



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

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

**Notice of Time Change**

**LEGISLATIVE/HUMAN RESOURCES  
COMMITTEE MEETING**

**10:00 a.m.  
Tuesday, May 12, 2015**

Notice is hereby given that on Tuesday, May 12, 2015 the Legislative/Human Resources Committee Meeting of the Board of Directors has been rescheduled from 10:15 a.m. to 10:00 a.m. The meeting will be held in the Training Resource Center of the Administration Building, 375 - 11th Street, Oakland, California.

Dated: May 7, 2015

A handwritten signature in cursive script, reading 'Lynelle M. Lewis', is written over a horizontal line.

Lynelle M. Lewis  
Secretary of the District

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

375 – 11<sup>th</sup> Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

**AGENDA**

**Legislative/Human Resources Committee**

**Tuesday, May 12, 2015**

**10:00 a.m.**

**Training Resource Center**

**(Committee Members: Directors Coleman {Chair}, McIntosh and Patterson)**

**ROLL CALL:**

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

**DETERMINATION AND DISCUSSION:**

1. Legislative Report: (Dumaine)
  - Receive Legislative Report No. 05-15 and consider positions on the following bills:  
AB 291 (Medina) California Environmental Quality Act: Local Agencies: Notice of Determination: Water; and SB 637 (Allen) Suction Dredge Mining: Permits
  - Update on Legislative Issues of Interest to EBMUD
2. Chabot Dam Seismic Improvement Project – Pilot Project Labor Agreement Update (X. Irias)

**ADJOURNMENT:**

**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.*



## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: May 7, 2015

MEMO TO: Board of Directors

FROM: Alexander R. Coate, General Manager *ARC*

SUBJECT: Legislative Report No. 05-15

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.

### **RECOMMENDED ACTION**

Approve positions on the following bills: 1) Support AB 291 (Medina) California Environmental Quality Act: Local Agencies: Notice of Determination: Water and 2) Support SB 637 (Allen) Suction Dredge Mining: Permits.

### **STATE LEGISLATION**

### **RECOMMENDED POSITION**

**AB 291  
(Medina)**

**CALIFORNIA ENVIRONMENTAL  
QUALITY ACT: LOCAL AGENCIES:  
NOTICE OF DETERMINATION: WATER**

**SUPPORT**

The California Environmental Quality Act (CEQA) requires a lead agency to prepare an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. When a project is approved or carried out by a local agency, the local agency is required to file the notice of approval or determination within five working days after the approval or determination becomes final with the county clerk of each county in which the project will be located and requires the county clerk to make the notice available for public inspection. When a project is carried out by a state agency, the state agency must file the notice of approval or determination with the Office of Planning and Research (OPR).

AB 291 (Medina), as amended on April 23, 2015, would establish an alternative procedure for the filing of CEQA notices of approval or determination for multi-county water projects, such as water transfers. Specifically, within five days of the approval or determination of a project, AB 291 would allow a local agency to meet CEQA notice requirements by doing all of the following: 1) filing the notice with the clerk of the county in which the agency's office is located, 2) filing the notice with OPR, and 3) mailing notices to the clerks of all the affected counties. In addition, AB 291 specifies that the start of the statute of limitations to challenge a project begins

on the date the notice is filed with OPR. AB 291 does not create any new exemptions or otherwise change how local agencies analyze the environmental impacts of water projects under CEQA. AB 291 is co-sponsored by the Association of California Water Agencies and the McGeorge Law School Legislative and Public Policy Clinic.

Currently, a local agency is required to post CEQA notices of approval or determination in each county in which a project will be located. While this is a straightforward requirement for land use projects, for a water project, notices must be posted on the same day in all counties through which the project's water flows. Each county clerk then must make these notices available to the public through bulletin board postings or other physical, paper-based means at the county clerk's office based on that particular clerk's practices. Local agencies face a myriad of different submission requirements from each county, posing substantial logistical burdens and must rely on each county clerk to maintain proper posting for a minimum of 30 days. If a technical error in a county clerk's posting process occurs, even in only one county, the timeframe to challenge the decision may be extended from the usually required 30-35 days to 180 days, potentially delaying a project through no fault of the local agency.

Multi-county water projects, such as water transfers, can be a way to promote regional cooperation and increase regional reliability. Some water transfers involve water flowing through five or more counties, which can require hand delivery of notices to each county clerk's office in the same day to ensure posting requirements are met. This can be very challenging due to the geographic separation between the various county clerks' offices. AB 291 would provide an alternative CEQA notice filing procedure to preserve and increase transparency for multi-county water projects, such as those that may be undertaken by EBMUD in the future, while simplifying the posting requirements and clarifying what triggers the start of the statute of limitations for challenging CEQA decisions.

EBMUD has previously supported legislation to support transparency in CEQA noticing requirements. In 2011, EBMUD supported AB 209 (Ammiano) which required CEQA notices to include information on how the documents can be obtained electronically. AB 209 was signed into law (Chapter 171). In 2010, EBMUD supported AB 2565 (Ammiano) to authorize public agencies to provide CEQA documents, such as notices, responses, and documents, in an electronic format. AB 2565 was signed into law (Chapter 210).

According to the author's office, the current support and opposition list is shown below.

Support

Association of California Water Agencies  
Association of Environmental Professionals  
California Municipal Utilities Association  
California Special Districts Association  
Eastern Municipal Water District  
McGeorge Law School Legislative and Public Policy Clinic

Metropolitan Water District of Southern California  
Mountain Counties Water Resources Association  
San Diego County Water Authority  
Valley Ag Water Coalition  
Three individuals

Opposition  
None

**SB 637  
(Allen)**

**SUCTION DREDGE MINING:  
PERMITS**

**SUPPORT**

Existing law prohibits the use of vacuum or suction dredge equipment in any river, stream, or lake without a permit issued by the Department of Fish and Wildlife (DFW). Existing law also prohibits DFW from issuing such permits until DFW establishes regulations that “fully mitigate all identified significant environmental impacts.” DFW has not established such regulations since, as it noted in a 2013 report to the legislature, DFW does not have the authority to address non-fish and wildlife related effects of suction dredge mining. DFW further noted that some impacts, such as water quality impacts, could be regulated under the existing authority of the State Water Resources Control Board (SWRCB) which is responsible for regulating and permitting waste discharges, including the discharging of mining waste, into California waterways. However, existing law does not provide SWRCB explicit authority to regulate suction dredge mining.

SB 637 (Allen), as amended on April 22, 2015, is intended to close the existing gap in regulatory authority and would primarily do three things: 1) require the SWRCB to establish, by regulation, a permitting process for suction dredge mining that addresses water quality impacts, including impacts from mercury, 2) allow the SWRCB to prohibit suction dredge mining if it finds that the prohibition is necessary to regulate suction dredge mining waste discharges that violate or impair water quality, to the extent that such a prohibition is consistent with federal law, and 3) require DFW to issue a suction dredge mining permit if it determines that the use of a vacuum or suction dredge would not cause any significant effects on fish and wildlife. The bill does not currently address how the requirements to obtain permits from both the SWRCB and DFW will be aligned.

During the California gold rush, mercury was commonly used in mining operations and much of it remains in the environment today, including in rivers and streams. Suction dredge mining, which uses an underwater suction device to filter river or streambed materials in order to extract valuable minerals, such as gold, disturbs sediments in rivers and streams. When these sediments contain mercury, suction dredge mining can disturb the mercury and result in mercury traveling downstream. Fish can take in available mercury when they feed and in turn, people ingest the mercury, which in high levels can harm the human brain and nervous system, when they consume fish.

Suction dredge mining has historically been regulated in California based on its impact on fish and aquatic life, and DFW is the only state agency with explicit authority to regulate suction dredge mining. In 2009, the legislature passed and Governor Schwarzenegger signed, SB 670 (Wiggins), to establish a temporary ban on suction dredge mining until DFW could complete a court ordered environmental review and update its regulations. Subsequent legislation in 2011 and 2012, initially extended the ban until 2016, and then extended the ban indefinitely until DFW developed rules to fully mitigate for all identified significant environmental effects, not just those on fish and wildlife, and submitted a report to the legislature with recommendations for changes in law that would be necessary for DFW to mitigate for all environmental effects.

As mentioned above, DFW submitted the report to the legislature in 2013, and noted that while DFW does not have the authority to impose non-fish and wildlife related conditions on suction dredge mining, there are already other state agencies with jurisdiction over other resource impacts, such as water quality. In addition, there is pending litigation regarding DFW's permitting authority and whether the state can ban, as opposed to regulate, suction dredge mining on federal lands since federal law generally allows and encourages mining on federal lands. Though additional work may be needed to clarify how the dual permitting process will work, SB 637 is intended to address the current gap in regulatory authority, as well as the pending litigation, by providing the SWRCB the authority to regulate and establish a water quality based permitting process for suction dredge mining and to allow the SWRCB to prohibit suction dredge mining, to the extent consistent with federal law, if a prohibition is necessary to regulate waste discharges in order to protect water quality.

With regard to EBMUD, suction dredge mining, though currently prohibited, has been known to have occurred in the past on the Mokelumne River upstream of Pardee reservoir. In addition, while mercury levels in EBMUD reservoirs meet federal water quality standards and EBMUD drinking water meets or exceeds state health requirements, potentially high levels of mercury were detected several years ago in some of the fish from Camanche reservoir. At that time, in conjunction with local health departments, EBMUD posted consumption advisories at both reservoirs. In late 2014, the California Environmental Protection Agency issued a recommendation that the public limit consumption of certain fish from Camanche based on high levels of mercury, including black bass. While there are currently no known mercury-related water quality impacts associated with EBMUD's reservoirs, SB 637 would help ensure that a potential source of mercury is regulated for water quality impacts and, accordingly, increase protections for California rivers and reservoirs, including EBMUD's, in areas where suction dredge mining may occur.

EBMUD has previously supported various efforts to regulate pollutants. In 2011, EBMUD supported SB 623 (Kehoe) to require manufacturers to use the least toxic alternative when replacing the copper in marine antifouling paint. This measure failed to advance out of the legislature. In 2008, EBMUD adopted a "support" position on AB 2347 (Ruskin) to facilitate the collection of mercury added thermometers, which was signed into law (Chapter 572).



The current list of support and opposition to SB 637 is shown below.

Support

California Wilderness Coalition  
Center for Biological Diversity  
Clean Water Action  
Defenders of Wildlife  
Friends of the River  
Karuk Tribe  
Sierra Club California  
Sierra Nevada Alliance  
South Yuba River Citizens League  
The Sierra Fund

Opposition

American Mining Rights Association  
East Bay Prospectors  
Gemstone Equipment Co, Inc.  
Western Mining Alliance  
75 individuals

ARC:MD:JF



AMENDED IN ASSEMBLY APRIL 23, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 291**

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**Introduced by Assembly Member Medina**

February 11, 2015

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An act to amend Section 21152 of, and to add Section 21152.2 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 291, as amended, Medina. California Environmental Quality Act: local agencies: notice of determination: water.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion ~~of~~, of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA requires a local agency that approves or determines to carry out a project subject to CEQA to file a notice of the approval or determination with the county clerk of each county in which the project will be located and requires the county clerk to make the notice available for public inspection.

This bill would authorize a local agency, for certain water projects, to file the notice with the county clerk of the county in which the local agency's principal office is located ~~in~~ and with the Office of Planning and Research, and to mail a copy of the notice to the county clerks of the counties in which the water project is located, as specified. The bill would require the notices to be available for public inspection or posted, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 21152 of the Public Resources Code is  
2 amended to read:  
3 21152. (a) Except as provided in Section 21152.2, if a local  
4 agency approves or determines to carry out a project that is subject  
5 to this division, the local agency shall file notice of the approval  
6 or the determination within five working days after the approval  
7 or determination becomes final, with the county clerk of each  
8 county in which the project will be located. The notice shall  
9 identify the person or persons in subdivision (b) or (c) of Section  
10 21065, as reflected in the agency's record of proceedings, and  
11 indicate the determination of the local agency whether the project  
12 will, or will not, have a significant effect on the environment and  
13 shall indicate whether an environmental impact report has been  
14 prepared pursuant to this division. The notice shall also include  
15 certification that the final environmental impact report, if one was  
16 prepared, together with comments and responses, is available to  
17 the general public.  
18 (b) If a local agency determines that a project is not subject to  
19 this division pursuant to subdivision (b) of Section 21080 and the  
20 local agency approves or determines to carry out the project, the  
21 local agency or the person specified in subdivision (b) or (c) of  
22 Section 21065 may file a notice of the determination with the  
23 county clerk of each county in which the project will be located.  
24 A notice filed pursuant to this subdivision shall identify the person  
25 or persons in subdivision (b) or (c) of Section 21065, as reflected  
26 in the agency's record of proceedings. A notice filed pursuant to  
27 this subdivision by a person specified in subdivision (b) or (c) of  
28 Section 21065 shall have a certificate of determination attached

1 to it issued by the local agency responsible for making the  
2 determination that the project is not subject to this division pursuant  
3 to subdivision (b) of Section 21080. The certificate of  
4 determination may be in the form of a certified copy of an existing  
5 document or record of the local agency.

6 (c) A notice filed pursuant to this section shall be available for  
7 public inspection, and shall be posted within 24 hours of receipt  
8 in the office of the county clerk. A notice shall remain posted for  
9 a period of 30 days. Thereafter, the clerk shall return the notice to  
10 the local agency with a notation of the period it was posted. The  
11 local agency shall retain the notice for not less than 12 months.

12 SEC. 2. Section 21152.2 is added to the Public Resources Code,  
13 to read:

14 21152.2. (a) For purposes of this section, "water project"  
15 means an activity undertaken pursuant to Sections 1011, 1011.5,  
16 and 1211 of, Chapter 2 (commencing with Section 1250), Chapter  
17 6.6 (commencing with Section 1435), Chapter 10 (commencing  
18 with Section 1700), and Chapter 10.5 (commencing with Section  
19 1725) of Part 2 of Division 2 of, the Water Code.

20 (b) Within five working days after a local agency has approved  
21 or made a determination to carry out a water project, a local agency,  
22 in lieu of the notice filing requirements of subdivision (a) of  
23 Section 21152 for that water project, may take all of the following  
24 actions:

25 (1) File the notice in the form required by subdivision (a) of  
26 Section 21152 with the county clerk of the county in which the  
27 local agency's principal office is located.

28 (2) File the notice with the Office of Planning and Research.

29 (3) Mail ~~copies~~ *a copy* of the notice through the United States  
30 mail, first-class postage prepaid with return receipt requested, to  
31 the county clerk of ~~all the counties~~ *each county* in which the water  
32 project will be located.

33 (c) (1) The county clerk receiving a notice pursuant to paragraph  
34 (1) of subdivision (b) shall comply with subdivision (c) of Section  
35 21152.

36 (2) All notices filed pursuant to paragraph (2) of subdivision  
37 (b) shall be available for public inspection, and a list of those  
38 notices shall be posted on a weekly basis in the Office of Planning  
39 and Research. Each list shall remain posted for a period of 30 days.

1 (3) As promptly as possible, a county clerk that receives a copy  
2 of a notice pursuant to paragraph (3) of subdivision (b) shall post  
3 that copy and shall not require an original of that notice or any  
4 additional information from the local agency.

5 (d) The filing date of the notice specified in subdivisions (b) to  
6 (e), inclusive, of Section 21167, Section 21167.10, and Section  
7 21177 shall be the date on which the notice is filed with the Office  
8 of Planning and Research pursuant to paragraph (2) of subdivision  
9 (b).

10 (e) Nothing in this section affects the application of Section  
11 21092.2.

AMENDED IN SENATE APRIL 22, 2015

SENATE BILL

No. 637

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Introduced by Senator Allen

February 27, 2015

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An act to *amend Section 5653 of the Fish and Game Code, and to add Section 13172.5 to the Water Code, relating to ~~water quality dredging~~.*

LEGISLATIVE COUNSEL'S DIGEST

SB 637, as amended, Allen. ~~Water quality: suction~~ Suction dredge mining: permits.

Existing law prohibits the use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state without a permit issued by the Department of Fish and Wildlife. *Existing law requires the department to issue a permit, if the department determines that the use of a vacuum or suction dredge will not be deleterious to fish, upon the payment of a specified fee.*

*This bill would instead require the department to issue a permit if the department determines that the use does not cause any significant effects on fish and wildlife and would authorize the department to adjust the specified fee to an amount sufficient to cover all reasonable costs of the department in regulating suction dredging activities.*

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the federal Clean Water Act and the Porter-Cologne Water Quality Control Act (state act). The state act, with certain exceptions, requires a waste discharger to file certain information with the appropriate regional board and to pay an annual fee. The state act additionally requires a person, before discharging

mining waste, to submit to the regional board a report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination and a report that evaluates the potential of the mining waste discharge to produce acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

This bill would require, by July 1, 2017, the State Water Resources Control board to establish a permitting process for suction dredge mining and related mining activities in rivers and streams in the state, consistent with requirements of the state act. The bill would require that the regulations, at a minimum, address cumulative and water quality impacts of specified issues. A person who violates these regulations would be liable for an unspecified penalty. The bill would provide that the state board is not prohibited from adopting regulations that would prohibit suction dredge mining, if the state board makes a certain finding relating to water quality objectives, to the extent consistent with federal law. The bill would prohibit these provisions from affecting any other law, including the California Environmental Quality Act and specified provisions relating to streambed alteration requirements.

*The bill would specify that a suction dredge contains any of specified components for purposes of permits issued by the Department of Fish and Wildlife and for purposes of the permitting process established by the state board.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 5653 of the Fish and Game Code is  
2     amended to read:  
3     5653. (a) The use of ~~any~~ a vacuum or suction dredge  
4     equipment by ~~any~~ a person in ~~any~~ a river, stream, or lake of this  
5     state is prohibited, except as authorized under a permit issued to  
6     that person by the department in compliance with the regulations  
7     adopted pursuant to Section 5653.9. Before ~~any~~ a person uses ~~any~~  
8     a vacuum or suction dredge equipment in ~~any~~ a river, stream, or  
9     lake of this state, that person shall submit an application for a  
10    permit for a vacuum or suction dredge to the department, specifying  
11    the type and size of equipment to be used and other information  
12    as the department may require.



(b) Under the regulations adopted pursuant to Section 5653.9, the department shall designate waters or areas wherein vacuum or suction dredges may be used pursuant to a permit, waters or areas closed to those dredges, the maximum size of those dredges that may be used, and the time of year when those dredges may be used. If the department determines, pursuant to the regulations adopted pursuant to Section 5653.9, that the operation will not be deleterious to fish use of a vacuum or suction dredge does not cause any significant effects to fish and wildlife, it shall issue a permit to the applicant. If any a person operates any equipment other than that authorized by the permit or conducts the operation in any waters or area or at any time that is not authorized by the permit, or if any person conducts the operation without securing the permit, that person is guilty of a misdemeanor.

(c) ~~The~~ (1) *Except as provided in paragraph (2), the department shall issue a permit upon the payment, in the case of a resident, of a base fee of twenty-five dollars (\$25), as adjusted under Section 713, when an onsite investigation of the project size is not deemed necessary by the department, and a base fee of one hundred thirty dollars (\$130), as adjusted under Section 713, when the department deems that an onsite investigation is necessary.* ~~In~~ *Except as provided in paragraph (2), in the case of a nonresident, the base fee shall be one hundred dollars (\$100), as adjusted under Section 713, when an onsite investigation is not deemed necessary, and a base fee of two hundred twenty dollars (\$220), as adjusted under Section 713, when an onsite investigation is deemed necessary.*

(2) *The department may adjust the base fees for a permit described in this subdivision to an amount sufficient to cover all reasonable costs of the department in regulating suction dredging activities.*

(d) It is unlawful to possess a vacuum or suction dredge in areas, or in or within 100 yards of waters, that are closed to the use of vacuum or suction dredges.

(e) *For purposes of this section and Section 5653.1, a suction dredge contains any of the following:*

(1) *A hose that vacuums sediment from a river, stream, or lake.*

(2) *A motorized pump.*

(3) *A motorized sluice box.*

~~SECTION 1.~~

SEC. 2. Section 13172.5 is added to the Water Code, to read:

1 13172.5. (a) On or before July 1, 2017, the state board shall  
2 establish by regulation a permitting process for suction dredge  
3 mining and related mining activities in rivers and streams in the  
4 state. The regulations shall be consistent with the requirements of  
5 this division and, at a minimum, address cumulative and water  
6 quality impacts of each of the following:

7 (1) Mercury loading to downstream reaches of rivers and streams  
8 affected by suction dredge mining.

9 (2) Methylmercury formation in water bodies.

10 (3) Bioaccumulation of mercury in aquatic organisms.

11 (b) A person who violates a regulation adopted pursuant to this  
12 section shall be liable in the amount of \_\_\_\_ (\$ \_\_\_\_).

13 (c) Nothing in subdivision (a) shall prohibit the state board from  
14 adopting regulations that prohibit suction dredge mining if the  
15 state board finds that prohibition is necessary to regulate waste  
16 discharges that violate or impair water quality objectives or other  
17 criteria under this division, to the extent consistent with federal  
18 law. In making this determination, the state board may consider,  
19 but is not limited to, soil types, fueling and refueling activities,  
20 and horsepower limitations.

21 (d) This section does not affect any other law, including the  
22 California Environmental Quality Act (Division 13 (commencing  
23 with Section 21000) of the Public Resources Code) and the  
24 Department of Fish and Wildlife's streambed alteration  
25 requirements described in Chapter 6 (commencing with Section  
26 1600) of the Fish and Game Code.

27 (e) *For purposes of this section, a suction dredge contains any*  
28 *of the following:*

29 (1) *A hose that vacuums sediment from a river, stream, or lake.*

30 (2) *A motorized pump.*

31 (3) *A motorized sluice box.*

## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: May 7, 2014

MEMO TO: Board of Directors

THROUGH: Alexander R. Coate, General Manager *ARC*

FROM: Xavier J. Irias, Director of Engineering and Construction *XJI*

SUBJECT: Chabot Dam Seismic Improvement Project – Pilot Project Labor Agreement Update

### SUMMARY

On December 9, 2014, the Board of Directors adopted principles for negotiation of a Pilot Project Labor Agreement (PLA) for the Chabot Dam Seismic Upgrade Project (Attachment A). In February 2015, staff completed exploratory meetings and discussions with potential stakeholders during which the project was described and the principles were presented. In April 2015, staff completed a draft PLA document consistent with the principles and considering the comments received during the stakeholder outreach. This draft was transmitted to the Alameda County Building Trades Council (ACBTC) on May 5, 2015 in order to begin negotiating the PLA. An update on the draft PLA and the progress of negotiations will be presented at the Legislative/Human Resources Committee on May 12, 2015.

### DISCUSSION

The stakeholder outreach and earlier public comments on the principles identified three areas that generated the most interest and would potentially be the most challenging to negotiate. These areas and the related proposed approach in the draft PLA are discussed below.

#### Targeted/Local Hiring

Although targeted/local hiring is not one of the principles, there has been interest expressed by Board members and community-based organizations to consider targeted/local hiring as part of the PLA. Staff discussed this concept with the ACBTC and was advised that the ACBTC does not have its own targeted/local hiring program and would simply cooperate with whatever the District requires. Since the District has significant legal hurdles to address in implementing a targeted/local hiring program and cannot compel the ACBTC to implement measures that the District could not do directly, staff proposes to develop a District-wide program in parallel with but independent of this pilot PLA. The program may be referenced in this pilot PLA (if developed in time for contract award) and should not be hindered by the PLA.

The program is in the early stages of development and would be modeled after or be a component of the District's Contract Equity Program. A separate update will be provided at the June 9, 2015 Legislative/Human Resources Committee.

#### Equitable Participation for all Contractors

As articulated in principle 8, the District's interests are best served by a PLA that assures equitable participation for all contractors and does not provide a competitive advantage to any single contractor or group of contractors. The draft PLA requires all contractors to pay their employees in accordance with the classification and wage scale contained in the appropriate Master Labor Agreements (MLA) and in compliance with the applicable General Prevailing Wage Determination. The draft PLA also requires all contractors to pay into trust funds or pay any benefits under any applicable MLA unless the contractor meets the following requirements:

- The contractor provides wages, health insurance coverage, retirement contributions and/or other fringe benefits to all employees, with the total dollar value of such wages and benefits being at least equivalent to those required under the applicable MLAs; and
- The contractor complies with prevailing wage laws applicable to the project.

#### Efficient and effective performance of the work

As articulated in principle 9, the District's interests are best served by a PLA that assures a steady, broad-based, adequate and reliable supply of skilled labor. The draft PLA identifies the unions as the primary source of all craft labor for the work. However, in the event that a contractor that is not signatory to an MLA has its own core workforce, that contractor may request by name, and the unions shall honor, referral of persons in that core workforce who demonstrate the following specified qualifications.

- The persons possess any license and/or certifications required by state or federal law for the work to be performed; and
- The persons have worked a total of at least one thousand hours in the construction craft during the prior three years; and
- The persons were on the contractor's active payroll for at least 60 out of 140 calendar days prior to the contract award.

Upon request, the unions are to first refer up to six core workers, and will thereafter refer an employee from the hiring hall out-of-work list for the affected trade or craft. Subsequent referrals shall alternate between requested core workers and employees from the out-of-work list. In case of layoffs, employees shall be laid off in reverse order of hiring.

PLA negotiations are just beginning. The updated schedule for the PLA negotiations is shown below.

Negotiation of PLA and Periodic Board Updates	May – June 2015
Board Consideration of PLA for Approval	July 2015
Final Implementation Plan	August 2015
Construction Contract Bid/Award	Fall 2015

XJI:OOY:cw

Attachment

I:\SEC\2015 Board Related Items\Committees 2015\05-12-15 Leg HR Cmte\E&C Chabot Dam Seismic Improvement Project - Pilot PLA Update - cw.doc



RESOLUTION NO. 34015-14

ADOPTING PRINCIPLES OF NEGOTIATION FOR A PILOT PROJECT LABOR AGREEMENT FOR THE CHABOT DAM SEISMIC IMPROVEMENT PROJECT

Introduced by Director Mellon ; Seconded by Director Foulkes

WHEREAS, the members of the Board of the East Bay Municipal Utility District ("EBMUD") have carefully reviewed and duly considered the information and reports submitted by staff on the utilization of a pilot Project Labor Agreement ("PLA") on a major public construction project to gain experience with how a PLA could work for EBMUD; and

WHEREAS, EBMUD has determined to undertake a major construction project to be known as the Chabot Dam Seismic Improvement Project ("Project"); and

WHEREAS, economical, efficient, quality construction of this Project is of utmost importance to the residents of the areas to be served by this Project; and

WHEREAS, it is important to EBMUD to ensure a steady and reliable source of skilled labor for the Project and an equal opportunity for all businesses to compete for work on the Project; and

WHEREAS, it is the intent of the principles outlined below to ensure equitable participation by all contractors in compliance with competitive bidding laws, to avoid costly and preventable delays, to assure contractors access to skilled craft workers, and to secure the best work at the lowest price possible for the benefit of EBMUD's ratepayers;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors ("Board") does hereby authorize the development and negotiation of a pilot Project Labor Agreement for implementation, subject to approval by the Board, as to all new construction work on the Project. In the course of the negotiations of such an Agreement, the District's consultants and advisors shall effectuate, to the extent practical and possible, the following principles:

1. The PLA shall contain effective, time-efficient dispute resolution procedures, available to all parties and their employees, covering any potential labor-management or employee-management dispute, including jurisdictional disputes among the signatory unions, which might arise under the Agreement;
2. The PLA shall contain provisions, including a comprehensive no-strike clause, which will prohibit any disruption, work stoppage or lockout that might arise and include a mechanism for the prompt, effective enforcement of such provisions;

3. The PLA shall contain provisions permitting the establishment of rules, regulations and procedures promoting a safe work place for all employees, which may include measures that are beneficial to the Project and to the District, such as reasonable substance abuse programs;
4. The PLA shall prohibit employment discrimination of all types;
5. The PLA shall not impede, but rather encourage, balanced opportunities among businesses owned by all ethnic and gender groups to participate in Project work, pursuant to EBMUD's Contract Equity Program;
6. The PLA shall be consistent with the terms of the Grant Agreement between the State of California (Department of Water Resources) and East Bay Municipal Utility District 4600010369 Proposition 1E Round 2 Stormwater Flood Management Grants, February 2014 regarding a 3<sup>rd</sup> party Labor Compliance Program;
7. The PLA shall include provisions that seek to ensure a steady, broad-based, adequate and reliable supply of properly skilled employees to undertake work covered by the PLA;
8. The PLA shall contain provisions which permit all qualified construction contractors to bid and be awarded work pursuant to the applicable procurement laws, and shall not require such contractors to be signatory to, or to become signatory to, any other agreement but the Project Labor Agreement for purposes of wages, benefits, hours and working conditions on the Project;
9. The PLA shall contain provisions permitting contractors that have an identifiable, regularly employed work force, to employ directly some of such work force, as will permit the contractor to effectively carry out the work for which he or she is committed;
10. The PLA shall, to the extent possible, standardize and harmonize working conditions on the Project to maximize the efficiency of construction and the coordination among different contractors and work forces; but the PLA shall not modify or overrule the terms and conditions in the individual master labor agreements except as necessary to achieve such standardization, harmonization, efficiency and coordination, or achieve any of the goals of these principles for negotiation;
11. The PLA shall explicitly define its scope as limited to the construction work authorized by the Board for inclusion within a PLA and shall further limit its application to those employees traditionally engaged in the construction process and employed directly by contractors bound by the PLA; and
12. The PLA shall, as the definitive labor relations program for the Project, encourage coordination among the contractors and inter-change between labor and management in order to establish a stable, harmonious work site and permit the timely completion of the Project.



BE IT FURTHER RESOLVED that the Secretary is authorized to provide a copy of this resolution upon request consistent with the provisions of state law.

ADOPTED this 9th day of December, 2014 by the following vote:

AYES: Directors Coleman, Foulkes, Linney, McIntosh,  
Mellon, Patterson, and President Katz.

NOES: None.

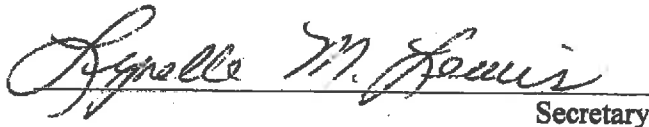
ABSENT: None.

ABSTAIN: None.

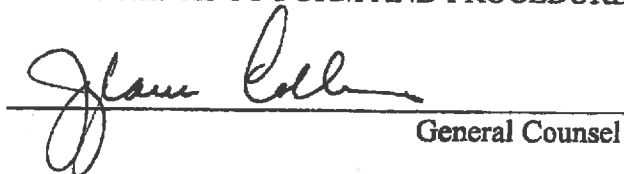


President

ATTEST:

  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

  
General Counsel

