ebmud.com/board-meetings**.

Cyber hikes – To encourage exploration of our watershed land and 90 miles of local trails, EBMUD launched an interactive East Bay trails map that shows detailed trail locations at **ebmud.com/eastbaytrails**.







Essential Workforce

Always here for you

EBMUD's work is essential. Every one of EBMUD's employees has sworn a civil service oath, no matter the disaster. If an earthquake strikes, we're prepared to make repairs. If droughts loom, we're ready to secure water sources, mobilize community conservation and harness recycled water. During storms, we're on guard to protect San Francisco Bay from untreated wastewater. And during fire danger periods, when homes, businesses and critical facilities may be de-energized, EBMUD is working through public safety power shutoffs, to ensure the water never stops flowing.

The pandemic underscored EBMUD's role in safeguarding the public health of customers with each hand wash and every flush. We adapted to ensure water and wastewater operations continued uninterrupted. We activated our Emergency Operations Team and adapted to a changing world. We even developed our own hand sanitizer and sterilization methods for masks when both were in short supply to keep our essential employees safe. EBMUD worked to treat your water and wastewater to the highest standards as we forged ahead to improve the systems that we all rely on.

It takes a team of dedicated employees to deliver unfailing service, and that is our commitment to you. We will work through every emergency to serve you, come what may.

Take action

Join EBMUD and be part of a team committed to protecting public health and the environment. Check out our latest job listings and apply today. More info at *ebmud.com/jobs*.





Major milestones

- EBMUD hired 363 new employees in the last two years, approximately one-fifth of our workforce.
 We participated in 91 events to support a diverse pipeline of candidates.
- During the pandemic, EBMUD staff mentored and supported our future workforce, hosting our first High School Virtual Internship Program. Other learning opportunities provided students with maintenance and machining training in a socially distant manner.
- EBMUD sponsored the continuing education of 22 graduates in Fiscal Years 2020 and 2021 as part of a cohort program developed with Laney College, for a total of 43 student graduates since the program began in 2017.
- EBMUD launched a Diversity, Equity, and Inclusion Strategic Plan with corresponding equity initiatives to foster fair and just practices within EBMUD and our community.



Managing Finances

Investing with you in mind

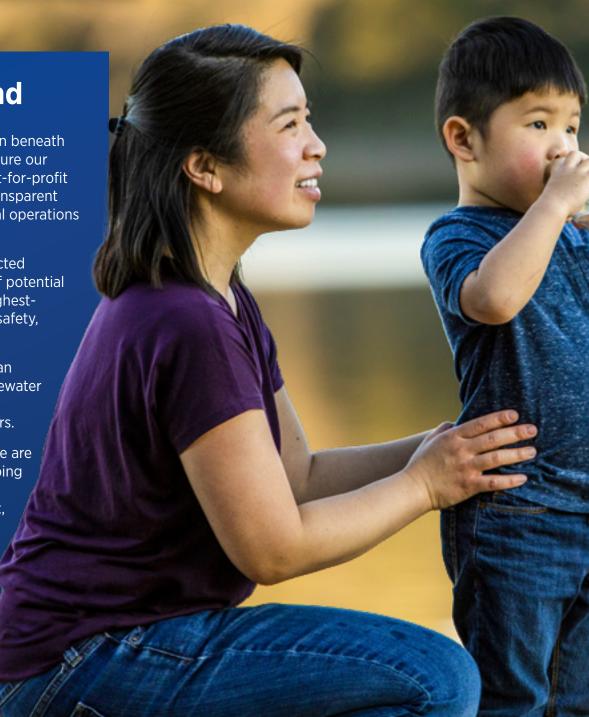
Although much of EBMUD's infrastructure is hidden beneath streets in your neighborhood, we work hard to ensure our financial decisions are visible to everyone. As a not-for-profit public utility, we are committed to prudent and transparent management of revenue collected to fund essential operations and capital improvements.

Our budget is developed and approved by our elected seven-member Board after analyzing a portfolio of potential infrastructure investments and determining the highestpriority projects based on regulatory compliance, safety, cost-effectiveness and service improvement.

Over the last two years, we have invested more than \$700 million to improve our aging water and wastewater infrastructure and are planning an additional \$2.25 billion in vital improvements over the next five years.

That means every time you see an EBMUD crew, we are hard at work rehabilitating treatment plants, pumping plants and reservoirs, and replacing and repairing pipelines. At our Main Wastewater Treatment Plant, we're focused on upgrades to pump stations and sewer interceptors to protect the ecosystem of San Francisco Bay.

Thank you for entrusting us to keep EBMUD's system running strong now and into the next century.



Water: Your rate dollar at work

EBMUD provides high-quality drinking water for 1.4 million customers in Alameda and Contra Costa counties.



Infrastructure improvements

Pipelines, reservoirs, treatment plants, pumping plants



Water service

Storage, treatment, delivery, system maintenance



Administration Internal support services



. .

Call center, education, water conservation, billing, collection



Natural resource management

Public recreation, watershed management, fisheries program



Regulatory compliance

Ensures all drinking water standards are met or surpassed



\$1 total

Wastewater: Your rate dollar at work

EBMUD treats approximately 50 million gallons of wastewater daily for 740,000 customers along San Francisco Bay, protecting public health and the environment.

42¢

Infrastructure improvements

Wastewater treatment plant facilities, sewer interceptors

Wastewater treatment

Operations and maintenance of main treatment plant and wet weather facilities



Environmental/regulatory compliance

Pollution prevention, water quality lab, inflow/infiltration control



Administration

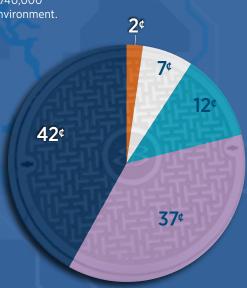
Internal support services



Customer service

Call center, education, billing, collection





Major milestones

- A \$2.25 billion budget was adopted for Fiscal Years 2022 and 2023, of which 64 percent is dedicated to capitalinvestments.
- Fitch Ratings affirmed its AA+ ratings on both the District's Water Revenue Bonds and Wastewater Revenue Bonds. EBMUD has one of the highest creditratings among public utilities in the country.
- EBMUD received the Government Finance Officers Association National Award for Excellence for its Fiscal Years 2020 and 2021 Budget-in-Brief publication, available at ebmud.com/rates.







EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 11, 2022

TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager

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

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

and Summary of 2021 Committee and Workshop Topics

The attached tables provide a prospective and a retrospective look at Board committees and workshops. The first table provides a forecast for January 2022 through June 2022, identifying items staff proposes to bring before committees, as well as upcoming workshops and events. The second table lists the items presented to Board committees, as well as workshops and events, held between July 2021 and December 2021.

CCC:KAZ:dso

Attachments

I:\Sec\2022 Board Related Items\011122 Board Agenda Items\OGM-Ctte Forecast Summary July 2021-June 2022-.docx



2022 BOARD COMMITTEES AND WORKSHOPS

Six-Month Forecast (January 2022- June 2022)

	Planning 2 nd Tuesdays	Leg/HR 2 nd Tuesdays	Finance 4 th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
JANUARY	Wet Weather Consent Decree Update	 Legislative Update Federal Initiatives for 2022 Diversity, Equity, and Inclusion Strategic Plan 	Cancelled	Annual Biosolids Management Update Green Fleet Roadmap Proposal for Residential High Efficiency Rebates	 Los Vaqueros Reservoir JPA (1/12) FRWA (1/13) Retirement Board (1/20) Diversity, Equity, and Inclusion Strategic Plan Workshop (1/25) UMRWA (1/28)
FEBRUARY	 Information Technology Project Implementation EBMUD 100th Anniversary Update Semi-Annual Regulatory Compliance Update 	Legislative Update Investment Consultation Services/Deferred Compensation	 Monthly Investment Transactions Report Updates on Upcoming Bond Sales Semi-Annual Internal Audit Report Interest Rate Swap Portfolio Summary Report Quarterly Financial Reports 	No Meeting	 DERWA (2/7) Customer Assistance Program Workshop Update (2/8) Los Vaqueros Reservoir JPA (2/9) Long-Term Water Supply Workshop (2/22)

	Planning 2 nd Tuesdays	Leg/HR 2 nd Tuesdays	Finance 4th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
MARCH	Upper San Leandro and Sobrante Water Treatment Plant Maintenance Reliability Chemical Systems Safety Improvements Project Update Semi-Annual Water Quality Update Private Sewer Lateral Program Update Education Program Update	Legislative Update	Monthly Investment Transactions Report FY22 Semi-Annual Budget Performance Report Annual Update on Employee Retirement System	No Meeting	 Los Vaqueros Reservoir JPA (3/9) Retirement Board (3/17) DERWA (3/28)
APRIL	 Annual Recreation Report Oakport/Willow Update 	Legislative Update	 Monthly Investment Transactions Report System Capacity Charge Implementation Update Quarterly Financial Reports Investment Policy Review Authorize Bond Issuances 	Wastewater Renewable Electricity Sales Agreement Annual Integrated Pest Management Update	 Los Vaqueros Reservoir JPA (4/13) FRWA (4/14) UMRWA (4/22)
MAY	 Advanced Metering Infrastructure Business Case Analysis Long-Term Infrastructure Plan and Resource Needs 	Legislative Update	Monthly Investment Transactions Report	No Meeting	 Los Vaqueros Reservoir JPA (5/11) DERWA (5/16) Retirement Board (5/19) FY22 & FY23 Mid- Cycle Budget Workshop (5/24)

	Planning 2 nd Tuesdays	Leg/HR 2 nd Tuesdays	Finance 4 th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
JUNE	No items scheduled at this time	Legislative Update	 Monthly Investment Transactions Report Advanced Metering Infrastructure Business Case 	No Meeting	• Los Vaqueros Reservoir JPA (6/8)



2021 BOARD COMMITTEES AND WORKSHOPS

Six-Month Summary

(July 2021 – December 2021)

	Planning	Leg/HR 2 nd Tuesdays	Finance	Sustainability/Energy	Workshops/Events
JULY	 2nd Tuesdays Pipeline Rebuild Program Update Trail User Permit Review Research and Innovation at EBMUD Excessive Water Use Penalty Ordinance Amendment 	Legislative Update	Cancelled	No Meeting	• Retirement Board (7/15) • UMRWA (7/23)
AUGUST	 Research and Innovation at EBMUD Groundwater Sustainability Plan Update Dam Safety Program Annual Report Dump Truck Services 	Cancelled	 Monthly Investment Transactions Report Quarterly Financial Reports Water Infrastructure Finance and Innovation Act Loan Update Annual Internal Audit Report Adopt New Policy and Approve Revisions to Existing District Policies 	No Meeting	Redistricting Ad Hoc Committee (8/24)

	Planning 2nd Tuesdays	Leg/HR 2nd Tuesdays	Finance 4th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
SEPTEMBER	Orinda Water Treatment Plant's Disinfection Improvements and Chemical Systems Safety Improvements Projects Update Water Quality Program Semi- Annual Update Main Wastewater Treatment Plant Seismic Retrofit Program Update Regulatory Compliance Semi- Annual Report — January 2021 through June 2021 Camanche — Riverview Fire Protection	Cancelled	Monthly Investment Transactions Report Fiscal Year 2022 Insurance Summary	No Meeting	 Retirement Board (9/16) DERWA (9/27) Redistricting Ad Hoc Committee (9/28)

	Planning 2nd Tuesdays	Leg/HR 2nd Tuesdays	Finance 4th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
OCTOBER	Fontaine Pumping Plant Replacement Project Update and Availability of the Draft Mitigated Negative Declaration Interceptor Level Monitoring Station and Overflow Structure Improvements Project Wet Weather Program Management Update Water System Capital Construction Support Agreement for Fiscal Year 2022-2023	Cancelled	 Financial Review of Fiscal Year 2021 Fiscal Year 2021 Key Performance Indicators Report Monthly Investment Transactions Report Quarterly Financial Reports Fiscal Year 2021 Annual Power Sales Report 	Resource Recovery Program Update Renewable Energy Update 2020 Greenhouse Gas Inventory	UMRWA (10/1) Redistricting Ad Hoc Committee (10/26)

	Planning 2 nd Tuesdays	Leg/HR 2 nd Tuesdays	Finance 4 th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
NOVEMBER	Wastewater Pretreatment and Pollution Prevention Program Update South Interceptor Special Structures Rehabilitation Phase 1 Update Main Wastewater Treatment Plant Odor Control Program Update Mokelumne Watershed Routine Maintenance Project Update and Final Mitigated Negative Declaration Marin Municipal Water District Drought Assistance Update and Draft Principles of Agreement	Cancelled	Monthly Investment Transactions Report Employee Reimbursements of at Least \$100 – June 30, 2021 Customer Assistance Program Funding	No Meeting	 Los Vaqueros Reservoir JPA (11/10) Retirement Board (11/18) Redistricting Ad Hoc Committee (11/23)

	Planning 2 nd Tuesdays	Leg/HR 2 nd Tuesdays	Finance 4 th Tuesdays	Sustainability/Energy Quarterly	Workshops/Events
DECEMBER	DSRSD/EBMUD Recycled Water Authority (DERWA) Side Agreement Oakland Inner Harbor Pipeline Crossing Update Fiscal year 2021 Annual Readiness Report	 State Legislative Initiatives for 2022 Legislative Year Contract Equity Program Annual Report Fiscal Year 2021 	Cancelled	No Meeting	 Special Closed Session (12/2) Los Vaqueros Reservoir JPA (12/8) Special Retirement Board (12/17)



EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 11, 2022

MEMO TO: Board of Directors

FROM: Clifford C. Chan, General Manager

SUBJECT: 2021 Interdepartmental Committees Annual Reports

SUMMARY

EBMUD Interdepartmental Committees oversee, review, and coordinate issues related to various District functions. As part of their ongoing duties, these committees report their activities annually to the General Manager. Below is a list of the 2021 committees and their Chair(s).

- Art Committee, Charmin Baagee, Chair
- Consultant Contract Negotiations Committee, Hasan Abdullah, Chair
- Diversity Committee, Jennella Sambour-Wallace and Steven Currie, Co-Chairs
- Internal Contract Equity Advisory Committee, Beverly Johnson, Chair
- Pipe Committee, Carlton Chan, Chair
 - o Materials Review Committee, Kelley Smith, Chair
- Sustainability Committee, Chandra Johannesson and Alice Towey, Co-Chairs
- Water Quality Committee, Susan Teefy, Chair
- Water Resources Committee, Lena Tam, Chair

The 2021 reports summarizing the objectives, accomplishments, and future work plans of each committee are attached for your information.

CCC:jmj

Attachments (9)



ART COMMITTEE ANNUAL REPORT - 2021

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

The Art Committee mounts approximately seven exhibits each year. Three of the exhibits are coordinated in conjunction with the month-long celebrations of Hispanic Heritage, Black History, and Asian American Heritage. On alternate years, one of the regular exhibits showcases the creations of EBMUD employees in what is known as the EBMUD Employee Arts Biennale.

Additionally, the Art Committee sponsors an annual one-day Employee Arts and Crafts Fair highlighting the crafts produced by EBMUD employees. This year the event was cancelled due to shelter-in-place orders prompted by the COVID-19 pandemic. The Art Committee is hopeful this event will return late 2022.

Each of the 7-week long art exhibits is coordinated by one or two committee members with support from the entire committee. Responsibility for coordination is distributed amongst committee members so that each member works on one or two shows per year. Committee members are responsible for:

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

Art Committee Annual Report – 2021 January 11, 2022 Page 2

2021 Accomplishments

In 2021, the Art Committee continued to focus on maintaining relationships with prospective exhibiting artists.

The COVID-19 pandemic and the Alameda County shelter-in-place mandate continued to result in the closure of the administrative offices to the general public and widespread telecommuting for District employees. Therefore, the Art Committee postponed all exhibitions and Art Committee programs until further notice. We are hopeful that discussions on future exhibitions and programming opportunities will resume late spring 2022.

2022 Work Plan

In 2022, the Art Committee will focus on how to re-envision local artist engagement during a time when social distancing may still be required. The committee will discuss alternative art programming strategies as well as additional health and safety guidelines that may be enacted once exhibit installations and in-person artist receptions resume. The Art Committee understands a revamp and safe continuance of the District's public art program will require interdepartmental collaboration and guidance. The Art Committee is hopeful that collectively an even better and more thoughtful program can be built. The committee remains committed to the artist community and looks forward to helping the District extend its reach, especially during a time when it is most needed.

The Art Committee will continue to partner with Affinity Groups, Employee & Organizational Development, and the Human Resources Department to ensure programming is inclusive and District employees are aware of opportunities to engage with and celebrate local artists. Proposed ideas include onboarding new members who work in locations outside of the Administration Building and brainstorming ideas to make Art Committee events more accessible to everyone.

Committee Composition

Charmin Baaqee, Assistant Engineer (Chair) Julie Cadigan, Administrative Clerk Linda Christo, Executive Assistant II Rischa Cole, Secretary of the District Kristen Font, Wastewater Control Rep Anya Kamenskaya, Water Conservation Tech Andrea Pook, Senior Public Information Rep Joey Smith, Water Conservation Tech

Adjunct members:

Jonathan Salmon, Assistant General Counsel, Legal Advisor Michael Bergstrom, Graphic Design Supervisor

CONSULTANT CONTRACT NEGOTIATIONS COMMITTEE ANNUAL REPORT - 2021

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

The CCNC meets on an ad-hoc basis to coordinate implementation of the current District-wide PSCR and plan for the development of the upcoming PSCR. In 2021, the committee members continued engagement with the Materials Management Information System replacement project manager regarding options to include tracking requirements in the new system. In 2022, the committee plans to continue work on evaluating the goals and objectives and implementing the PSCR program.

2021 Accomplishments

- Awarded 1 percent to Small Businesses and 20 percent to Local Businesses (only four PSCR contract awards for Fiscal Year 2021 (FY21)).
- Achieved 75 percent (3 of 4) utilization of the PSCR by District project managers for PSCR eligible contracts for FY21.
- Worked to implement a process within the District's Oracle Enterprise Resource Planning system (went live in fall 2021) for the continuous update of the Consultant Agreement Spreadsheet History (CASH) as a part of the contract-award process.

2022 Committee Work Plan/Goals

In 2022, the Committee has the following goals:

- Revise the current PSCR, including evaluation of expanding the number and types of disciplines to accommodate the potential need for increased professional services contracting opportunities starting in 2022.
- Continue work on the evaluation of PSCR goals and objectives, and how to update the PSCR
 process with input from Senior Management Team and stakeholders. Updates to the PSCR would
 reflect the District's current engineering contracting needs, current consultant landscape, District
 values, and contract equity objectives while being consistent with the District's Strategic Plan,
 forthcoming Diversity, Equity, and Inclusion Strategic Plan, and contracting codes.
- Continue to seek opportunities to improve performance for ethnic minority and women-owned firms (FY21 actual level of participation was 100 percent for white men).
- Develop professional services contracting out guidelines to include contract development, the
 contracting out process, negotiation of professional services agreements, and contract review and
 approval processes.

Consultant Contract Negotiations Committee Annual Report – 2021 January 11, 2022 Page 2

Committee Members

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

DIVERSITY COMMITTEE ANNUAL REPORT – 2021

The Diversity Committee (DC) is responsible for ensuring progress toward the vision of the District's diversity and inclusion (D&I) initiatives, and particularly the D&I Action-Oriented Programs outlined in the annually updated Affirmative Action Program (AAP) under the Diversity and Inclusion Office (DIO).

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

The DC acts as an advisory body to the DIO and the EBMUD Senior Management Team (SMT) on matters regarding D&I strategy related to:

- Hiring, recruitment, and retention
- Workforce development and outreach
- Employee engagement
- Intercultural and interpersonal communications
- Cultural awareness, understanding, and appreciation

The DC advances the D&I Action-Oriented Programs contained in the annual AAP. The DC ensures D&I activities are closely aligned with District's strategic priorities and are responsive to the diverse needs and capabilities of the District workforce. In its recommendations, the DC considers methods to collaborate and share resources with District Departments, Affinity Groups, and Interdepartmental Committees and Clubs to ensure effective implementation of strategies and activities identified in the AAP Action Oriented Program.

Objectives

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

Diversity Committee Annual Report – 2021 January 11, 2022 Page 2

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

As the Diversity, Equity, and Inclusion (DEI) Strategic Plan was being developed, many of the DC members were serving on the Equity Core Team to advise on the development of the Strategic Priorities. There was also significant DC and Equity Core Team overlap with the staffing for the Racial Equity and Justice (REJ) Strategy Task Forces. The DC, as a whole, has been briefed quarterly on REJ and DEI Strategic Plan processes and has provided regular review and input on the drafting of the DEI Strategic Plan.

As the DEI Strategic Plan is realized, the responsibilities and objectives of the DC may be modified to allow for greater input and participation from the DC members in advising on the implementation of the plan's strategic priorities.

2021 Accomplishments

DEI Strategic Plan

- SMT and the Core Team completed the Foundational Education training and have been organized into Pilot Project teams for pilot-implementation of five key strategic initiatives: Hiring and Recruitment, Promotion & Retention, Contracting & Procurement, Capital Improvement Projects, and Community Engagement.
- DC reviewed and provided feedback on initial findings and recommendations from Winters Group.
- DC has provided ongoing feedback and guidance to help inform the drafting of the DEI Strategic Plan including informing on briefings on the DEI strategic pillars.

Racial Equity and Justice (REJ) Project

• REJ Steering Committee and seven task forces completed recommendations for addressing the eight Strategic Areas identified in the EBMUD Board Resolution.

Affirmative Action Plan Report

• Diversity Committee provided feedback and recommendations around implementation of the annual AAP.

2022 Goals

2023 Work Plan/Goals

- Develop 2023 work plan to be informed by the annual D&I Action-Oriented Programs and the DEI Strategic Plan.
 - The Plan was initially presented to the Board on November 23, 2021, with updates planned for January 11, 2022 and January 25, 2022.
- Provide feedback and recommendations on updated AAP goals/strategy.

Diversity Committee Annual Report – 2021 January 11, 2022 Page 3

Committee Members

- Executive Sponsor: Derry Moten, Special Assistant III to the General Manager (Since September 2021)
- Chair: Jennella Sambour-Wallace, D&I Officer (Since August 2021)
- Co-Chair: Steven Currie, Human Resources Analyst II

Subject Matter Experts:

- Laura Acosta, Director of Human Resources
- Richard Jung, Recruitment and Classification Division
- Jaisha White, ODEC/Employee & Organizational Development Representative

Department Representatives:

- Douglas Higashi, Wastewater Department
- Barry Gardin, Finance Department
- Scott Hill, Natural Resources Department
- Latrice King, Customer & Community Services Department
- Sue Leiga, Information Systems Department
- Antonio Martinez, Operation & Maintenance Department
- Michiko Mares, Engineering Department

Affinity Group Representatives:

- Lillian Leung, APEA
- George Cleveland, Raining Pride
- Rischa Cole, Black Employee Network
- Jose Lopez, Fuerza Latina

Additional Invitees:

- EBMUD Toastmasters Representatives: Dawn Benson, Stella Tan
- EBMUD Sustainability Committee Representatives: Chandra Johannesson, Alice Towey
- EBMUD Values Advocates Representatives: Sean Barrow, Delorean Johnson
- EBMUD UDEA Representative: Dorothy Collier
- EBMUD Art Committee Representative: Charmin Baagee



INTERNAL CONTRACT EQUITY ADVISORY COMMITTEE ANNUAL REPORT – 2021

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

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

The committee typically convenes bi-annually to address contracting issues and/or other agencies' contracting diversity and local hire initiatives that could positively impact the District's CE Program and the local business community.

2021 Accomplishments

- Implemented new CE Program enhancements:
 - o Expanded local business definition to include Sacramento County
 - o Began monitoring and reporting local hires on construction projects by District wards
 - Revised CE proposal rating sheet for professional services to better reflect intent of compliance with CE Guidelines
- Promoted and participated in outreach activities:
 - o Four business forums
 - o Seventy-four community outreach events
- Promoted management and staff advocacy for the CE Program

2022 Work Plan/Goals

For 2022, the committee will continue to review and monitor contract participation and workforce utilization and recommend any newly identified initiatives to:

- Incorporate the goals from the pending Diversity, Equity and Inclusion Strategic Plan including aggressive outreach and business development (education) efforts.
- Reach the District's goal of 50 percent small business participation for contract awards of \$80,000 or less.
- Achieve all three District's overall contracting objectives:

White Men
 White Women
 Ethnic Minorities
 25%
 25%

- Promote local hiring on District construction projects while achieving 50 percent good faith goals on all construction projects over \$500,000 of which 30 percent will be local hires from the county(ies) directly impacted by the project.
- Finalize development of a new Professional Services Consultant Roster and contracting guidelines with the Consultant Contract Negotiations Committee.
- Pilot targeted professional services small business set-aside for contracts of \$250,000 or less.
- Launch internal and external awards/recognition program.

Internal Contract Equity Advisory Committee Annual Report - 2021 January 11, 2022 Page 2

• Market *Elsie*, the new Financial Information System (FIS), and incorporate streamlined reporting and outreach capabilities.

Committee Members

Beverly Johnson, Contract Equity Administrator (Chair)
Carlton Chan, Engineering Manager
Anna Gunderson, Attorney III
Doug Higashi, Manager of Wastewater Engineering
Linda Hu, Manager of Water Supply Improvements
Rick Hu, Principal Management Analyst
Kelley Smith, Manager of Purchasing
Serge Terentieff, Engineering Manager

MATERIAL REVIEW COMMITTEE ANNUAL REPORT – 2021

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

2021 Accomplishments

New team members were added to the committee, the review of various materials, and an emphasis placed on streamlining and standardization. Below is a synopsis of some of the items which were covered.

The MRC reconstituted with the following stated goals:

- 1. Finalize the current membership list and maintain an open call for new members.
- 2. Build a list of the existing materials gaps/needs/issues and ensure, to the extent possible, that all products have broad applicability.
- 3. Create a more formal decision-making/documentation process for the vetting and approval of materials which is straightforward and gives a voice to all team members who will be using the materials.

Regulatory Requirements

Worked with the Specifications Section and Plant Inspection to add requisite regulatory requirements (NSF 61/no lead/zinc, etc.) for materials in contact with drinking water to all District bid documents, requirements, PO Terms, etc.

Materials Reviews and Resolutions

- 1. Investigated and resolved issues with Muller CL-12 including
 - a. Fabricating in field
 - b. Hot tapping equipment for 4"-12" taps
 - c. Standard tapping "T"
- 2. Tested new and heavier duty traffic rated boxes in the field in conjunction with installation and meter maintenance teams, finding that installs and durability were very good; however, meter covers for heavy duty boxes continue to be an ergonomic issue. Will test additional boxes in coming months.
- 3. Resolved pipe lube issues related to water quality and materials warranty including "Black Swan" compatibility with chloramines, ensuring that crews use subaqueous with TR Extreme, and that all ductile iron pipe from US pipe is delivered from Oakport to the field

Material Review Committee Annual Report – 2021 January 11, 2022 Page 2

with the lubricants provided by US Pipe and that crews know to use only the US Pipe recommended lube with ductile iron pipe.

4. Yuuki Tanaka gave a presentation on stainless steel service saddles and partially corrugated stainless steel for service laterals. The group has added these materials to the testing and discussion topics for future meetings.

Continuation of Ductile Iron (DI) Pipe Materials Support

The MRC continued tracking and discussing items such as leaks, appropriate appurtenances (gaskets, lube, etc.), installation process, chlorination, jumpers/bonding, procurement and appropriate stock levels.

The MRC will continue to support the ongoing implementation of DI pipe by:

- 1. Ensuring that new and replacement pipeline planning accounts for drawing down the existing stock of steel ML&PCS pipe to a reasonable on hand amount in order to account for repairs and the need for steep pipe in specific applications. This logic will be applied to any appurtenances necessary for steel pipe installs.
- 2. Ensuring the appurtenances necessary for DI pipe installs and maintenance are appropriately stocked and meet District standards/crew needs.

2022 Goals

The MRC will continue to be a forum for information distribution and discussion of issues related to new product evaluation, existing product issues/modifications, product streamlining, and changes to District specifications.

In 2022 the MRC will look to continue these efforts by prioritizing the following:

- Enhance information exchange via the MRC Splashpad pages.
 <u>https://splashpad.ebmud.com/work-center/departments/finance/purchasing/warehousestores/material-review-committee</u>
- Invite product and industry experts to MRC meetings to educate and inform about new products and processes.
- Invite District team member who are not on the MRC to present, propose and discuss products and innovations.

Committee Members

Kelley Smith, Manager of Purchasing (Chair)
Sharon Sarmenta, Senior Administrative Clerk
Johnathon Kruger, Material Storage Foreman
James Eggenberger, Associate Corrosion Control Specialist
Keith Packard, Associate Corrosion Control Specialist
Jorge Valencia, Materials Specialist
Roberts McMullin, Senior Civil Engineer

Material Review Committee Annual Report – 2021 January 11, 2022 Page 3

Jonathan Tham, Senior Civil Engineer
Hank Williams, Associate Civil Engineer
Neal Brown, Mechanical Supervisor
David Correa, Material Storage Foreman
Tom Reinhart, Material Storage Supervisor
Arnold Gacusan, Materials Specialist
Perry Foreman, General Pipe Supervisor
Mobil Cox, Construction/Maintenance Superintendent
Donovan Szarka, Assistant Construction/Maintenance Superintendent
Becky Sharpe, Purchasing Contract Supervisor
Rochelle Roybal, Buyer II
Adam Clarke, Supervising Construction Inspector
Ron Monteforte, Supervising Plant Inspector



PIPE COMMITTEE ANNUAL REPORT – 2021

The purpose of the Pipe Committee is to establish and maintain standards, specifications, procedures, and practices related to the wide range of subjects involving water and reclaimed water distribution system pipelines and appurtenances. The Pipe Committee is chartered to meet a minimum of three times per year. This summary report describes the committee's accomplishments in 2021 and goals for 2022.

2021 Accomplishments

Pipe Materials and Appurtenances

<u>Ductile Iron (DI)</u>. The specification for fabricating DI pipe 4-inch through 16-inch with restrained joints and fittings was finalized in 2020 and AqueoUS Vets was awarded a contract to supply TR-Flex restrained joint pipe manufactured by U.S. Pipe. Purchasing has input all stores code for DI pipe and the first order was delivered to Oakport March 2021. Corrosion Section is currently working with PCE staff on pin brazing equipment and training to bond the DI pipe for continuity. Draft installation specifications and standard drawings were completed in early 2021. The specifications and standard drawings are being reviewed by all stakeholders. All comments will be incorporated in early 2022.

<u>iPVC.</u> iPVC had two failures during tapping. Both failures were longitudinal cracks. The failed sections of pipe were sent back to the manufacturer for materials testing. The cause of the failures is unknown at this time. District crews have developed a list of key best practices to implement in future taps such as drilling with a pilot bit, not using excessive force when drilling, and ensuring the shell cutters are sharp. In addition, staff will pilot new and improved tapping machines in 2022. U.C. Boulder completed several tests (tension, compression, and bending) on iPVC using internal self-locking gaskets. The results of the tests were submitted to the District in June 2021 and plans to complete pilot installations were implemented in October 2021.

High Density Polyethylene (HDPE). Staff participated in a virtual HDPE training through the Municipal Advisory Board. The virtual training was challenging for District staff. HDPE may still be used on Applicant projects until the iPVC and Ductile Iron Specifications and Standard Drawings are available. Once the new standards are developed, HDPE will be used in limited situations, such as contractor installed dead-end mains and emergency bypass pipelines with no services. Staff continues to retain a third-party inspector to evaluate the installation of electrofusion service saddles. The third-party inspector has improved installation techniques at the District and the HDPE industry.

Pilot Projects

U.C. Berkeley and the District have teamed to launch a new research and innovation center, the Center for Smart Infrastructure, to be based at the U.C. Berkeley's Richmond Field Station. One of the first research projects is to utilize the large-scale, fault-rupture pipeline testing facility (which was originally located at Cornell University) to test new and improved Earthquake

Pipe Committee Annual Report – 2021 January 11, 2022 Page 2

Resistant Ductile Iron Pipe (ERDIP) from U.S. Pipe. In addition to the fault-rupture test, U.C. Berkeley will run tension, compression and four-point bending tests on the ERDIP. The Center for Smart Infrastructure will also develop the use of remote sensors, data analytics and artificial intelligence tools to ultimately assist utilities and government agencies in making more informed decisions to manage, update, and/or replace their infrastructure.

Standard Weight Epoxy Lined Steel Pipe. The committee approved piloting standard weight steel pipe with fusion bonded epoxy (FBE) lining and FBE and plastic coating for dead-end systems in areas of contaminated soil and geo-hazards. A second weld test occurred at Oakport in October 2021 due to concerns with damaging the lining. The test helped District staff determine lining holdbacks in order to perform butt joint and bell and spigot welds. A pH test conducted at the recently completed Hollis Street installation confirmed the FBE pipe did not exhibit elevated pH in dead-end locations. Future projects include an installation on an existing bridge, the USL South 30 project, and Lincoln Landing, an applicant project in Alameda. A typical mortar lined steel pipe may be too heavy for the existing bridge hangers and the USL South 30 project is pipeline that is seasonally operated and could have pH issues. A memo on the pilot results will be completed in 2022.

Standard Weight Steel Pipe. The District is evaluating the use of standard weight steel pipe as an alternative to the custom gauge steel pipe that the District currently stocks. A pilot project was successfully completed with 6-inch standard weight steel pipe at York and Rosal in Oakland. District forces also successfully installed 8-inch standard weight steel pipe for the Bayfair Pumping Plant project and a 20-inch standard weight steel connection for the Summit Pressure Zone South Pipeline Phase 1 project. Standard weight steel pipe is more resistant to ground motion and liquefaction than the District's steel pipe due to its thicker wall and the specified type of welded joint, which increases the allowable internal pressure, and axial and shear limits. A memo on the pilot results will be completed in 2022.

<u>Trench Dams.</u> The committee approved a pilot to install prefabricated HDPE trench dams instead of the standard controlled density (CDF) fill installation. CDF is labor intensive and costly. These trench dams are manufactured by Trenchdam Systems and relatively easy to install. A pilot project planned for this year in Oakland on a street with approximately 15-17 percent slope was delayed until 2022. A memo on the pilot results will be completed in 2022.

Standards and Procedures

Engineering Standard Practice (ESP) 512 Review. ESP 512.1 was divided into five separate ESPs to update the ESP and provide better clarity and direction. The draft review of the ESPs was completed and submitted to the Pipe Committee members. The initial comments were addressed and incorporated into the final versions. These ESPs include 512.1, Water Main Design Criteria, ESP 512.6, Water Main Relocation Standards, ESP 512.7, Water Service Design Criteria, ESP 512.8, Water Main Valves and Appurtenances, and ESP 512.9, Water Main Abandonment. The next step is to complete the secondary review and confirm all changes with the Pipe Committee. The ESPs will be completed early 2022.

Pipe Committee Annual Report – 2021 January 11, 2022 Page 3

Engineering Standard Practice 550. ESP 550.2, Below Ground Piping - Seismic Design Requirements was created to clarify design requirements for other assets (ESP 550.1) and below ground pipeline assets. The ESPs will be completed early 2022.

2022 Goals

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

Pipe Materials and Appurtenances

Restrained Ductile Iron Pipe:

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

Earthquake Resistant Ductile Iron Pipe (ERDIP):

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

HDPE Pipe:

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

iPVC Pipe:

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

Steel Pipe:

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

Pipe Committee Annual Report – 2021 January 11, 2022 Page 4

Pilot Projects

- Work with the University of California Berkeley to oversee installation of fiber optic lines by the contractor for the Summit Pressure Zone South pipeline project. The project will allow the UC researchers to collect data on the movement of the Hayward Fault and the effects on two new HDPE pipelines which cross the fault.
- Work with the University of California Berkeley to improve the cement mortar lining mix design for the Mokelumne Aqueducts for future relining projects.
- Work with the new Center for Smart Infrastructure to test ERDIP Standards and Procedures
- Update Standard Drawing 286-EA Galvanic Anode Installation.
- Revise Standard Drawings 310-EA and 1870-A to reflect the difference in thickness of steel elbows and stock pipe.
- Update Standards Drawing 1995-A Multiple Branch Service Installations ³/₄-Inch through 2-Inch to add options for vault installation and staggered meter boxes.
- Update standard specifications and details for iPVC installations.
- Finalize standard drawing for restrained hydrant runs.
- Finalize standard drawing for using restrained fittings for thrust restraint.
- Update ESP 450.1 Annually Informing Local Jurisdictions of Upcoming Capital Projects.
- Update ESP 510.1 Pipe and Fittings Standard Sizes.
- The update of ESP 512.1 Water Main and Services Design Criteria is in final development as previously noted, with a planned completion in early 2022. ESP 512.1 will be divided into five parts:
 - o 512.1, Water Main Design Criteria,
 - o 512.6, Water Main Relocation Standards,
 - o 512.7, Water Service Design Criteria,
 - o 512.8, Water Main Valves and Appurtenances, and
 - o 512.9, Water Main Abandonment Water Mains (ESP 512.1),
- Update ESP 512.2 Pipeline Material Estimate.
- Update ESP 514 Identifying Buried Conflicts.
- Update ESP 550.1 Seismic Design Requirements to remove Below Ground Piping section. Create new ESP 550.2 Below Ground Piping Seismic Design Requirements to include criteria for pipelines in geohazard areas, such as fault zones, liquefaction, and landslides.

Committee Members

David Bailey Senior Mechanical Engineer, (retired in September, replaced by Jon Lee)

Marisa Boyce Senior Civil Engineer Brett Margosian Senior Civil Engineer

Carlton Chan (Chair) Manager of Pipeline Infrastructure Division

Adam Clarke Supervising Construction Inspector

Mobil Cox Construction Maintenance Superintendent
Ben Ricketts-Mann Construction and Maintenance Superintendent

Damon Hom Superintendent of Water Treatment Cindy Hunt Superintendent of Water Treatment

Gina Jenkins Manager of Meter Reading and Maintenance Support

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Laura Johnson Manager of Pipeline Construction and Equipment

David Katzev Senior Civil Engineer

Antonio Martinez Manager of Distribution Maintenance and Construction

Marshall McLeod Senior Civil Engineer Roberts McMullin Senior Civil Engineer Elena Dudek Senior Civil Engineer

Keith Packard Associate Corrosion Control Specialist

Vincent Pon Superintendent of Aqueduct

Jason Reza Supervising Construction Inspector

Jose Rios Senior Civil Engineer, (for David Rehnstrom)

Kelley Smith Manager of Purchasing

Kenneth Younger Materials Storage Supervisor (retired, replaced by Thomas Reinhart)

Gary L. Walters Assistant Construction and Maintenance Superintendent



SUSTAINABILITY COMMITTEE ANNUAL REPORT – 2021

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

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

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

2021 Accomplishments

2021 continued to be an unusual year for the Sustainability Committee due to the COVID-19 pandemic. As many District staff continued to telecommute, the Sustainability Committee continued its efforts to offer virtual events and information.

The Sustainability Committee met six times in 2021 and reports the following accomplishments.

- Virtual Earth Day 2021. For the second year in a row, the Earth Day fair was canceled due to COVID-19. The committee instead offered a variety of virtual activities and events the week of Earth Day, including a virtual "Craft Corner" and a Kahoot trivia challenge. Daily emails offered information on topics like home leak detection and sustainability-themed movies that staff could watch at home.
- As part of the Earth Day celebrations in the month of April, the committee created a "Photo Scavenger Hunt." Employees were provided with a set of six photos (and hints) from select EBMUD trails in the East Bay watershed. Staff were invited to try to recreate the photos by visiting and exploring EBMUD watershed trails.
- The Sustainability Committee's bimonthly meetings occasionally featured presentations from in-house subject matter experts including: Alicia Chakrabarti and Eileen White on the District's Climate Action Plan, Chris Dembiczak on the District's greenhouse gas emissions inventory, and Greg Benson on the carpet replacement project.
- Updates were made to the Sustainability Committee's internal webpages for the district wide transition to the Splashpad.
- Green Business Certifications: Walnut Creek WTP, Castenada Service Center, and North Area Service Center were certified this year. Ten facilities were certified.
- Several other projects had been put on hold pending the end of the pandemic. These include the development of signage and education materials on proper waste sorting and the conclusion and evaluation of the plastics reduction pilot. The committee resumed work with Graphics on the development of signage for proper waste sorting.

Sustainability Committee Annual Report – 2021 January 11, 2022 Page 2

2022 Goals

- Continue coordination with Diversity Committee focusing on the nexus of sustainability and equity.
- If staff are able to return to the office and hold events, the committee will host the annual Earth Day fair. If not, it will host a virtual Earth Day event that may include speakers, games, or other activities to promote sustainability.
- Coordinate with Clean-up Week in April 2022. Introduce surplus room concept.
- Consider a virtual succulent garden event.
- Recipe exchange.
- Green business certification: certify at least one additional facility.
- Green bag speaker series topic may include: biodiversity, carbon farming, Fibershed.
- Visit to Skyline Ranch.
- Lake Merritt birding walk.
- Hold the sixth annual crop swap in spring/fall 2022; dates may flex to accommodate for variety in harvest periods.
- Continue development and implementation of an outreach program to educate employees on proper waste sorting (i.e., recycling, composting, and landfill).
- Continue and expand employee outreach and education (Splashes, intranet, reports, Green Bags/Engineers' Forum).
- Support the Senior Management Team's priority planning and actions on sustainability and resilience and development of the Climate Resiliency and Adaptation Plan.
- Evaluate the efficacy of the pilot program for centralized purchasing and distribution of sustainable party supplies for District sponsored events.
- Evaluate the efficacy of the pilot program for centralized purchasing and distribution of reuseable dishes at targeted sites.
- Continue to explore eco-friendly commute alternatives for employees; how best can the Committee support assessment of the current telecommute framework.
- Pursue additional Green Business and WaterSmart certifications of additional District facilities.
- Support district-wide Climate Resiliency activities.
- Continue to advance a "culture of sustainability" at the District at all levels and in all workgroups.

Committee Members

Michael Ambrose, Manager of Maintenance and Construction Greg Benson, Senior Administrative Clerk Jolene Bertetto, Water Conservation Representative Nadia Borisova, Environmental Health & Safety Specialist II Allison Brede, Water Treatment Operator Tracy Da Lomba, Water System Inspector II Suzanne Delbou, Management Analyst I Adam Edgell, Sr. Administrative Clerk Sustainability Committee Annual Report – 2021 January 11, 2022 Page 3

Hoyt Fay, Grounds Maintenance Specialist II

Samuel Feldman-Crough, Principal Management Analyst

Kristen Font, Wastewater Control Representative

Vincent Flores, Plant Structures Maintenance Supervisor

Lorena Girardin, Senior Administrative Clerk

Geneva Gondak, Water Conservation Technician

Victor Gonzales, Associate Mechanical Engineer

Anna Gunderson, Attorney II

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

Dennis Karaim, Drafting Supervisor

Steven Kekki, Building Tenant Services Supervisor

Tina Kwan, Senior Administrative Clerk

Dana Mims, Administrative Services Supervisor

Tony Montano, Manager of Facility Maintenance & Construction

Bruce Moog, Grounds Maintenance Specialist II

Virginia Northrop, Senior Ranger/Naturalist

Jose Perez, Engineering Designer I

Ivette Rivera, Gardener Foreman

Aaron Ross, Sr. Cross Connection Specialist

Jose Setka, Environmental Affairs Officer

Carolyn Shadan, Assistant Engineer

Luke Sires, Water Conservation Representative

Joey Smith, Water Conservation Technician

Kelley Smith, Manager of Purchasing

Alice Towey, Manager of Water Conservation (Co-Chair)

Theresa Walker, Janitor Supervisor

Agnes Wan, Associate Architect



WATER QUALITY COMMITTEE ANNUAL REPORT – 2021

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

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

The committee meets on the third Thursday of each month. Twelve meetings were held during 2021. For each meeting, agendas were developed, meeting minutes were created, reviewed, finalized, and links were distributed to the members. All files were delivered electronically. Due to the pandemic, the meetings were conducted virtually via MS Teams.

2021 Accomplishments

- Reviewed and discussed water quality data for trends or changes in various water quality parameters. Review of these charts facilitated discussion of ongoing or potential upcoming water quality issues.
- Paid special attention to nitrification in the distribution system during 2021, discussed factors that influence its occurrence, and reviewed treatment and operational actions that might be considered for control. Disinfection byproduct issues were reviewed closely, notably bromate formation at the Sobrante Water Treatment plant, and the committee helped monitor and mitigate this issue. Also, water quality information from the drought supplemental supply was reviewed and discussed. Finally, the committee discussed potential actions that could be taken to deal with degraded water quality that would be expected if a wildfire were to occur in the Mokelumne watershed.
- Helped coordinate the Regional Water Quality Control Board's mercury study, which focused on San Pablo Reservoir.
- Proposed legislation and draft regulatory changes were tracked, and comments were developed when appropriate.
- Prepared the semi-annual water quality reports for the Board of Directors summarizing the status of the District's compliance with regulatory requirements as well as with the District's water quality goals. These semi-annual reports were presented to the Planning Committee.
- Provided input for the District's annual Consumer Confidence Report and for the mid-year update which will be required under upcoming federal regulations.
- Reviewed design and construction progress and provided input regarding upcoming capital projects that will impact water quality.
- Reviewed results of ongoing research projects and discussed potential applications to the
 District. Members of the committee participated in various research projects, both as Project
 Advisory Committee members and as participating utilities, and shared information about
 these projects at committee meetings. Further, members of the committee actively participate

Water Quality Committee Annual Report – 2021 January 11, 2022 Page 2

in industry organizations and share relevant water quality information and updates with the group.

2022 Work Plan and Goals

In 2022, the committee will continue to meet monthly to review, coordinate, and oversee the District's water quality program. Specifically the committee plans to:

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

Committee Members

Michael Ambrose, Manager of Maintenance and Construction

Ardy Assaadi-Rad, Assistant Civil Engineer

Charles Beckman, Ranger Supervisor

Yuriy Bondarenko, Chemist II

David Briggs, Director of Operations and Maintenance

Carlton Chan, Manager of Pipeline Infrastructure

Gus Cicala, Associate Civil Engineer

Roberto Cortez, Manager of Water Supply

Dillon Cowan, Assistant Superintendent

Andrew Enos, Associate Engineer

Paul Gilbert-Snyder, Associate Engineer

Daniel Gill, Superintendent of Water Treatment

Michael Hartlaub, Senior Civil Engineer

Scott Hill, Manager of Watershed & Recreation

Damon Hom, Superintendent of Water Treatment/Distribution/Quality

Linda Hu, Manager of Water Supply Improvements

Cindy Hunt, Superintendent of Water Treatment/Distribution/Quality

Chandra Johannesson, Manager of Environmental Compliance

Brett Kawakami, Engineering Manager

Drew Lerer, Senior Environmental Health & Safety Specialist

Jack Lim, Senior Chemist

Jason Mitchell, Senior Chemist

Clarence Peralta, Superintendent of Water Treatment

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Vincent Pon, Superintendent of Aqueduct
Javier Ramos, Water Distribution Supervisor
David Rehnstrom, Engineering Manager of Planning Division
Yun Shang, Manager of Laboratory and Technical Services
Serge Terentieff, Engineering Manager
Gordon Williams, Manager of Regulatory Planning for Water Quality
Lori Work Kazimi, Senior Civil Engineer



WATER RESOURCES COMMITTEE ANNUAL REPORT – 2021

The Water Resources Committee (WRC) coordinates and clarifies District responses to emerging water resources issues to advance District policies in a comprehensive and effective manner. This report summarizes the activities on several long-term water resources issues, primarily affecting the District's water rights, contractual entitlements and participation in statewide forums.

2021 Accomplishments

<u>U.S.</u> Bureau of Reclamation (USBR) Central Valley Project (CVP) Water Supply Contract – The District coordinated with USBR to receive the maximum 25% allocation of its water supply deliveries under EBMUD's CVP Contract to supplement Mokelumne River supply with 33,250 acre-feet and 2,000 acre-feet from Contra Costa Water District's CVP allocation.

<u>Bay-Delta Water Quality Control Plan Update and Voluntary Agreement</u> - In 2021, the WRC collaborated and worked closely with several stakeholders in the Bay-Delta watershed-wide process to update the State Water Resources Control Board (SWRCB)'s Bay-Delta Water Quality Control Plan (Bay-Delta Plan). Staff proactively participated in the VA negotiations in the following ways:

- Conducted numerous meetings and technical briefings and coordinated negotiations with the state and other parties, sharing information, reviewing modeling alternatives and associated analyses, and moving negotiations forward on multiple fronts.
- Convened meetings with the Mokelumne Stakeholder partners to share information and strategize on issues of mutual concern.
- Conducted lower Mokelumne River tour with recently appointed State Water Resources Control Board member on November 5th.

The WRC also led efforts on several key water resources initiatives:

- Submitted a petition for a temporary change to water right License 11109 from the SWRCB on November 1, requesting to transfer up to 658 acre-feet of surface water to the North San Joaquin Water Conservation District (NSJWCD) to operate the DREAM Project again in 2022, and to enhance fish and wildlife in the stretch of the Mokelumne River from Camanche Dam downstream to NSJWCD's South Pump Station. Coordinated with NSJWCD, SWRCB, California Department of Fish and Wildlife, California Department of Water Resources, and US Bureau of Reclamation to develop an approach that relies on the water savings/credit resulting from the use of recycled water under Water Code Section 1010 and that does not cause injury to other water users including the state and federal water projects. The public comment period closed on November 24 without any protests or comments received. After SWRCB approves the temporary change, EBMUD will complete the water transfer in 2022 if surplus water is available.
- Coordinated drought activities to ensure compliance with SWRCB curtailment orders and reporting requirements, reviewed SWRCB's Water Unavailability Methodology for the

Water Resources Committee Annual Report – 2021 January 11, 2022 Page 2

Mokelumne watershed to ensure the accuracy of data for the Mokelumne watershed and provided comments.

- Coordinated with Contra Costa Water District (CCWD) to evaluate water rights options, schedule, CEQA and other planning-related needs for EBMUD's participation in the Los Vaqueros Reservoir Expansion Project
- Participated in several workshops and Board meetings held by Department of Water Resources (DWR) and State Water Resources Control Board (SWRCB) related to establishing long term water use efficiency targets and water use reporting. Continued to actively coordinate with internal stakeholders, the Department of Water Resources, the SWRCB, Association of California Water Agencies, and California Urban Water Agencies to analyze and modify the proposed water use efficiency and water use reporting legislation and regulations. This affects future reporting requirement on the District's water use. Comments were submitted to the State in partnership with CUWA and ACWA as well as by EBMUD on its own. The comments provided review of proposed regulations and methodologies and offered recommendations that would be more effective to help meet the State's objectives.
- Coordinated with the EBMUD's Water Loss Audit Committee to complete the Water Loss Audit for calendar year 2020 and submitted to the SWRCB electronically on September 13, 2021.
- Submitted monthly reporting related to water use and drought response actions to SWRCB; tracking water use reduction as related to District and State's goals.
- Met monthly with California Department of Water Resources (DWR) representative on the Delta Conveyance Project CEQA process. A number of public workshops were held with DWR and the Delta Conveyance Authority regarding fisheries, constructions, and Delta stakeholder issues. It is expected that a draft PEIR will be available in mid-2022.
- Coordinated with EBMUD's Water Operations Committee and the Mokelumne River Technical Advisory Committee (MRTAC) on development of a Camanche Reservoir flow release plan to maintain sufficient cold water in storage through October 31 to support the salmon fall return. Several operational alternatives were modeled to determine the best strategy moving forward. Staff evaluated operational strategy effectiveness under real-time conditions and adjusted the operations plan to maximize cold water storage and minimize any water quality concerns at the local water treatment plants.
- Completed a Technical Memo (TM) to document and analyze effects of a US Bureau of Reclamation 2035 climate change benchmark study. The TM documents the technical approach implemented to represent future 2035 climate change and the effect on the Mokelumne system. The results showing the increased likelihood of spills from Camanche is consistent with the District's previous climate change studies. This analysis adds further support that this is not a long-term planning issue, rather a consideration for the near-term planning horizon of 10 to 15 years from the time of this study.

2022 Work Plan

• Coordinate with other agencies to secure a voluntary agreement and develop modeling analysis for inclusion in the SWRCB Bay-Delta Plan Update Substitute Environmental Document (SED).

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- Review and respond to SWRCB's Bay-Delta Plan Update for Phase II and implementation of Phase I, to prevent potential impacts to Mokelumne River fishery and water supply reliability.
- Complete implementation of the DREAM project, and comply with permit terms, refill agreement and CEQA requirements.
- Review DWR's CEQA documentation on the new Delta conveyance project and provide comments and recommend actions to prevent potential impacts to EBMUD facilities, the Freeport Project and the Mokelumne River fishery.
- Track and review other key projects, such as Sites Reservoir, to insure there are no significant impacts to District water supply and resources.
- Continue coordinating District responses to Mokelumne and Bay Delta emerging water resource issues. Strategic responses continue to be guided by the principle that a balanced approach to allocation of California's water resources, to meet both environmental and water supply needs, is fundamental to the District's mission.
- Continue to review and provide input and help guide the development of legislation and requirements related to long-term planning, water shortage planning and water use reporting.

Committee Members

Lena Tam Manager of Water Resources Planning (Chair)

Benjamin Bray Senior Civil Engineer

David Briggs Director of Operations and Maintenance

Clifford Chan General Manager

Roberto Cortez Manager of Water Operations Fred Etheridge Assistant General Counsel

Linda Hu Manager of Water Supply Improvements

Priyanka Jain Senior Civil Engineer
Derek McDonald General Counsel
Chris Potter Senior Civil Engineer

Jose Setka Environmental Affairs Officer

Michael Tognolini Director of Water and Natural Resources

Ana Ulloa Senior Civil Engineer

Michelle Workman Manager of Fisheries and Wildlife



EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 11, 2022

MEMO TO: Board of Directors

FROM: Clifford C. Chan, General Manager

SUBJECT: Monthly Report – December 2021

HIGHLIGHT

On December 24, the State Water Resources Control Board (SWRCB) issued an order approving the water right change petition to transfer recycled water for the DREAM Project. The SWRCB indicated that no public comments were received during the 15-day public comment period which ended November 24, 2021. The order allows transfer of up to 658 acrefeet of water made available from using recycled water in EBMUD's service areas instead of water from Pardee Reservoir. If EBMUD declares there is surplus water next spring, the water will be transferred to North San Joaquin Water Conservation District where it will be used to irrigate crops in lieu of pumping groundwater. The use of recycled water credit for a water transfer is a first for California.

WATER SUPPLY

Freeport Regional Water Authority/Folsom South Canal Connection. In December, delivery of supplemental supply to storage at San Pablo and Upper San Leandro (USL) Reservoirs totaled 6,743 acre-feet (AF) at an average rate of 71 million gallons per day (MGD). Deliveries to San Pablo and USL Reservoirs were 1,582 AF and 5,161 AF, respectively. From October 4, 2021 to December 28, 2021, a total of 20,980 AF of water was delivered at an average rate of 79 MGD. Of the total, 9,739 AF has been delivered to San Pablo Reservoir and 11,241 AF to USL Reservoir. Freeport operations were suspended on December 28 due to significant precipitation in the month both in the East Bay and upcountry.

On December 6, staff participated in the Los Vaqueros Reservoir Joint Powers Authority (JPA) meeting. The draft 2022 project schedule, potential options for managing the JPA, and an update on permitting and engineering of associated facilities was discussed.

On December 7, staff met with the City of Hayward and the California Department of Fish and Wildlife (CDFW) to discuss comments on the draft East Bay Plain Subbasin Groundwater Sustainability Plan. Staff discussed the proposed responses to CDFW's comments and confirmed their comments had been sufficiently addressed.

On December 16, staff attended the 2021 Water Transfer Workshop. The workshop was cohosted by the California Department of Water Resources, State Water Resources Control Board, and U.S. Bureau of Reclamation. The topics discussed included reviewing lessons learned from 2021 water transfers and providing guidance on the regulatory approval process for water transfers in 2022.

Precipitation. The East Bay precipitation for December was 9.29 inches (193 percent of average) and the season total was 18.02 inches (182 percent of average). The Mokelumne precipitation for December was 15.83 inches (199 percent of average) and the season total was 29.64 inches (171 percent of average).

Water Releases

Camanche Reservoir. The average rate of Camanche release for December was 225 cfs (184 cfs generation, 12 cfs sluice, and 29 cfs through the hatchery), and the average flow below Woodbridge Dam was 187 cfs, both in accordance with the Joint Settlement Agreement "Dry" water year criteria.

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

Water Storage

Mokelumne reservoirs storage is 83 percent of average. As of December 31, 2021, Pardee was at 555.5 feet or 99 percent of average, and Camanche was at 198.0 feet or 71 percent of average. Combined Pardee and Camanche reservoir storage was 361,000 AF compared to 448,000 AF last year.

East Bay reservoirs storage is 109 percent of average. As of December 31, 2021, USL was at 455.7 feet or 131 percent of average, San Pablo was at 307.9 feet or 121 percent of average, and Briones was at 564.0 feet or 95 percent of average. Total terminal reservoir storage was 131,000 AF compared to 118,000 AF last year.

Mokelumne Aqueducts and Raw Water Pumping Plants (RWPPs). The average rate of Mokelumne Aqueduct draft for December 2021 was 86 MGD. Moraga RWPP (associated with supplemental water operation) pumped a total of 1,682 million gallons at an average of 60 MGD (when in operation) to refill USL Reservoir. Walnut Creek and Briones RWPPs remained out of service for the month.

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

	December 2021	December 2020	December 2013	Average of FY 2005-2007
East of Hills	25 MGD	31 MGD	37 MGD	30 MGD
West of Hills	96 MGD	104 MGD	117 MGD	126 MGD
Total	121 MGD	135 MGD	154 MGD	156 MGD
Max Day	134 MGD	155 MGD	165 MGD	
Production	(12/1/2021)	(12/7/2020)	(12/2/2013)	

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

WATER QUALITY AND ENVIRONMENTAL PROTECTION

In December, the District effectively managed increased flows in the wastewater system from several wet weather systems that moved through the District's wastewater service area. Over 8.5 inches of rain was recorded in the East Bay during December, well above the prior maximum of 2.8 inches of rain for the month. Staff used a combination of maximizing flows to the Main Wastewater Treatment Plant (MWWTP), using the wet weather storage basin at the MWWTP, blending, and operating all three wet weather facilities as needed during each storm event to manage the increased flows due to excessive inflow and infiltration in the satellite collection systems. Maximum flows in the District's interceptor system exceeded 500 million gallons per day (MGD) during one of the storms and flows over 200 MGD were sustained multiple times. All wastewater regulatory requirements were met throughout the unusually wet month.

In December, staff deployed core acoustic telemetry receiver arrays in the Delta to support Sacramento River releases of acoustically tagged salmon. Receivers were deployed at sites in the upper north and south forks on December 8 and December 10, adjacent to Delta Shores Resort and Marina, and within Little Potato Slough. This is part of a collaborative effort, coordinated through the Interagency Telemetry Advisory Group, to access Central Valley outmigration success. All 29 District arrays will be deployed by March 2022 to support our upcoming acoustic telemetry study.

In December, staff planted over 400 trees with funds from Proposition 68 for the 2021 Mokelumne River Habitat Restoration Project. The riparian planting is a component of the restoration project to create flood plain habitat for juvenile salmon and completes the work for 2021.

In December, seasonal salmonid field monitoring was conducted in the Mokelumne River. As of December 14, Chinook salmon escapement is 4,977 fish. Staff continued to conduct weekly redd surveys, with a cumulative total of 320 Chinook salmon redds observed as of December 16. The upstream rotary screw trap was installed on December 6. As of December 14, no naturally produced juvenile Chinook salmon have been captured in the upstream trap. The downstream rotary screw trap was installed on December 21. Trap calibrations to generate Chinook salmon abundance estimates will begin in January 2022.

On December 8, the District made public comment at the State Water Resources Control Board Workshop on Phase I and II of the Water Quality Control Plan Update. The comments addressed the status of the Mokelumne River: meeting salmon doubling goals and meeting the water supply needs of the communities we serve. The comments called for continued collaboration in the Voluntary Agreement process.

On December 14, staff attended Hyundai Motor Company's demonstration of its Class 8 Fuel Cell Trucks. One of the fuel cell trucks on display is similar to the vehicles that will be deployed at the Port of Oakland over the next several years and will be fueled at the new Hydrogen Fueling Station on the MWWTP property.

On December 15, staff met with the U.S. Environmental Protection Agency (EPA), San Francisco Bay Regional Water Quality Control Board (RWQCB), Baykeeper, and the District's satellite agencies (cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and Stege Sanitary District) to discuss the progress in the Wet Weather Consent Decree (Consent Decree)-mandated removal of inflow and infiltration from the regional wastewater collection system. Based on current data, all three wet weather facilities may meet the benchmarks at next year's formal review and are likely to be within the established parameters for on-going compliance. The meeting continued the collaboration among the EPA, RWQCB, the satellite agencies, and the District to achieve compliance with the Consent Decree requirements.

On December 20, the District submitted the report on the study of Pardee Dam South Spillway's forty-eight post-tensioned anchors to the Federal Energy Regulatory Commission. The study concluded that the existing instrumentation is in good operating condition, and the tension loads are consistent and stable. The study included a field testing program using non-destructive testing methods, and completion of an engineering analysis report. Staff retained a consultant affiliated with Harvey Mudd College to introduce a short-term load, measure the response of the anchors, and based on these readings, estimate the tension loads as an independent check of the existing load cell instrumentation. The test results from the evaluation matched well with the existing load cell instrumentation readings. This coming year, the District plans to perform an advanced dynamic stability evaluation of the spillway that incorporates the anchor measurements, and will submit findings to both FERC and the California Division of Safety of Dams.

All authorized discharges from the Main Wastewater Treatment Plant (MWWTP) were in compliance with the permit limits for the month of December. This is the 268th consecutive month the MWWTP experienced no exceedances.

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

INFRASTRUCTURE INVESTMENT

In December, the conceptual pre-design phase began for the Willow Service Center project located in West Oakland. The new service yard will include a 6,000 square foot administration building, 50 employee parking spaces, 43 fleet parking spaces, and materials laydown areas. This phase of the project will include the development of site visualization (3D rendering) followed by submission of a Conditional Use Permit application to the City of Oakland and with public outreach in February 2022.

In December, staff completed a pipeline replacement project in the 94th Avenue area in Oakland. This project replaced cast iron pipe with approximately 1,825 feet of 6-inch mortarlined zinc coated ductile iron pipe.

In December, staff began the first and second phases of a pipeline replacement project in the Norton Avenue area in Oakland. The first phase will replace cast iron pipe with approximately 6,000 feet of 6-inch mortar-lined zinc coated ductile iron pipe. This project is expected to be completed in June 2022. The second phase will replace cast iron pipe with approximately 4,185 feet of 6-inch mortar-lined zinc coated ductile iron pipe. This project is expected to be completed in April 2022.

In December, staff began a pipeline replacement project in the Manor Drive area in Piedmont. This project will replace cast iron pipe with approximately 1,445 feet of 6-inch structurally-enhanced polyvinyl chloride pipe. This project is expected to be completed in February 2022.

On December 1, staff filled two separate exposed mine shafts at Camanche South Shore. The shafts were located near Arrowhead Campground and Eucalyptus Point. Staff removed material near the mine shafts to expose the cavity then filled and compacted a total of 12 transfer loads of backfill to fill in the mine shafts.

Mains repaired in December totaled 85. The attached table lists the mains repaired by staff in December, sorted by city and street. The table indicates the source of the leaks in three categories: non-surfacing leaks discovered by leak detection technologies, breaks caused by contractors or other agencies, and all other main breaks. The associated map shows the location of the main repairs.

CUSTOMER AND COMMUNITY SERVICES

Happy Valley and Sunnyside Pumping Plants and Pipelines project update. Staff presented the Orinda City Council with road closure alternatives which the council unanimously approved granting an encroachment permit for the project. The project is currently out to bid for construction.

In December, a StoryMap version of the Main Wastewater Treatment Plant (MWWTP) virtual tour was posted to the District's website. The MWWTP StoryMap is similar to the StoryMaps of the Orinda Water Treatment Plant and the prehistoric fossil find in the Mokelumne River Watershed. The MWWTP StoryMap uses graphics that were developed for kiosks at the MWWTP along with drone videography to guide the viewer through the treatment process. The MWWTP StoryMap will complement the MWWTP tour program and serve as a resource for educators to prepare students for the live tour, reinforce the knowledge gained during the tour, and be available for anyone with an interest in learning about the wastewater treatment process.

On December 1, staff responded to a report of a blockage in EBMUD's SP201 drop structure in San Pablo Creek in Orinda. The outlet of the drop structure was obstructed by logs and debris and the group was concerned that it was blocking fish passage upstream of the structure. Staff cleared the debris and reestablished flow through the opening so fish could travel upstream.

On December 2, staff met with the Town of Moraga to coordinate construction activities. The two agencies shared information on current and upcoming work.

On December 3, staff met with the City of Orinda to coordinate construction activities. The two agencies shared information on current and upcoming work.

On December 7, staff met with City of Orinda to coordinate construction activities. The two agencies shared information on current and upcoming work.

On December 7, staff participated in the Emergency Action Plan (EAP) Annual Seminar. The seminar is required by FERC for dam operators. The seminar provided an overview of the EAP's content and of each utility's water system on the Mokelumne River. Approximately 60 people attended.

On December 9, staff presented to the West Contra Costa Unified School District. The presentation highlighted potential partnerships and curriculum development for trades pathways programs related to water/wastewater at EBMUD. Approximately 20 people attended.

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

On December 14, staff met with City of Lafayette to coordinate construction activities. The two agencies shared information on current and upcoming work.

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

On December 17, staff participated the City of Richmond's Ad Hoc Committee meeting to discuss the proposed Marin Water pipeline project. Approximately 40 people attended.

On December 21, staff met with City of San Leandro to coordinate construction activities. The two agencies shared information on current and upcoming work.

On December 21, staff met with 100K Trees for Humanity to discuss mitigating climate change through tree planting in the District service area.

On December 21, the Integrated Master Plan in Brief for the Main Wastewater Treatment Plant (MWWTP) was posted to the District's website. Staff created a 16-page brochure to summarize the context, goals, and findings of the Integrated MWWTP Master Plan. The brochure provides an overview of the wastewater system, guiding principles, drivers, integrated roadmap, site plans, and key takeaways.

On December 23, staff presented to the West County Mayors' & Supervisors' Association. The presentation highlighted water supply, drought, and EBMUD's role in the proposed Marin Water project.

Media. Media stories this month included coverage of overall drought (The Daily Cal); water supply levels and recent storm totals (KPIX5, KNTV11, Oakland News Now); water use restrictions/prohibitions (KTVU2, KCRA3, KPIX5, Bay City News, East Bay Times, SF Gate, East Bay Times, Press Democrat); conservation tips (Bloomberg News); and Marin Water's water transfer agreement and pipeline project status (KOVR, Good Day Sacramento, KPIX5, KCBS radio, Appeal-Democrat, Marin IJ, ACWA online).

San Francisco Chronicle reviewed the status of water shutoffs and arrearages for water customers, and KQED rebroadcast a story on Chabot Dam, in light of infrastructure in the news.

Social Media:

Social Platform	Popular Topic	Impression Generation	# Followers	Change Over Last Month
Twitter	Promote Water Waste Form	227	3,639	11
Facebook	Promote Water Waste Form	150	1,685	9
LinkedIn	Job Opportunities	1,100	6,866	93
Nextdoor	Customer Pipeline – Nov/Dec 2021	Enti	re Service Are	ea

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

- Bolla Cluster Pipeline Project (Alamo)
- Happy Valley Pumping Plant Project (Orinda)
- Maloney Pumping Plant and Sobrante Water Treatment Plant Improvements Project (El Sobrante)
- Notification of Geotechnical Borings in public right-of-way at Candy Lane (Lafayette)
- Sobrante Maintenance and Safety Improvements Project (El Sobrante)
- Via Verde Outage (Richmond)

Contract Equity

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

- December 3 American Indian Chamber of Commerce, *Northern California Summit* 14 attended
- December 6 Women Business Enterprise Council Pacific, *Staff Incentive Program* 14 attended
- December 7 University of California C Small & Diverse Business Advisory Council, Q4
 Meeting 19 Attendees
- December 8 Construction Resource Center, Advisory Board Meeting 8 attended
- November 18 National Association of Minority Contractors Northern California *Membership Strategy Meeting* – 4 attended

Water Conservation

On December 2, staff participated as a judge in Hayward Castro Valley Moose Lodge's calendar art contest for grades three through five. The art contest theme was "drought" and "wildfires" and 43 students submitted art. The winners will be announced in January 2022.

On December 6, the District hosted the Landscape Advisory Committee meeting. The meeting focused on the new California (State) Organics Waste Reduction Law (SB 1383) which will launch in January 2022. Experts with the law provided an overview that requires the State to reduce organic waste disposal by 75 percent and increase edible food recovery by 2025. Approximately 45 people attended.

On December 8, staff was re-elected as a Board member to the California Water Efficiency Partnership (CalWEP) for a three-year term. CalWEP is an organization that promotes urban water use efficiency and conservation throughout California by supporting and integrating innovative technologies and practices; encouraging effective public policies; advancing research, training, and public education; and building collaborative approaches and partnerships.

On December 9, staff presented to the Islandia Homeowners Association's (HOA) Landscape Committee in Alameda. Topics highlighted the Districts' median strip rebate, how to train their landscape staff on maintaining a drought tolerant landscape, how to inspire their HOA community to make changes, and the available District resources. Approximately 5 people attended.

WORKFORCE PLANNING AND DEVELOPMENT

Construction Project Procedures Training. In December, internal training sessions were provided to Assistant, Associate, and Senior Engineers. The sessions covered best practices for responding to documents submitted by contractors including Requests for Information and submittals and an overview of the design change management process. These trainings are intended to ensure the District provides clear and high-quality direction to contractors, which will minimize added costs to District capital construction projects in the long run.

On December 14, the District's COVID-19 testing program transitioned to clinician-administered nasal swab antigen tests for most employees at three District work sites. When the program was established in September, self-collect, saliva-based polymerase chain reaction (PCR) tests were used. Results of nasal swab antigen tests may be received within as little as 15 minutes. Unvaccinated employees working outside of the Bay Area (Brentwood, Lodi, Mokelumne, Pardee, and Stockton) and off-hour shifts continue to use the self-collect, saliva-based PCR tests.

Staff participated in events/activities that support the District's long-term efforts to develop a diverse pipeline of candidates for future workforce needs and expand collaborative relationships with local partner organizations:

- December 1, the District provided a skilled trades facility tour to Rising Sun Opportunity Center trainees. Staff provided a tour of the District's Central Shops facility and provided information on District careers. Approximately 20 people attended.
- December 6, staff coordinated a virtual career panel for EBMUD Instrumentation Interns and Jewish Vocational Services Instrumentation/Pre-apprenticeship Program students connected with Los Medanos College. Staff participated in a career panel discussion focused on instrument tech internships and provided information on District career pathways. Approximately 10 people attended.
- December 9, staff participated in a career event at Rising Sun Opportunity Center in Oakland. Staff participated in mock interview sessions with Rising Sun Opportunity Center trainees and provided information on District career opportunities. Approximately 40 people attended.

• December 15, staff participated in a virtual career outreach event sponsored by BAYWORK, Jewish Vocational Services, and Laney College Machine Technology Program. Staff provided information on District mechanical maintenance and machining career pathways. Approximately 20 people attended.

Tuition Reimbursement

	December 2021	FY22 Total
# of Employees	9	68
# of Classes	13	109
Total Reimbursed	\$7,025	\$91,048

Employment Information

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	December 2021	FY22 Total			
Retirements – Regular	2	34			
Retirements – Vested	2	7			
Hires/Rehires	18	94			
Other Separations	4	54			

FINANCIAL STABILITY

On December 8, District paid the annual Water Rights Fees to California Department of Tax and Fee Administration. Staff prepared and submitted the payment of \$345,716 for the District's sixteen water rights accounts.

The estimated earned revenue from the Main Wastewater Treatment Plant Power Generation Station's surplus power sales for December is \$61,942. The District sold renewable power and related Renewable Energy Credits (RECs) to the Port of Oakland. Sale of RECs generated \$17,184 from the Port of Oakland. Earned revenue for FY22 to-date is estimated at \$298,394 or 40 percent of the total FY22 budget of \$750,000.

The estimated earned revenue from Mokelumne power sales for December is \$294,031. The District sold renewable power and related Renewable Energy Credits (RECs) to Marin Clean Energy (MCE). A total of \$75,688 was generated from REC sales – all from MCE. Resource Adequacy capacity sales to 3 Phases Renewables, Inc. and East Bay Community Energy collectively earned \$114,164. Earned revenue to date through December is estimated at \$2,247,489 or 44.9 percent of the FY22 budgeted \$5.0 million. Forecasted revenue for FY22 is \$8.7 million.

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

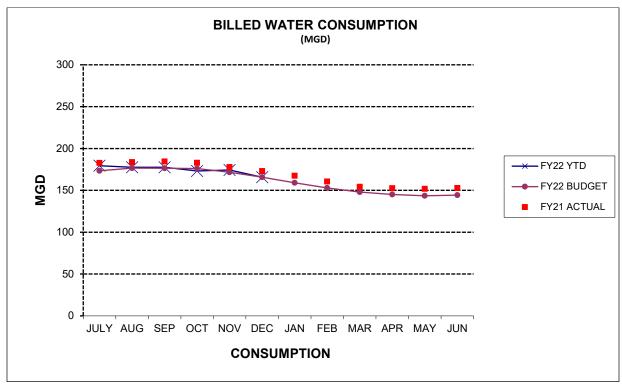
VENDOR NAME	DATE AWARDED	CEP STATUS	ITEM (S) PURCHASED	PROJECT	CONTRACT TERM	VALUE
Wiss, Janney, Elstner Associates, Inc.	12/7/21	White Male	Services to review and assess existing designs and design submittals during construction for the Main Wastewater Treatment Plant Digester Upgrade Project Phase 3.	Digester Upgrade Project	N/A	\$80,000
Pipe and Plant Solutions, Inc.	12/15/21	White Male	Authorization to increase PO # EBM200895 for services to complete the hydro jet and removal of debris from approximately 1,400 linear feet of 60-inch diameter sewer.	N/A	N/A	\$60,000
K.W. Emerson	12/28/21	White Female	Services to complete concrete walkway at the Camanche South Shore Lakeside Hall.	N/A	N/A	\$36,310

Water Sales (Consumption)

The following consumption information is the average water consumption in millions of gallons per day (MGD) for the first five months of FY22. 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.

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.

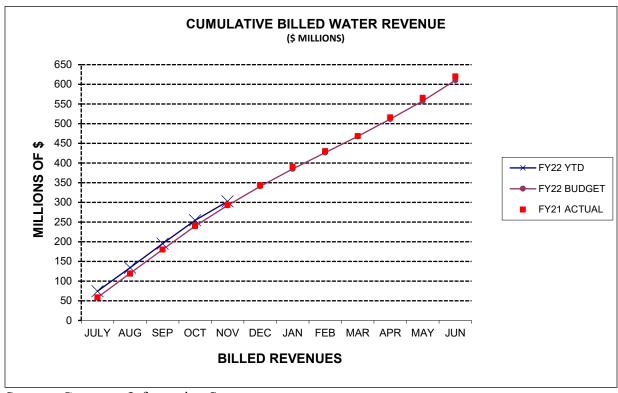
Fiscal Year-to-Date Billed Water Consumption					
Usage Type	FY22 (MGD)	FY21 (MGD)	Year-over-Year (% change)		
Residential	84.9	96.5	-12.0%		
Commercial	53.6	55.4	-3.2%		
Industrial	19.1	17.2	11.0%		
Public Authority	8.1	8.6	-5.8%		
Total Billed Water Consumption	165.7	177.7	-6.8%		



Source: Customer Information System

Water Sales (Revenue)

Water revenues billed through November were \$288.8 million or 1.5% less than the FY21 revenue through November of \$293.3 million. This decrease reflects the lower November 2021 water sales offset by the 4.0% FY22 rate increase. Total FY22 water revenues through November are \$3.6 million, or 1.2%, less than the budgeted water revenue of \$292.4 million. Due to two meters serving the Chevron Richmond Refinery that were found to be underregistering, approximately \$13.8 million was billed to Chevron in July 2021 bringing the total water revenues billed in FY22 to \$302.5 million. The backbill period started three 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

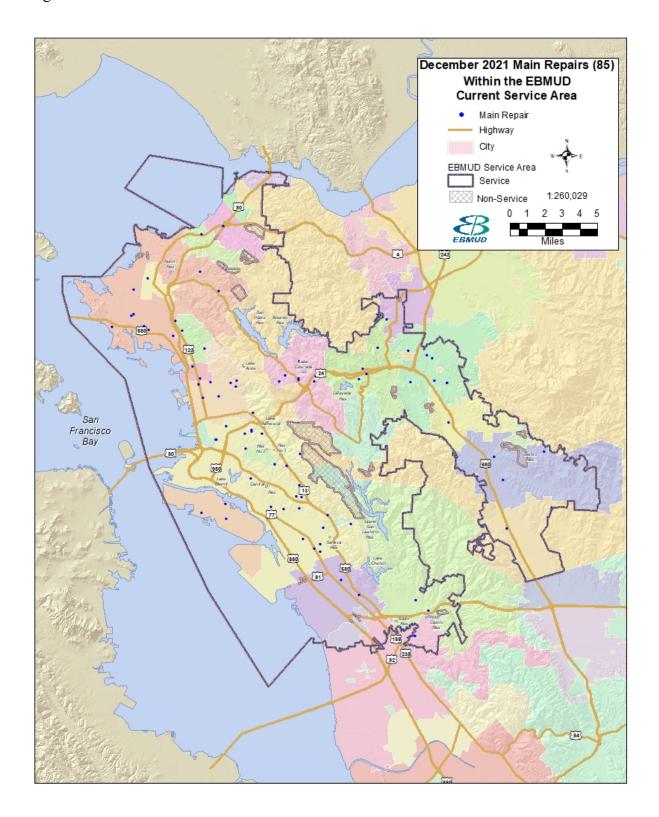
	December 2021 MAIN BREAK REPAIRS										
City	Pre	Street	Suf Pipe Material AVE NON METALLIC / PLASTIC		Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?	
ALAMEDA		ATLANTIC	AVE	NON METALLIC / PLASTIC	8	1988	0	12/15/2021	12/15/2021	Υ	
ALAMEDA		CENTRAL	AVE	CAST IRON	6	1940	1,350	12/16/2021	12/16/2021	Υ	
ALAMEDA		SAN ANTONIO	AVE	CAST IRON	8	1953	13,500	12/5/2021	12/5/2021	Υ	
ALAMO		ORCHARD	СТ	ASBESTOS CEMENT	6	1958	47,520	12/4/2021	12/14/2021	Υ	
ALBANY		CORNELL	AVE	CAST IRON	6	1926	1,800	12/23/2021	12/23/2021	Υ	
ALBANY		MADISON	ST	CAST IRON	6	1926	1,350	12/31/2021	12/31/2021	Υ	
BERKELEY		ADDISON	ST	ASBESTOS CEMENT	6	1959	0	10/19/2021	12/10/2021	Y	
BERKELEY		ALBINA	AVE	ASBESTOS CEMENT	6	1961	5,760	12/5/2021	12/8/2021	Υ	
BERKELEY		ALVARADO	RD	CAST IRON	8	1961	21,600	12/9/2021	12/13/2021	Y	
BERKELEY		GILMAN	ST	CAST IRON	6	1937	27,000	12/16/2021	12/17/2021	Υ	
BERKELEY		HAWTHORNE	TER	CAST IRON	4	1927	28,800	12/18/2021	12/21/2021	Υ	
BERKELEY		HILGARD	AVE	NON METALLIC / PLASTIC	1	2014	9,000	12/29/2021	12/29/2021	Υ	
BERKELEY		LA LOMA	AVE	CAST IRON	6	1931	9,000	12/14/2021	12/14/2021	Υ	
BERKELEY		UNIVERSITY	AVE	CAST IRON	4	1953	1,350	12/30/2021	12/30/2021	Υ	
CASTRO VALLEY	Е	CASTRO VALLEY	BL	CAST IRON	8	1931	1,350	12/29/2021	12/30/2021	Υ	
CASTRO VALLEY		HEYER	AVE	CAST IRON	6	1953	450	12/1/2021	12/1/2021	Υ	
DANVILLE		DIABLO	WAY	ASBESTOS CEMENT	6	1960	12,960	12/6/2021	12/14/2021	Υ	
DANVILLE		MOSSY OAK	DR	ASBESTOS CEMENT	8	1977	90	12/30/2021	12/31/2021	Υ	
DANVILLE		ROBYN	DR	ASBESTOS CEMENT	6	1974	2,250	12/30/2021	12/30/2021	Υ	
EL CERRITO		LIBERTY	ST	CAST IRON	6	1924	9,000	12/29/2021	12/29/2021	Υ	
EL CERRITO		SEAVIEW	DR	CAST IRON	6	1945	900	12/30/2021	12/30/2021	Υ	
EL CERRITO		WALDO	AVE	CAST IRON	8	1925	1,800	12/17/2021	12/17/2021	Υ	
EMERYVILLE		45TH	ST	CAST IRON	8	1931	45,000	12/17/2021	12/17/2021	Υ	
HAYWARD		ZORRO	СТ	CAST IRON	4	1950	0	11/29/2021	12/6/2021	Υ	
HERCULES		WILLOW	AVE	NON METALLIC / PLASTIC	8	1989	9,000	12/22/2021	12/23/2021	Υ	
LAFAYETTE		BLACK HAWK	RD	ASBESTOS CEMENT	8	1958	720	12/21/2021	12/21/2021	Υ	
LAFAYETTE		MOUNTAIN VIEW	DR	CAST IRON	4	1938	1,800	12/18/2021	12/18/2021	Υ	
LAFAYETTE		MT DIABLO	BL	CAST IRON	8	1963	1,800	12/8/2021	12/9/2021	Υ	
LAFAYETTE	N	THOMPSON	RD	NON METALLIC / PLASTIC	2	2001	1,800	12/30/2021	12/30/2021	Υ	

	December 2021 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?	
LAFAYETTE		WITHERS	AVE	CAST IRON	4	1941	23,040	12/15/2021	12/22/2021	Υ	
OAKLAND		39TH	AVE	CAST IRON	6	1929	900	12/18/2021	12/19/2021	Υ	
OAKLAND		60TH	ST	CAST IRON	6	1938	9,000	12/16/2021	12/16/2021	Υ	
OAKLAND		82ND	AVE	CAST IRON	4	1911	0	8/24/2021	12/15/2021	N	
OAKLAND		100TH	AVE	CAST IRON	6	1929	20,160	12/1/2021	12/7/2021	Υ	
OAKLAND		45TH	ST	CAST IRON	8	1931	2,250	12/17/2021	12/17/2021	Υ	
OAKLAND		ANDERSON	AVE	CAST IRON	6	1937	13,500	12/16/2021	12/16/2021	Υ	
OAKLAND		ASCOT	DR	CAST IRON	8	1938	1,800	12/28/2021	12/28/2021	Υ	
OAKLAND		ATLAS	AVE	CAST IRON	6	1939	1,800	12/16/2021	12/16/2021	Υ	
OAKLAND		BEECHWOOD	DR	CAST IRON	6	1928	900	12/17/2021	12/17/2021	Υ	
OAKLAND		CARLTON	ST	CAST IRON	4	1915	34,560	12/21/2021	12/28/2021	Υ	
OAKLAND		CONGRESS	AVE	CAST IRON	4	1922	9,000	12/5/2021	12/6/2021	Υ	
OAKLAND		COSGRAVE	AVE	CAST IRON	4	1928	23,040	12/17/2021	12/18/2021	Υ	
OAKLAND		FOOTHILL	BL	CAST IRON	4	1936	18,720	12/8/2021	12/20/2021	Υ	
OAKLAND		GLENBROOK	DR	CAST IRON	6	1928	2,700	12/20/2021	12/20/2021	Υ	
OAKLAND		HEAFEY	RD	CAST IRON	8	1953	18,720	12/9/2021	12/21/2021	Υ	
OAKLAND		INTERNATIONAL	BL	CAST IRON	4	1925	1,350	12/14/2021	12/15/2021	Υ	
OAKLAND		MCKINLEY	AVE	CAST IRON	6	1941	17,280	12/26/2021	12/29/2021	Υ	
OAKLAND		MILLSVIEW	AVE	CAST IRON	4	1935	27,000	12/21/2021	12/22/2021	Υ	
OAKLAND		MONTEREY	BL	CAST IRON	6	1957	4,320	12/14/2021	12/16/2021	Υ	
OAKLAND		MORPETH	ST	CAST IRON	6	1934	1,350	12/15/2021	12/15/2021	Υ	
OAKLAND		MOUNTAIN	BL	STEEL	24	1964	4,500	12/1/2021	12/2/2021	Υ	
OAKLAND		OLIVE	ST	CAST IRON	6	1933	34,560	12/21/2021	12/28/2021	Υ	
OAKLAND		PAMPAS	AVE	CAST IRON	6	1925	540	12/23/2021	12/24/2021	Υ	
OAKLAND		ROSE	AVE	CAST IRON	6	1931	4,500	12/22/2021	12/22/2021	Υ	
OAKLAND		TOMPKINS	AVE	CAST IRON	6	1925	20,160	12/18/2021	12/19/2021	Υ	
ORINDA		BATES	BL	ASBESTOS CEMENT	8	1957	1,350	12/24/2021	12/25/2021	Υ	
ORINDA		CAMINO SOBRANTE		CAST IRON	6	1934	900	12/17/2021	12/17/2021	Υ	
ORINDA		CRESCENT	DR	CAST IRON	4	1946	2,250	12/28/2021	12/28/2021	Υ	

December 2021 MAIN BREAK REPAIRS										
City	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
ORINDA		LA PLAZA	DR	CAST IRON	4	1934	630	12/19/2021	12/20/2021	Υ
ORINDA		LOMAS CANTADAS		CAST IRON	6	1948	1,350	12/20/2021	12/20/2021	Υ
ORINDA		MINER	RD	CAST IRON	6	1934	14,400	11/29/2021	12/8/2021	Υ
ORINDA		WANDA	LN	ASBESTOS CEMENT	6	1963	1,800	12/16/2021	12/16/2021	Υ
PIEDMONT		ESTATES	DR	CAST IRON	6	1927	900	12/24/2021	12/25/2021	Υ
PINOLE		ELM	ST	CAST IRON	6	1953	4,500	12/16/2021	12/16/2021	Υ
RICHMOND		2ND	ST	CAST IRON	4	1935	3,600	12/18/2021	12/18/2021	Υ
RICHMOND		4TH	ST	CAST IRON	6	1935	9,000	12/26/2021	12/26/2021	Υ
RICHMOND	S	16TH	ST	CAST IRON	4	1942	900	12/23/2021	12/23/2021	Υ
RICHMOND	S	21ST	ST	CAST IRON	4	1943	450	12/7/2021	12/7/2021	Υ
RICHMOND		CARLSTON	ST	ASBESTOS CEMENT	6	1954	25,920	12/20/2021	12/28/2021	Υ
RICHMOND		CYPRESS	AVE	ASBESTOS CEMENT	6	1963	0	11/8/2021	12/2/2021	Υ
RICHMOND		FRAN	WAY	STEEL	12	1964	45,000	12/14/2021	12/15/2021	Υ
RICHMOND		MARTINA	ST	CAST IRON	8	1947	1,800	12/25/2021	12/25/2021	Υ
RICHMOND		OLINDA	RD	CAST IRON	8	1954	1,350	12/24/2021	12/25/2021	Υ
RICHMOND		TRUMAN	ST	CAST IRON	6	1953	6,750	12/24/2021	12/24/2021	Υ
SAN LEANDRO		151ST	AVE	CAST IRON	6	1938	18,000	12/31/2021	12/31/2021	Υ
SAN LEANDRO		TROMBAS	AVE	CAST IRON	6	1943	4,500	12/27/2021	12/27/2021	Υ
SAN PABLO		CLARE	ST	CAST IRON	2	1942	900	12/2/2021	12/2/2021	Υ
SAN RAMON		TALAVERA	DR	ASBESTOS CEMENT	6	1979	63,000	12/8/2021	12/8/2021	Υ
WALNUT CREEK		KAREN	LN	ASBESTOS CEMENT	6	1962	270	12/29/2021	12/29/2021	Υ
WALNUT CREEK		LEROY	LN	ASBESTOS CEMENT	8	1965	3,600	12/21/2021	12/21/2021	Υ
WALNUT CREEK		MURWOOD	DR	ASBESTOS CEMENT	6	1955	22,500	12/23/2021	12/23/2021	Υ
WALNUT CREEK		SAN MIGUEL	DR	ASBESTOS CEMENT	6	1953	27,000	12/4/2021	12/5/2021	Υ
WALNUT CREEK		SAN MIGUEL	DR	ASBESTOS CEMENT	6	1953	4,500	12/19/2021	12/20/2021	Υ
WALNUT CREEK		WILLOW	AVE	CAST IRON	6	1933	18,000	12/14/2021	12/14/2021	Υ
WALNUT CREEK		YGNACIO VALLEY	RD	STEEL	16	1975	220,320	10/18/2021	12/7/2021	N
							1,058,040			

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	December 2021 MAIN BREAK REPAIRS											
	City	Pre	Street	Suf	ıf Pipe Material		Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On	KPI Met?
-	Breaks c	aused by	contractors or other agencies			2						
	Other main breaks					78						
	Total water main repairs					85						



Customer Account Delinquency Information DECEMBER 2021

(Data collection began September 1, 2017)

	300	un september 1				
CUSTOMER ASSIST. PROGRAM (CAP) ENROLLMENT	August	September ⁹	October ¹⁰	November ¹¹	December 12	Totals
New CAP Participants	220	192	120	110	69	9,003
CAP Renewals	232	173	131	105	77	8,227
CAP Departures	297	243	276	265	268	8,636
Total Active CAP Participants w/Active Accounts	9,172	9,229	9,222	9,100	9,110	
PAYMENT PLANS	August	September	October	November	December	Totals
Approved Payment Plans	1,275	1,123	1,023	1,175	1,350	182,583
Payment Plans Established After Service Interruptions			8	8		1,320
SERVICE INTERRUPTIONS - RESIDENTIAL	August	September	October	November	December	Totals
15-day Final Collection Notices	16,849	13,942	16,754	18,059	14,315	803,380
48-hr Service Interruptions Notices	10,966	8,718	9,878	11,216	9,767	447,628
Service Interruption Orders Created	*	*	*	*	*	82,689
Service Interruptions Completed (Actual)	*	*	*	*	*	22,712
CAP Enrolled Service Interruptions	*	*	*	*	*	802
WATER THEFT	August	September	October	November	December	Totals
No. of Incidents	-	2	2	5	5	381
No. of 2nd or 3rd Occurrences		1	-	=		41
No. Water Theft Penalties Issued			-	-	-	227
No. of Appeals Received			-		-	10
No. of 1st Appeals Approved	1	1	-	-	-	5
No. of 1st Appeals Denied	¥	п	1	-	-	7
Multi-Family Liens ¹	August	September	October	November	December	Totals
Liens Filed	30					5,039
Released	205	46	509	12	110	4,403
Transferred to Alameda Cty.	277	ï	-	-	16	1,905
Transferred to Contra Costa Cty.	36	1	-	-	-	373
Total/Month	548	46	509	12	126	11,720
BAD DEBT - WRITE OFFS	August	September	October	November	December	Totals
Total Referred to Collection Agency	\$ 180,647	\$ 209,521	\$ 227,772	TBD ²	TBD ²	\$ 8,072,898
Write-Off % to Billed Revenue	0.27%	0.31%	0.44%	TBD ²	TBD ²	

¹Liens filed monthly represent delinquent accounts 4-6 months in arrears.

*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	13	2	2	1	2	1	6	4
Illegal Connection		174	#	1	-	- 3	=	S1	-	-	14
Hydrant	100	100	8	В		3.00	=	, sea]	-	-	
Total	2	1	2	14	2	2	1	2	1	6	4
Water Theft Type/City	Lafayette		Piedmont		Richmon d	Rodeo	San Lorenzo	San Leandro	San Pablo	San Ramon	Totals since 9/1/2017
Meter	1	243	1	-5	73	7	1	5	3	2	377
Illegal Connection	0	3	2	3	120	100	3	0	=	=	4
Hydrant	19	74	=	9	w)	-	=	ei	-	-	0
Total	1	246	1	5	73	7	1	5	3	2	381

²Information not available until the 20th of the month is normally one month behind, however due to summer schedule July and August to be updated in September 2020.

³ 48-hour notices were generated, but not mailed to customers since March 23, 2020. Customers are receiving payment reminders in-lieu of 48-hours notices.

⁹ CAP distribution and new CAP participants through September 28, 2021.

¹⁰ CAP distribution and new CAP participants through October 26, 2021.

¹¹ CAP distribution and new CAP participants through November 19, 2021. Delay due to staff changes and holiday in CAP application processing team.

¹² CAP distribution and new CAP participants through December 13, 2021. Delay due to staff changes and holiday in CAP application processing team.



EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 6, 2022

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager

FROM: Rischa S. Cole, Secretary of the District

SUBJECT: Planning Committee Minutes – December 14, 2021

Chair Marguerite Young called to order the Planning Committee meeting at 8:49 a.m. She announced that in accordance with Government Code section 54953(e), this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting. Directors Lesa R. McIntosh and Frank Mellon were present at roll call. All Directors participated remotely. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Senior Civil Engineer Florence T. Wedington, Associate Civil Engineer Raffi J. Moughamian, Manager of Regulatory Compliance David M. Woodard, Executive Assistant II Robyn S. Johnson, and Secretary of the District Rischa S. Cole.

<u>Public Comment.</u> Kelly A. commented on the impropriety of an email from Director Mellon regarding Kelly A.'s comments on redistricting at EBMUD.

<u>Presentations/Documentation.</u> 1) Presentation entitled "DSRSD/EBMUD Recycled Water Authority Side Agreement," dated December 14, 2021; 2) Presentation entitled "Oakland Inner Harbor Pipeline Crossing," dated December 14, 2021; and 3) Presentation entitled "Fiscal Year 2021 Annual Readiness Report," dated December 14, 2021.

Dublin San Ramon Services District (DSRSD)/EBMUD Recycled Water Authority (DERWA) Side

Agreement. Senior Civil Engineer Florence T. Wedington presented an overview of a short-term Side Agreement being prepared for consideration by the District and DSRSD. Ms. Wedington highlighted the formation and purpose of DERWA, a Joint Powers Authority (JPA) formed in 1995, and the agreements already in place for supply, sales, operations, new supplies, and coordination with the City of Pleasanton. In 2020, DERWA, EBMUD, and DSRSD sought to update the various agreements to address the actual working conditions of DERWA and declining recycled water supplies. The Side Agreement would allow for a three-year "pause" (2022-2024) as demands are anticipated to remain flat and DERWA gains operational experience receiving flow diversion from Central Contra Costa Sanitary District (CCCSD). During this time, DERWA would monitor regulations around wastewater discharge, nutrients, and potable reuse; monitor key supply efforts and decisions; implement demand management strategies; review wastewater flow trends; and track CCCSD's water recycling initiatives. She reviewed key components of the Side Agreement which include enacting a connection moratorium; implementing demand management measures recommended by the DERWA Demand Management Working Group; reducing recycled water deliveries to address recycled water shortages, if necessary, so the actual delivery to member agency customers equals the recycled water supply; deferring DSRSD's charges to DERWA for secondary effluent; clarifying roles and responsibilities for pursuing supplemental supplies; suspending changes to the JPA membership structure; and establishing principles for future JPA negotiations. The agencies would continue evaluating regulations and supply options and implement demand management strategies through 2024. Negotiations to update the JPA will begin in 2024.

Board of Directors Planning Committee Minutes of December 14, 2021 January 6, 2022 Page 2 of 3

The Side Agreement is scheduled for EBMUD Board consideration in March 2022. Director Mellon commented the Side Agreement has been discussed at DERWA meetings. Addressing the Committee was Kelly A. who commented on the information presented and the recommendation to implement a three-year "pause." Chair Young responded and provided clarification on DERWA's purpose and some of the District's operations referenced by Kelly A. It was moved by Director Mellon, seconded by Director McIntosh and carried (3-0) by roll call vote to accept the report.

Oakland Inner Harbor Pipeline Crossing Update. Associate Civil Engineer Raffi J. Moughamian presented the update. Water service to the City of Alameda (Alameda) is provided by four existing underwater pipeline crossings at three separate locations between the City of Oakland (Oakland) and Alameda and North Bay Farm Islands. The Alameda-North Bay Farm Island Crossing Master Plan was completed in November 2014 and recommended three new underwater pipeline crossings and associated in-street pipeline connections. The first project, which is estimated to cost between \$32 and 34 million, will replace the existing Alice-Webster crossing which was installed in 1946 in highly liquefiable soil adjacent to the Posey Tube and will likely fail during a large seismic event. The District will install approximately 3,000 feet of 32-inch, high-density polyethylene (HDPE) pipe under the Oakland Inner Harbor and approximately 10,400 feet of 24-inch steel approach pipelines within Alameda and Oakland streets. Mr. Moughamian reviewed the construction methods that will be used including horizontal directional drilling and open trench; construction staging area locations in Oakland and Alameda; proposed construction hours in both cities; and community and stakeholder outreach efforts. He noted that once the new pipeline is in place, the existing crossing will be abandoned. The District has received approval for all but one of the multiple permits and easements required from various cities, agencies, and private property owners. An encroachment permit from the San Francisco Bay Conservation and Development Commission is pending as the District is required to submit the final design along with the final easement documents before approval. Project design will be completed in December 2021. Staff plans to conduct another public meeting after the construction contract is awarded and construction is scheduled to begin in summer 2022 contingent on successful easement negotiations. Mr. Moughamian confirmed the new pipeline would be placed 100 feet below ground and clarified the work to be performed by staff and contractors. The Committee recommended staff conduct outreach to residents and businesses near the construction areas well in advance of the summer 2022 construction start date. It was moved by Director Young, seconded by Director Mellon and carried (3-0) by roll call vote to accept the report.

Fiscal Year 2021 (FY21) Annual Readiness Report. Manager of Regulatory Compliance David M. Woodard presented the report. In FY21, staff updated nine and exercised all 22 Business Continuity Plans; updated 16 of the 29 Site Security Emergency Action Plans which are updated every five years or as needed; continued mutual aid activities with Los Angeles Department of Water and Power, Las Vegas Valley Water District, Denver Water and Contra Costa Water District; updated risk assessments and Emergency Response Plans as required by the America's Water Infrastructure Act; completed various exercises, trainings, and emergency plan updates to comply with Federal Energy Regulatory Commission requirements; and continued updating the Earthquake Mitigation and Response Plan which provides a framework for identifying the potential vulnerability, preparation, response, and recovery from an earthquake. In addition to managing the COVID-19 pandemic, the Emergency Operations Team also managed PG&E Public Safety Power Shutoffs (PSPS) events. The District was affected by two events in October. The first event involved nine District facilities and required deployment of one generator and the second involved 84 District facilities and required twenty-one generators.

Board of Directors Planning Committee Minutes of December 14, 2021 January 6, 2022 Page 3 of 3

No customers were impacted during these events. Mr. Woodard reported the District will purchase five additional generators to limit the need to rent equipment during PSPS events. He discussed actions taken during this period in response to the COVID-19 pandemic and said in FY22, staff will continue managing the pandemic; complete the Earthquake Mitigation and Response Plan by the end of December 2021; update and exercise Business Continuity Plans; and conduct exercises and meetings with mutual assistance partners and stakeholders. The Committee raised no questions. It was moved by Director McIntosh, seconded by Director McIntosh and carried (3-0) by roll call vote to accept the report.

Adjournment. Chair Young adjourned the meeting at 9:40 a.m.

CCC:RSC

W:\Board of Directors - Meeting Related Docs\Minutes\2021 Planning Ctte Minutes\121421 Planning Minutes.doc



EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 6, 2022

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager

FROM: Rischa S. Cole, Secretary of the District

SUBJECT: Legislative/Human Resources Committee Minutes – December 14, 2021

Chair John A. Coleman called to order the Legislative/Human Resources Committee meeting at 9:49 a.m. He announced that in accordance with Government Code section 54953(e), this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting. Directors McIntosh and Patterson were present at roll call. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Manager of Legislative Affairs Marlaigne K. Dumaine, Contract Equity Administrator Beverly D. Johnson, Executive Assistant II Robyn S. Johnson, and Secretary of the District Rischa S. Cole.

Public Comment. None.

<u>Presentations/Documentation.</u> 1) Presentation entitled "Contract Equity Program Annual Report – Fiscal Year 2021," dated December 14, 2021.

Legislative Update. Manager of Legislative Affairs Marlaigne K. Dumaine discussed seven state legislative initiatives for 2022 for Board review and consideration: 1) Climate Change – advance EBMUD's interests related to climate change and climate adaptation discussions; 2) Emerging Contaminants – advance EBMUD's interests in legislative and policy discussions and seek opportunities to support efforts to eliminate the use of Per- and Polyfluoroalkyl Substances (PFAS) and other emerging contaminants; 3) Forest Health/Wildfire Prevention and Response – advance EBMUD's interests in efforts to address forest health and vegetation management in the context of water and wastewater service; 4) Housing Fees – seek constructive ways to protect and advance EBMUD's interests as the legislature considers development-related fees, including capacity charges and connection fees, in the context of increasing housing supply and affordability; 5) Racial Equity and Justice – look for opportunities to advance EBMUD's interests as the legislature continues to consider racial equity and justice issues in the context of policy development in areas relevant to EBMUD priorities; 6) Ratepayer Assistance – seek constructive ways to advance EBMUD's interests as the administration and legislature consider ways to provide ongoing as well as additional pandemic-related assistance to water and wastewater customers; and 7) Water Supply Reliability and Resiliency – protect and advance EBMUD's interests in the context of water supply reliability and resiliency, including the use of recycled water, and the Mokelumne River fishery. Ms. Dumaine noted the climate change initiative does not cover wildfire or water which are covered under initiatives 3 and 7. She responded to questions regarding the state's budget surplus, potential impacts to District operations if current EBMUD fees are revised or eliminated as the legislature considers various fees in the context of increasing housing supply and affordability, and whether the state legislature is considering using a portion of the budget surplus to assist customers with paying delinquent utility bills. The Committee requested an update on any federal legislation that would allow timber removed for forest health management to be exported for sale outside of the United States and to provide the initiatives about

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forest health/wildfire prevention and response, ratepayer assistance, and water supply reliability and resilience to the Upper Mokelumne River Watershed Authority Executive Director. Addressing the Committee was Kelly A. who commented on initiative 7. It was moved by Director McIntosh, seconded by Director Patterson, and carried (3-0) by roll call vote to support the staff recommendations.

Contract Equity (CE) Program Annual Report - Fiscal Year 2021 (FY21). Contract Equity Administrator Beverly D. Johnson presented an update on the program's key objectives, goals, and accomplishments. In FY21, District contracts with local businesses totaled \$117.6 million; \$47 million with small businesses (including disabled veteran and lesbian, gay, bisexual, transgender business enterprises); and \$28 million with ethnic minorities and women businesses. Over 47 percent of the workers on 24 District construction projects were local hires and \$5 million in contract dollars paid wages and benefits for local workers. Ms. Johnson reviewed overall historical contract participation from FY16-FY21 and contracting goals and actual participation for white men, white women, ethnic minorities, and small businesses; the District does not currently have contracting goals established for local businesses. In FY22, the CE Office became a part of the District's newly formed Office of Diversity, Equity, and Culture and reaffirmed its partnership with AFSCME Local 444 in working for the overall betterment of the local community. The District also received the American Indian Chamber of Commerce of California's highest honor, *The Warrior Award*. Future activities include incorporating goals from the District's Diversity, Equity, and Inclusion Strategic Plan into CE Program efforts; piloting SBE First – a program to implement set asides for professional services contracts less than or equal to \$250,000; improving the effectiveness of matching potential proposers to contract opportunities; conducting at least two business forums regarding legal services and proposal writing; evaluating the impact of franchises and offshore staffing on local contracting efforts; and exploring "living wage" options for janitorial contracts. Ms. Johnson responded to questions regarding other District Unions partnering with the CE Office for the overall betterment of the local community. The Committee thanked Ms. Johnson for the presentation and said they look forward to hearing about the outcome of the business forums. It was moved by Director Patterson, seconded by Director McIntosh, and carried (3-0) by roll call vote to accept the report.

Adjournment. Chair Coleman adjourned the meeting at 10:35 a.m.

CCC:RSC

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