



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

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

**AGENDA
Tuesday, July 25, 2017**

**REGULAR CLOSED SESSION
11:00 a.m., Board Room**

ROLL CALL:

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

ANNOUNCEMENT OF CLOSED SESSION AGENDA:

1. Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2): one matter.
2. Conference with Real Property Negotiators pursuant to Government Code section 54956.8 regarding conditions and terms of payment for the telecommunications site leases for the East Bay Regional Communications System Authority. East Bay Municipal Utility District negotiators: Sherri A. Hong, Manager of Customer & Community Services, and Matt Elawady, Manager of Real Estate Services. Negotiating parties: East Bay Municipal Utility District and the East Bay Regional Communications System Authority.
3. Conference with Labor Negotiators Bruce Heid and Glenn Berkheimer from the Industrial Employers Distributors Association, Alexander R. Coate, Laura A. Brunson and David Pak 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 hold Closed Session in Conference Room 8)

**REGULAR BUSINESS MEETING
1:15 p.m., Board Room**

ROLL CALL:

BOARD OF DIRECTORS:

- Pledge of Allegiance

ANNOUNCEMENTS FROM CLOSED SESSION:

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

CONSENT CALENDAR: (Single motion and vote approving 14 recommendations, including 2 resolutions.)

1. Approve the Regular Meeting Minutes of July 11, 2017.
2. File correspondence with the Board.
3. Award contracts to the lowest responsive/responsible bidders, Univar USA, Inc., and Olin Corporation, in the total annual amount, after the addition of taxes, not to exceed \$3,755,052 for supplying liquid sodium hypochlorite to various District sites for three years, beginning on or after August 1, 2017 with two options to renew for an additional one-year period for a total cost of \$18,775,259 under Request for Quotation No. 1718.
4. Award a contract to the lowest responsive/responsible bidder, Commercial Waterproofing Systems, Inc., dba ERC Roofing and Waterproofing, in the amount of \$1,797,395 for construction of Leland and Almond Reservoir Roof Improvements under Specification 2127.
5. Award a contract to Integrated Archive Systems, Inc., in an amount, after the addition of taxes, not to exceed \$824,520 for supplying NetApp, Inc., data storage equipment, installation, and staff training for District data centers located at the Administration Building in Oakland and the Disaster Recovery/Business Continuity site in Sacramento with three years of maintenance and support, beginning on or after August 1, 2017.
6. Authorize actions related to fully maintained and operated (FM&O) portable rental welding services.
 - 6a. Authorize an amendment to Board Motion No. 071-15 dated April 28, 2015, to increase the estimated agreement amounts by \$570,000 for the rental of FM&O portable welding services from Eyeball Engineering, Ferguson Welding Services, T.A.Z. Welding & Fabrication; Larsson Welding; Mid Mountain Mechanical, Nicole Welding, and Wood Welding beginning on or after July 25, 2017 through the remainder of the agreement period ending April 30, 2020.
 - 6b. Authorize additional agreements for FM&O portable welding rental services with vendors that meet District standards and offer pricing at or below the range in the amended agreements above. These additional agreements may be issued, on an as-needed basis to increase flexibility and ensure availability of FM&O portable welding rental services to the District.
7. Authorize an agreement with Collection Bureau of America to provide collection services on unpaid terminated District customer accounts for a fee of 18 percent on the collected amount on accounts referred from September 1, 2017 through August 31, 2020, with two options to renew for an additional one-year period.
8. Authorize the extension of an agreement with Bentley Systems, Inc., in an amount, after the addition of taxes, not to exceed \$496,500 for supplying Microstation software licenses and maintenance for three years beginning on or after August 1, 2017.

CONSENT CALENDAR: (Continued)

9. Authorize a third amendment to the agreement with SR Bray, LLC, dba Power Plus approved under Board Motion No. 018-16 dated January 26, 2016, to increase the authorization by \$260,000, to an amount not to exceed \$616,370, to continue the rental of a standby generator at Lafayette Water Treatment Plant beginning on or after July 25, 2017.
10. Authorize staff to execute a Memorandum of Understanding with the City of Hayward to jointly prepare a Groundwater Sustainability Plan for the East Bay Plain Sub-basin, a grant application, and a cooperating agreement.
11. Cancel the August 22, 2017 Closed Session and Regular Meetings of the Board of Directors.
12. Approve the June 2017 Monthly Investment Transactions Report.
13. Approve actions related to the sale of the Stonewall Reservoir property. (Resolution)
 - 13a. Approve the sale of the Stonewall Reservoir property in Oakland to JB Stonewall, LLC, for the purchase price of \$1,200,000.
 - 13b. Authorize District staff to execute the Grant Deed (“Deed”) for the sale of the property to JB Stonewall, LLC.
14. Appointment of Manger of Maintenance and Construction/Water Operations. (Resolution)

PUBLIC HEARING:

15. Conduct a public hearing to consider objections and protests to the General Manager’s Report to Transfer Delinquent EBMUD Charges to the 2017-2018 Property Tax Rolls.

DETERMINATION AND DISCUSSION:

16. Adopt the General Manager’s Report and authorize the General Manager to exclude from the report any affected parcels or amounts as appropriate, including those that the District receives payment for on or before the reports are sent to Alameda and Contra Costa counties in electronic form by August 10, 2017. (Resolution)
17. Amend Exhibit A – Summary of Changes – of Board Position Resolution No. 35048-17 approved on July 11, 2017 for Fiscal Year 2018/2019 to correct a typographical error on the numbers of full-time and temporary construction and limited-term positions allocated. (Resolution)
18. Consider a request from Viridis Fuels, LLC (Viridis) to extend the current deferred Additional Value payment of \$175,244.36 due under the lease agreement between Viridis and the District for a portion of the District's West End property until December 1, 2017, for a total deferment of Additional Value payments of \$260,000.04

DETERMINATION AND DISCUSSION: (Continued)

19. Legislative Update:

- Receive Legislative Report No. 08-17 and consider positions on the following bills: SB 623 (Monning) Water Quality: Safe and Affordable Drinking Water Fund; and H.R. 23 (Valadao) Gaining Responsibility on Water Act of 2017
- Update on Legislative Issues of Interest to EBMUD

20. General Manager's Report:

- Chevron Recycled Water Contract Negotiations Update
- Conducting a Pilot to Provide Board Meeting Audio Recordings Online

REPORTS AND DIRECTOR COMMENTS:

21. Committee Reports:

- Special Finance/Administration
- Planning
- Sustainability/Energy
- Legislative/Human Resources

22. Other Items for Future Consideration.

23. Director Comments.

ADJOURNMENT:

The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, August 8, 2017 in the Administration Center Board Room, 375 Eleventh Street, Oakland, California.

Disability Notice

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

Document Availability

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

BOARD CALENDAR

Date	Meeting	Time/Location	Topics
Tuesday, July 25	Sustainability/Energy Committee Young {Chair}; Katz; Linney	9:00 a.m. Training Resource Center	<ul style="list-style-type: none"> • 2016 Greenhouse Gas Inventory and Mitigation Efforts • Integrated Pest Management Program
	Finance/Administration Committee Patterson {Chair}; Coleman; Mellon	10:00 a.m. Training Resource Center	<ul style="list-style-type: none"> • Annual Internal Audit Report • Monthly Investment Transactions Report • Quarterly Financial Reports
	Legislative/Human Resources Committee Coleman {Chair}; Patterson; Young	10:30 a.m. Training Resource Center	<ul style="list-style-type: none"> • Legislative Update
	Board of Directors	11:00 a.m. 1:15 p.m.	<ul style="list-style-type: none"> • Closed Session • Regular Meeting
Tuesday, August 8	Planning Committee Mellon {Chair}; Linney; Young	9:15 a.m. Training Resource Center	
	Legislative/Human Resources Committee Coleman {Chair}; Patterson; Young	10:15 a.m. Training Resource Center	
	Board of Directors	11:00 a.m. 1:15 p.m.	<ul style="list-style-type: none"> • Closed Session • Regular Meeting
Tuesday, August 22	Finance/Administration Committee Patterson {Chair}; Coleman; Mellon	TBD Training Resource Center	
Board of Directors	TBD	<ul style="list-style-type: none"> • Closed Session • Regular Meeting 	

MINUTES

Tuesday, July 11, 2017

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

Regular Closed Session Meeting

President Lesa R. McIntosh called to order the Regular Closed Session Meeting of the Board of Directors at 11:03 a.m. in the Administration Center Board Room.

ROLL CALL

Directors John A. Coleman, Doug Linney, Frank Mellon, William B. Patterson, Marguerite Young, and President Lesa R. McIntosh were present at roll call. Director Andy Katz arrived at 11:15 a.m.

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Assistant General Counsel Fred S. Etheridge (Item 1a), Director of Water and Natural Resources Richard G. Sykes (Item 1a), Attorney Jonathan D. Salmon (Item 2a), Director of Wastewater Eileen M. White (Item 2a), Attorney Lourdes Matthew (Item 3), Manager of Human Resources Laura A. Brunson (Item 3), Manager of Employee Relations David Pak (Item 3), and Industrial Employers Distributors Association representatives Glenn Berkheimer and Bruce Heid (Item 3).

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Lesa R. McIntosh announced the closed session agenda. The Board convened to Conference Room 8 for discussion.

Regular Business Meeting

President McIntosh called to order the Regular Business Meeting of the Board of Directors at 1:17 p.m. in the Administration Center Board Room.

ROLL CALL

Directors John A. Coleman, Andy Katz, Doug Linney, Frank Mellon, William B. Patterson, Marguerite Young, and President Lesa R. McIntosh were present at roll call. Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President McIntosh led the Pledge of Allegiance.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

There was no public comment.

CONSENT CALENDAR

- Motion by Director Mellon, seconded by Director Young, to approve the recommended actions for Items 1-13 on the Consent Calendar, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 111-17** – Approved the Regular Meeting Minutes of June 27, 2017.
 2. The following correspondence was filed with the Board: **1)** Letter dated July 11, 2017 to Board of Directors from California State Senator Steven M. Glazer, urging the District to delay action on the proposed rate increase; **2)** Letter dated July 11, 2017 to Board of Directors from Dr. Elizabeth Dougherty, Director, Wholly H2O, encouraging the Board to reduce GPD water use, increase watershed restoration, reduce sewer fees, and institute a tiered rate system for all water users; **3)** Document entitled “The “FAIR” Proposal for EBMUD Water Rate Reform: Efficient, Equitable Rates to Reflect the Cost of New Supplies, January 2003”; **4)** Document entitled “Managing Water use in California with Progressive Water Pricing” from Kenneth Gibson, dated July 7, 2017; **5)** Affidavit of Posting dated June 19, 2017 and Notice of the Time and Place of Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager for Revisions to Water and Wastewater System Schedules of Rates and Charges, Capacity Charges, and Other Fees dated June 16, 2017; **6)** Amador Ledger Dispatch Proof of Publication of the Notice of the Time and Place of Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager for Revisions to Water and Wastewater System Schedules of Rates and Charges, Capacity Charges, and Other Fees (Legal No. T242 published June 16 and June 23, 2017); **7)** Calaveras Enterprise Proof of Publication of the Notice of the Time and Place of Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager for Revisions to Water and Wastewater System Schedules of Rates and Charges, Capacity Charges, and Other Fees (published June 15 and June 22, 2017); **8)** Contra Costa Times Proof of Publication of the Notice of the Time and Place of Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager for Revisions to Water and Wastewater System Schedules of Rates and Charges, Capacity Charges, and Other Fees (Legal No. 5973783 published June 16 and June 23, 2017); **9)** Oakland Tribune Proof of Publication of the Notice of the Time and Place of Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager for Revisions to Water and Wastewater System Schedules of Rates and Charges, Capacity Charges, and Other Fees (Legal No. 5973783 published June 16 and June 23, 2017); **10)** Presentation entitled “FY 2018 and FY 2019 Public Hearing, Rates & Charges,” dated July 11, 2017; and **11)** Speakers’ Bureau and Outreach Record CY17 as of July 11, 2017.

3. **Motion No. 112-17** – Awarded a contract to the lowest responsive/responsible bidder, Armorcast Products Company, Inc., in the estimated annual amount of \$352,383, after the addition of taxes, for supplying polymeric concrete vault/meter boxes and covers for three years, beginning on or after July 18, 2017, with two options to renew for an additional one-year period for a total cost of \$1,761,915 under Request for Quotation No. 1716.
4. **Motion No. 113-17** – Awarded a contract to the lowest responsive/responsible bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$2,674,000 for construction of the Main Wastewater Treatment Plant Gallery Drainage and Piping Improvements Project under Specification SD-341.
5. **Motion No. 114-17** – Authorized an agreement beginning on or after July 11, 2017 with Westin Engineering, Inc., in an amount not to exceed \$104,200 for reviewing the District's work management systems and advising the District on developing a project roadmap for modernizing these systems.
6. **Motion No. 115-17** – Authorized an amendment to the agreement beginning July 12, 2017 with Aspen Technology, Inc., in an amount not to exceed \$218,000 for software for the District's operations/network data historian system through June 30, 2022.
7. **Motion No. 116-17** – Approved assignment of the lease for grazing in the East Bay watershed originally awarded under Board Motion No. 127-12 on September 24, 2012 from Alfred Mendoza to John Hoover.
8. **Motion No. 117-17** – Authorized a cost-share agreement with the United States Department of the Interior, Bureau of Land Management for the District to contribute a one-half share, not to exceed \$300,000, of the costs to construct a remediation project at a legacy contaminated mine tailing site partially on District property near Camanche Reservoir and determine this project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to section 15330 of the CEQA Guidelines.
9. **Motion No. 118-17** – Approved the Water Supply Assessment requested by the City of San Leandro for the Bay Fair Transit-Oriented Development Specific Plan pursuant to California Water Code, Sections 10910-10915.
10. **Motion No. 119-17** – Authorized the Office of General Counsel to continue the employment of the law firm of Ellison, Schneider Harris & Donlan, LLP, for specialized legal services related to water and energy law and litigation matters in an additional amount not to exceed \$180,000.
11. **Motion No. 120-17** – Authorized the Office of General Counsel to continue the employment of the law firm of Liebert Cassidy Whitmore for specialized legal services related to labor and employment matters in an additional amount not to exceed \$150,000.
12. **Motion No. 121-17** – Authorized the Office of General Counsel to employ the law firm of Somach Simmons & Dunn for services of special counsel related to providing representation in litigation arising under the California Environmental Quality Act and/or the National Environmental Policy Act in an amount not to exceed \$85,000.

13. **Resolution No. 35044-17** – Authorizing An Application For Reorganization To The Alameda County Local Agency Formation Commission Consisting Of Detachment From The District Of Territory That Is Currently Served By The City Of Hayward And The Annexation To The District Of Territory That Is Currently Served By East Bay Municipal Utility District.

PUBLIC HEARING

14. **Conduct a Public Hearing to consider revisions to the water and wastewater systems schedules of rates and charges, capacity charges and other fees recommended in the Biennial Report and Recommendation of the General Manager for Fiscal Years 2018 and 2019.**

President McIntosh opened the Public Hearing at 1:19 p.m. She announced the process for lodging a protest and said that all protests must be lodged before the close of the Public Hearing. Staff will report on the number of valid protests received after the close of the Public Hearing.

Director of Finance Sophia Skoda presented the staff recommended actions for revisions to the water and wastewater systems schedules of rates and charges, capacity charges and other fees for Fiscal Years 2018 (FY18) and 2019 (FY19). Staff recommended adopting the Proposition 218 and non-Proposition 218 rates, charges, fees and regulations outlined in the Biennial Report and Recommendation of the General Manager for FY18 and FY19 submitted to the Board on June 13, 2017. She noted that drought rate surcharges are included in the proposed rate structure as a contingency plan in the unanticipated event of a water shortage. The Board held three budget workshops (January 24, March 14 and April 11) and Proposition 218 notices were mailed in April for a June 13 public hearing. However, due to a data processing error in the mailing list, an updated notice was re-sent in May and the public hearing was rescheduled to July 11. The rates were developed from the Cost of Service study conducted in 2015 and the FY18/19 budget which was adopted by the Board on June 27.

Ms. Skoda reviewed the District's 10-year rate increase history, current and proposed monthly billing impacts to the average single family residential customer and other customer classes, an agency comparison of water and wastewater rates and charges, and highlighted the proposed revisions to other water fees, charges and regulations.

The recommended changes to the rates, charges, fees and regulations subject to Proposition 218 are summarized below:

- Modify Schedule A of the Water System Schedule of Rates and Charges including modifications to monthly Water Service Charge, Water Flow Charge, Private Fire Service Charge, and Elevation Surcharge.
- The proposed modifications will increase overall water non-drought rates (Service, Flow and Private Fire Service Charges and Elevation Surcharge) by 9.25 percent overall for FY18 and by an additional 9.0 percent for FY19.

- Modify Schedule A and Schedule B of the Wastewater System Schedule of Rates and Charges including modifications to monthly Wastewater Service Charge, Strength Charge, Flow Charge and Wet Weather Facilities Charge.
- The proposed modifications will increase overall treatment rates as shown in Wastewater System Schedule A (Service, Strength and Flow charges) by 5 percent for FY18 and 5 percent for FY19.
- The proposed modifications will increase overall Wet Weather Facilities Charges as shown in Wastewater System Schedule B by 5 percent for FY18 and 5 percent for FY19.

If adopted by the Board, the FY18 rates will go into effect on July 12, 2017, which is later than assumed in the FY18 budget and the General Manager Report and Recommendation. FY18 budgeted revenues will be affected by this delay by less than \$2 million, or under 0.3 percent of the total projected revenue for the fiscal year. The FY19 rates will go into effect on July 1, 2018.

The recommended changes to the rates, charges, fees and regulations not subject to Proposition 218 are summarized below:

Modifications to Water Rates, Charges and Fees

- Modify Schedule B, Account Establishment Charge to increase the Account Establishment Charge effective July 12, 2017.
- Modify Schedule C, Charges for Special Services, to increase the Meter Testing, Service Interruption Charges, Lien Charges, Wasteful Use Charge, Flow-Restrictor Installation Charge, Backflow Device Certification Charge, Service Trip Charge, Public Hydrant Account Establishment Charge, and Hydrant Meter Account Visit Charge to reflect current costs. The Schedule C increases are proposed to be effective July 12, 2017.
- Modify Schedule M, Water Service Estimate Application Fees to clarify the calculations for the application fee. The revised Schedule M is proposed to be effective July 12, 2017.

Modifications to the Standard Participation Charge (SPC), System Capacity Charges (SCC) and Water Demand Mitigation Fees

- Modify Schedule H, SPC, to reflect the latest future water supply costs.
- Modify Schedule J, SCC, to reflect updates for construction cost escalation, financing costs, and revised estimated costs to complete future water supply projects. SCC rates for regions 1, 2 and 3 are proposed to change from 4.5 percent to 4.7 percent.
- Modify Schedule N, Water Demand Mitigation Fees, to reflect the latest future water supply costs and to reflect the latest U.S. City Average of the Consumer Price Index.

Changes to Water System Schedules H, J and N are proposed to be effective on August 14, 2017.

Water System Regulations Governing Water Service

- Amend Section 1, Explanation of Terms Used in these Regulations, to explain the terms “Expanded Service,” “Irrigable Landscape Area,” “Dedicated Irrigation Meter,” “Master Meter,” “Multi-Family Premises,” “Multi-Occupancy Commercial/Industrial Premises,” “Single-Family Premises,” “Dwelling Unit,” “Commercial/Industrial Unit,” “Live/Work Unit,” and “Work/Live Unit.”
- Amend Section 2, Applying for Service, to clarify the requirement for individual meters for each unit within a new structure.
- Amend Section 3, Standard Service, to clarify when standard and fire services can be combined into a single service and when the requirements for individual and master meters apply.
- Amend Section 17, Change in Size of Service, to clarify that this regulation also applies to applicant requested replacement or relocation of services larger than 1½ inches.
- Amend Section 26, Protection of Public Water Supply, to add single-family premises with residential wells that do not conform to District cross-connection requirements to the backflow device requirements and annual certification.
- Amend Section 31, Water Efficiency Requirements, to reference current state and federal codes, standards, and laws related to increased efficiency standards for indoor and outdoor water use.

Revised Water System Regulations 1, 3, 17, 26 and 31 are proposed to be effective July 12, 2017. Revised Water System Regulation 2, is proposed to be effective January 1, 2018, consistent with the effective date of the new law that is the basis for the proposed revisions.

Modifications to Wastewater Charges and Fees

- Modify Schedule C, Industrial Permit Fees, to increase the Fiscal Year 2018 (FY18) and Fiscal Year (FY19) Wastewater Discharge Permit, Estimation Permit, and Limited Term Discharge Permit Fees to reflect current costs. The fee is proposed to be effective July 12, 2017 for the FY18 increase and July 1, 2018 for the FY19 increase.
- Modify Schedule D, Other Fees to increase the FY18 and FY19 Monitoring Fees and Private Sewer Lateral Compliance Fees. The fees are proposed to be effective July 12, 2017 for the FY18 increase and July 1, 2018 for the FY19 increase.
- Modify Schedule F, Rates for Resource Recovery Material Treatment to add an additional subcategory for Brine (renamed from Grey Water) and to increase the Brine treatment rates for FY18 and FY19. The fees are proposed to be effective July 12, 2017 for the FY18 increase and July 1, 2018 for the FY19 increase.

Modifications to Wastewater Capacity Fees

- Modify Wastewater Schedule G to update the Wastewater Capacity Fee (WCF). The WCF increase for single-family residential will be 16.7% (\$360). The WCF increase for non-residential customers will depend on the customer's wastewater flow and strength characteristics. The WCF increase was calculated based on the fifth and final year of a five-year phase-in of a calculation change approved by the Board in 2013 and a cost update of the wastewater system facilities assigned to the WCF.

Changes to Schedule G, Wastewater Capacity Fees, are proposed to be effective on August 14, 2017.

Modifications to Recreation Use Fees

- Modify Recreation Use Fees for the Pardee and Camanche Recreation Areas and Camanche Hills Hunting Preserve to recover the costs of the recreation programs. Modifications to Recreation Use Fees are proposed to be effective January 1, 2018, for the 2018 changes and January 1, 2019, for the 2019 changes.

Modifications to Real Property Use Application Fees

- Modify the Real Property Use Application Fees to reflect the District's cost of reviewing and investigating the proposed use applications. Modifications to Real Property Use Application Fees are proposed to be effective July 12, 2017.

Modifications to Public Records Act Fees

- Modify the Public Records Act Fee Schedule to reflect the cost of duplication and computer programming. Modifications to Public Records Act Fees are proposed to be effective July 12, 2017.
- Addressing the Board were the following: 1) Rachel Scheibe, Service Workers' Project for Affordable Utilities and Water (SWPAUW), expressed opposition to the proposed rate increase and asked the Board to place a moratorium on shut-offs for low-income customers; 2) Billy Bakker, SWPAUW, asked the Board to place a moratorium on shut-offs for low-income customers, consider auto enrollment in the Customer Assistance Program (CAP), and to cease requiring guarantee deposits; 3) Ryan Wong, SWPAUW, expressed opposition to the proposed rate increase and asked the Board to place a moratorium on shut-offs for low-income customers; 4) Sharon Reinbott, SWPAUW expressed opposition to the proposed rate increase, demanded a moratorium on shut-offs for low-income customers and shared she had postcards from over 100 residents opposed to the rate increase; 5) Queen Khalifah Shakur, SWPAUW, expressed opposition to the proposed rate increase and asked the Board to focus on the health issues of customers without access to water; 6) Peter Kurtz, SWPAUW, expressed opposition to the proposed rate increase and asked the Board to cancel all charges for water theft; 7) Kevin Jordan, SWPAUW, expressed opposition to the proposed rate increase, demanded a moratorium on shut-offs for low-income customers and asked the Board to focus on the health impacts to customers without access to water; 8) Albert Kueffner, Alameda Interfaith

Climate Action Network, expressed opposition to the proposed rate increase; 9) Stephen Lautze, SWPAUW and City of Oakland employee, expressed opposition to the proposed rate increase and asked the Board to consider implementing a policy to offer the CAP to customers before shutting off water service; 10) Viki Tamaradze expressed opposition to the proposed rate increase; 11) Angela Barra commented on the Proposition 218 notice and the lack of customer outreach regarding the rate protest process; 12) David Ponas expressed opposition to the proposed rate increase; 13) Cecelia McCloy expressed opposition to the proposed rate increase, suggested a decrease in staff and an increase in use of technology; 14) Max Binder commented it seems the largest water users in the service area are being subsidized; 15) David Annal expressed opposition to the proposed rate increase; 16) Heinrich Albert, Sierra Club, expressed support for the proposed rate increase and recommended the Board work on a rate structure so low-income customers can afford to pay for water; 17) Edgar Perry expressed opposition to the proposed rate increase; 18) Jonathan Young, Oakland Housing Authority (OHA), commented on how the rate increase will impact OHA and others offering affordable housing; 19) Scott Rafferty expressed opposition to the proposed rate increase and disappointment about the information provided regarding the increase; 20) Reverend Tzedek Nicholas Alexander Oakley, Holy and Sovereign Order of Melchizedek, asked the Board to be sensitive to the needs of the people they serve when considering the rate increase; 21) Spreck Rosekrans commented on the proposed rate increase and suggested the Board consider a variable rates structure; 22) Dr. Elizabeth Dougherty, Wholly H2O, thanked Directory Young for her Facebook and Nextdoor posts and commented the Board should consider a tiered rate structure for all customers and include graywater in sewer fees; 23) Barry Carroll commented on a surcharge he received on his tax bill and that the District should have included rates protest materials in customer bills (Mr. Carroll was referred to staff regarding his bill); 24) Pearl Hunter asked the Board to reconsider the rate increase; 25) Thomas Adams expressed opposition to the proposed rate increase; 26) Deborah Taylor expressed opposition to the proposed rate increase; 27) Teresa Geringer, representing Senator Steven M. Glazer, read a statement from the Senator urging the Board to delay action on the rate increase until the District informs customers of its rate increase history; 28) Maren Poitras, SWPAUW, recommended a rate increase for high water users and a rate decrease for low water users and that EBMUD consider supporting creation of a public bank to finance public agencies; 29) Thomas Lehnert asked the Board to consider alternative rate structures; 30) Ninh T. Nguyen commented on her experience applying for the CAP and water shut-offs at her home; 31) Christina Berteau, Graywater Action thanked the Board for endorsing graywater use and said she was not aware of the number of customer shut-offs before today; 32) Benny J. Murillo, SWPAUW, commented on rate increase and asked the Board consider a variable rate structure; and 33) John Wilson suggested the Board consider prorating water charges in wet years.

President McIntosh announced that staff received 599 valid protests from the record owners of parcels upon which the water and wastewater service rates and charges are proposed to be imposed or tenants who are directly liable for the payment of the proposed water service rates and charges. President McIntosh closed the Public Hearing at 3:04 p.m.

DETERMINATION AND DISCUSSION

15. Adopt rates, charges, fees, and regulations for Fiscal Year 2018 and Fiscal Year 2019.

Board members thanked the speakers for coming and discussed the comments received. There was considerable Board comment regarding the need to invest in infrastructure, seeking general obligation (GO) bonds to finance infrastructure upgrades, exploring alternative rate structures, increasing the Rate Stabilization Fund to mitigate rate increases, modifications to the Water Theft Penalty Ordinance, the need to address low-income customer assistance, establishment of a KPI to achieve no water shut-offs, and changes to the District's bimonthly billing cycle.

Director Young requested a revision to the resolution for Item 15.1 to include language expressing District support for the human right to water and a commitment to review and make revisions to District ordinances, policies and programs to improve affordability for low-income customers. There was Board discussion regarding this request. General Counsel Craig S. Spencer advised that alternatively, the proposed language could be included in a Board policy that provides direction to staff on addressing affordability for low-income customers. He cautioned that including language in the resolution could subject the rates to be challenged in the future.

- Motion by Director Young, seconded by Director Katz to revise the resolution language for Item 15.1 to include the following text – *Whereas, the Districts supports the human right to water and further recognizes that a growing number of our customers struggle to afford water and wastewater charges. Therefore, be it resolved, that the District will make substantial progress in the review of ordinances, policies and programs with the goal of improving affordability for our low-income customers by the end of 2017.*

Director Patterson offered a “substitute motion” to move Director Young’s proposed revision to a policy that addresses low-income customer assistance. The “substitute motion” died for a lack of a second.

After additional discussion regarding revisions to the resolution language for Item 15.1, there was Board consensus to have staff develop a low-income assistance policy for Board consideration to guide the District’s efforts in assisting low-income customers. Director Young withdrew her motion.

- Motion by Director Patterson, seconded by Director Mellon, to approve the recommended actions for Items 15.1, 15.2 and 15.3, carried (6-1) by the following roll call vote: AYES (Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (Coleman); ABSTAIN (None); ABSENT (None).

15.1. Resolution No. 35045-17 – Adopting Water System Schedule Of Rates And Charges And Wastewater System Schedule Of Rates And Charges Subject To Proposition 218 For Fiscal Years 2018 and 2019; Approving An Exemption Under The California Environmental Quality Act; And Directing Staff To File A Notice Of Exemption.

- 15.2. **Resolution No. 35046-17** – Authorizing Drought Surcharges Subject To Proposition 218; Approving An Exemption Under The California Environmental Quality Act; And Directing Staff To File A Notice Of Exemption.
- 15.3. **Resolution No. 35047-17** – Adopting Revised Regulations And Revised Water And Wastewater System Schedules Of Rates And Charges Not Subject To Proposition 218 For Fiscal Years 2018 and 2019, Including System Capacity Charge, Standard Participation Charge, Wastewater Capacity Fee, Recreation Use Fees, Public Records Act Fees, Real Property Use Application Fees; Approving An Exemption Under The California Environmental Quality Act, And Directing Staff To File A Notice Of Exemption.
16. **Adopt the Position Resolution for Fiscal Year 2018 and 2019 to implement necessary staffing and classification changes.**

Manager of Recruitment and Classification Richard G. Jung presented the recommended action to adopt the Position Resolution for FY18 and FY19. The recommended action will ensure that position changes funded in the FY18 budget are in place for implementation on July 12, 2017 and July 1, 2018. Proposed staffing for FY18 is 2,106 full-time equivalents (FTE), a net increase of 38 FTEs from FY17. Proposed staffing for FY19 is 2,113 FTEs, a net increase of 7 FTEs from FY18. Staffing needs for FY19 will be re-evaluated when Mid-Cycle Budget changes are considered in May 2018.

- Motion by Director Patterson, seconded by Director Mellon, to approve the recommended action for Item 16, carried (6-1) by the following roll call vote: AYES (Katz, Linney, Mellon, Patterson, Young, and McIntosh); NOES (Coleman); ABSTAIN (None); ABSENT (None).

Resolution No. 35048-17 – Authorizing The Number And Character Of Positions And Authorizing The General Manager To Take Action In Connection Therewith.

17. **General Manager’s Report.**

General Manager Alexander R. Coate announced that the Six-Month Forecast of Board Committee and Workshop Agenda Topics and Summary of 2017 Committee and Workshop Topics, the Monthly Report for June 2017, and a schedule for the 2017 State of the District Addresses were included in the Board’s packets.

REPORTS AND DIRECTOR COMMENTS

18. **Committee Reports.**

- Filed with the Board were the Finance/Administration Committee Minutes of June 27, 2017.

19. **Other Items for Future Consideration.**

None.

20. **Director Comments.**

- Director Coleman reported attending/participating in the following events: Retirement lunch for Jim Fielder on June 29 in Mountain View; ACWA teleconference meeting on July 10 in Oakland; He reported on plans to participate in the ACWA teleconference meeting on July 17 in Arnold and on July 24 in Oakland.
- Director Katz had no report.
- Director Linney had no report.
- Director Mellon reported attending the San Ramon Mayor's Monthly Breakfast on July 7 in San Ramon.
- Director Patterson had no report.
- Director Young had no report.
- President McIntosh had no report.

ADJOURNMENT

President McIntosh adjourned the meeting at 4:03 p.m.

SUBMITTED BY:

Rischa S. Cole, Secretary of the District

APPROVED: July 25, 2017

Lesa R. McIntosh, President of the Board



AGENDA NO. 3.
 MEETING DATE July 25, 2017

TITLE LIQUID SODIUM HYPOCHLORITE FOR WATER AND WASTEWATER

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

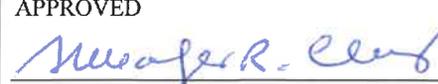
Award contracts to the lowest responsive/responsible bidders, Univar USA Inc. and Olin Corporation, in the total annual amount, after the addition of taxes, not to exceed \$3,755,052 for supplying liquid sodium hypochlorite to various District sites for three years, beginning on or after August 1, 2017 with two options to renew for an additional one-year period for a total cost of \$18,775,259 under Request for Quotation (RFQ) No. 1718.

SUMMARY

The District uses liquid sodium hypochlorite in the District’s water, wastewater and wet weather treatment systems. The estimated quantities listed in the RFQ were based on historical data and departmental input, and the District is not committed to purchasing the specific quantities described; purchases will be made only to meet specific District needs. Purchasing these materials supports the District’s Strategic Plan goal for Water Quality and Environmental Protection.

DISCUSSION

The Board approved a bulk chemicals bid on February 28, 2017, which excluded liquid sodium hypochlorite due to a bid protest. This contract follows a rebid of the liquid sodium hypochlorite portion of the District’s bulk chemicals bid process. The chemicals procured under this award are required for use in the water, wastewater and wet weather treatment systems and are crucial to maintaining safe and healthy systems, benefitting both EBMUD customers and the environment. The prices of chemicals and fuel used to haul the chemicals have been volatile and the competitive bidding process helps to mitigate volatility by providing long term bulk pricing. Entering into contractual agreements with various chemical vendors will help to ensure more reliable service delivery and serve to forestall any allocation issues that vendors may encounter.

Funds Available: FY 18		Budget Code: VAR/VAR
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR	APPROVED
Finance	 Sophia D. Skoda	 General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

VENDOR SELECTION

RFQs were posted on the District’s website, advertised in the Oakland Tribune, and sent to three resource organizations and 129 potential bidders. Three bids were received and one bid was deemed non-responsive. The awards are being recommended to the lowest qualified bidder for each of the three schedules as described below.

Lowest Responsive/ Responsible Bidder	Schedule	Description	Estimated Annual Cost Without Taxes
Univar USA Inc.	I	Liquid Sodium Hypochlorite for Water	\$1,010,000
Univar USA Inc.	II	Liquid Sodium Hypochlorite for Wastewater	\$2,418,000
Olin Corporation	III	Liquid Sodium Hypochlorite for Wet Weather Stations	\$89,100

SUSTAINABILITY

Economic

Expenditures have been included in the respective FY18 budgets and funding will be requested in subsequent budget years.

Social

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

Environmental

All chemicals in this contract meet or exceed the requirements stated in the National Science Foundation/American National Standards Institute – Standard 60 for safety in drinking water treatment chemicals.

ALTERNATIVE

Purchase material on the open market. This alternative is not recommended because the District would lose both the economies of scale pricing afforded by bidding the chemicals in bulk, and the long-term pricing stability of multi-year contracts.

Attachments

P-035 – Contract Equity Program Summary

P-061 – Affirmative Action Summary



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 Services Amendment Liquid Sodium Hypochlorite for Water and Wastewater - Three-Year Contract with 2 One-Year Renewal Options						DATE: July 7, 2017									
CONTRACTOR: Various Firms (See Below)			QUOTATION NO.: 1718			PERCENTAGE OF CONTRACT DOLLARS									
			Availability Group		Contracting Objectives			Participation							
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP				White Men		25%		0.0%					
		Ethnicity		Gender		White Women		2%		0.0%					
\$3,755,052 /yr*		White		Men		Ethnic Minorities		25%		0.0%					
CONTRACT EQUITY PARTICIPATION															
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION									
				M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign			
PRIMES:															
Univar USA Inc. (Schedules I & II)		\$3,657,710	PHC								97.4%				
Olin Corporation (Schedule III)		\$97,342	PHC								2.6%				
TOTAL		\$3,755,052				0.0%	0.0%	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					
No. of Employees:				INFORMATION NOT PROVIDED											
Percent of Total Employees:															
MSA Labor Market %:															
MSA Labor Market Location:															
COMMENTS															
Contract Equity Participation - Zero Contract Equity participation since firms are a publicly held corporation.															
*Total not to exceed: \$18,775,259															
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended							
NA				NA											



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title:		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
Liquid Sodium Hypochlorite for Water and Wastewater - Three-Year Contract with 2 One-Year Renewal Options		National	10.5	10.7	3.7	0.7	27.3		
		9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9		
		Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2		
Quotation #:	DATE:								
	7/7/2017								
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number		B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %	
RP	Publicly Held Corporation	Company Wide	5	19	13	0	37	53.6%	52.1%
Univar USA Inc. Claudia Lindsey 3075 Highlands Prkwy., Ste. 200 Downers Grove, IL 60515 425-889-3711		Manager/Prof	1	1	2	0	4	28.6%	
		Technical/Sales	1	2	1	0	4	28.6%	
		Clerical/Skilled	2	8	8	0	18	69.2%	
		Semi/Unskilled	1	8	2	0	11	73.3%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
AA Plan on File:		NA	Date of last contract with District:			1/13/2017			
Co. Wide MSA:		San Jose	# Employees-Co. Wide:			69	Bay Area: 0		
RP	Publicly Held Corporation	Company Wide							
Olin Chlor Alkali Products Norma Holm 26700 South Banta Road Tracy, CA 95304 423-336-4292		Manager/Prof	INFORMATION NOT PROVIDED						
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
Co. Wide MSA:			# Employees-Co. Wide:				Bay Area:		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
Co. Wide MSA:			# Employees-Co. Wide:				Bay Area:		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
Co. Wide MSA:			# Employees-Co. Wide:				Bay Area:		



AGENDA NO. 4.
 MEETING DATE July 25, 2017

TITLE LELAND AND ALMOND RESERVOIR ROOF IMPROVEMENTS

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

Award a contract to the lowest responsive/responsible bidder, Commercial Waterproofing Systems, Inc. doing business as (DBA) ERC Roofing and Waterproofing (ERC), in the amount of \$1,797,395 for construction of Leland and Almond Reservoir Roof Improvements under Specification 2127.

SUMMARY

Work includes furnishing and installing a single-ply waterproofing membrane system over the existing concrete roofs at Leland Reservoir (approximately 187,000 square feet) in Lafayette and Almond Reservoir (approximately 67,600 square feet) in Castro Valley.

DISCUSSION

Grout at the joints between the concrete roof panels at both Leland and Almond Reservoirs has cracked in several locations, allowing some rain water intrusion into the reservoirs. Roof repairs using sealant have not proved effective. This project will construct a membrane roof cover to prevent further leaks. The waterproofing system is designed to last at least 10 years, by which time both reservoirs are slated for replacement.

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

BID RESULTS

Bid documents were issued to 25 resource organizations and 15 prospective bidders, and posted on the District's website. Six bids were received, ranging from \$1,797,395 to \$3,682,480. The bid summary is attached. The engineer's estimate for this work is \$1,999,684.

Funds Available: FY18-19; CIP# 000919; Page 120		Budget Code: WSC/570/7999/5561/2011529:25
DEPARTMENT SUBMITTING <u>Engineering and Construction</u>	DEPARTMENT MANAGER or DIRECTOR Xavier J. Irias	APPROVED General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

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

On June 28, 2017, the second low bidder, State Roofing, Inc. (State) protested ERC's low bid. State claimed that ERC's bid did not comply with the 50-mile radius requirement from the contractor's office to the project site. The District reviewed and investigated the points raised in the protest and determined ERC's bid to be responsive and the protest was therefore denied. A copy of the bid protest letter dated June 28, 2017 and the District's response letter to State dated July 6, 2017 are attached.

On June 28, 2017, the fourth low bidder Andy's Roofing Co., Inc. (ARC) protested the bid submitted by the first, second, and third low bidders. ARC claimed that the three low bids did not comply with the contract documents. The District reviewed and investigated the points raised in the protest and determined ERC's bid to be responsive and the protest was therefore denied. A copy of the bid protest letter dated June 28, 2017 and the District's response letter to ARC dated July 7, 2017 are attached.

An appeal was filed by ARC on July 10, 2017. Upon review of the points raised in this appeal, it was determined that there is no basis for reversing the District's original decision to recommend award to ERC. The District continues to deem ERC's bid to be responsive and responsible, and therefore denied ARC's appeal. A copy of the protest appeal letter dated July 10, 2017 and the District's response letter to ARC dated July 19, 2017 are attached.

SUSTAINABILITY

Economic

This item is included in the FY18-19 budget for the Distribution System Water Quality Improvement project.

Social

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

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 Industrial Relations of the State of California.

Local 444 was notified of the contract on April 11, 2017. Local 444 issues were addressed at a meeting on May 3, 2017 and resolved.

Environmental

This project will protect water quality by preventing intrusion of rainwater into a drinking water reservoir.

Notices of Exemption were posted with the Contra Costa County Clerk for Leland Reservoir and with the Alameda County Clerk for Almond Reservoir on April 21, 2017.

ALTERNATIVES

Do not complete the project. This alternative is not recommended because the project is needed to protect drinking water quality within the Leland and Almond Reservoirs prior to the next rain events.

Perform the work with District forces. This alternative is not recommended because District staff does not possess the expertise or resources to perform the work within the necessary timeframe. The work is being prioritized to be completed prior to next winter's rainy season.

Attachments

Location Map

Bid Summary

P-035 - Contract Equity Program Summary

P-061 - Affirmative Action Summary

State Roofing Systems, Inc.'s Bid Protest Letter dated June 28, 2017

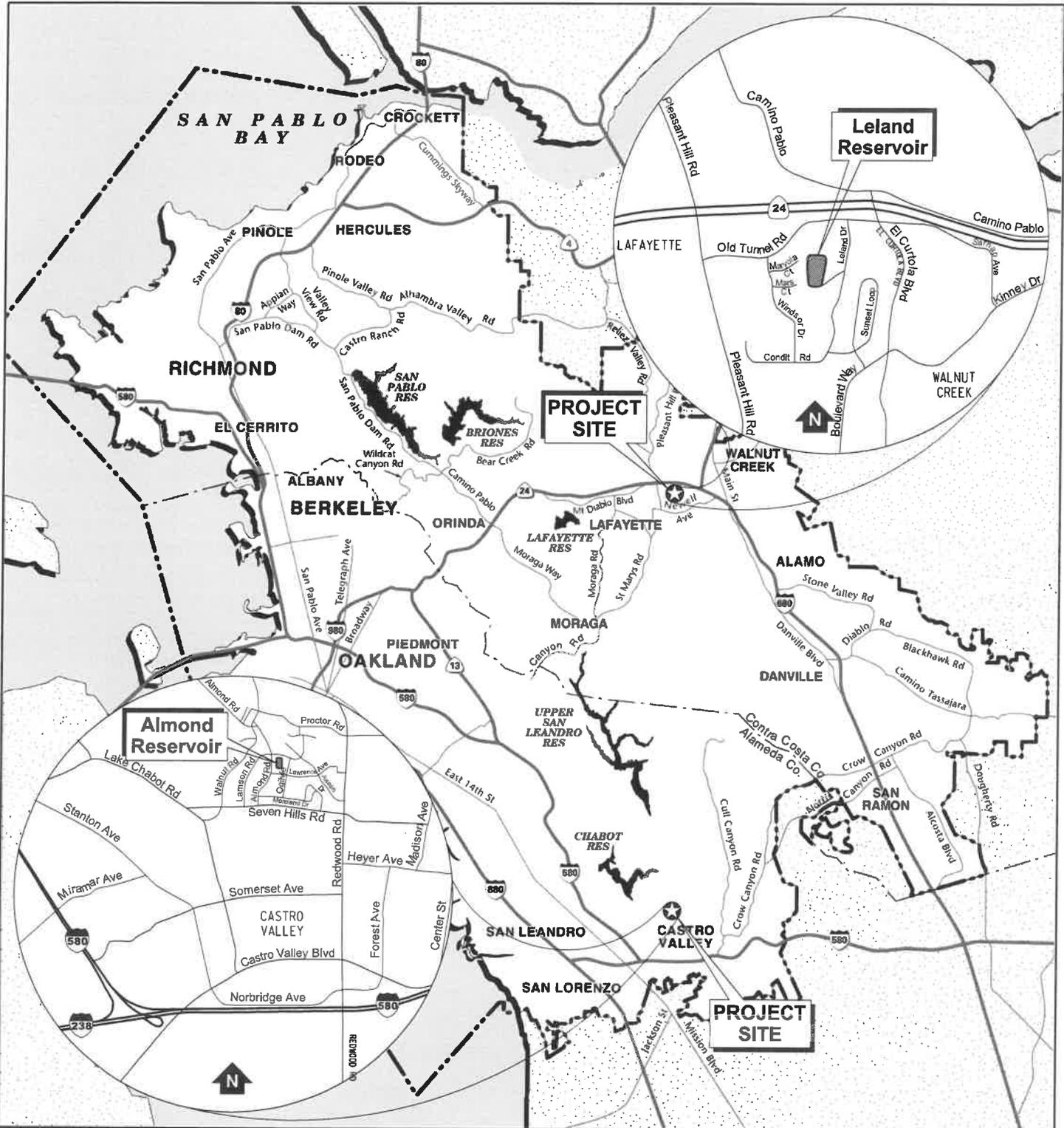
Andy's Roofing Company, Inc.'s Bid Protest Letter dated June 28, 2017

District's Response to State Roofing Systems, Inc.'s Protest dated July 6, 2017

District's Response to Andy's Roofing Co., Inc.'s Protest dated July 7, 2017

Andy's Roofing Company, Inc.'s Bid Protest Appeal Letter dated July 10, 2017

District's Response to Andy's Roofing Co., Inc.'s Protest Appeal dated July 19, 2017



**PROJECT SITE
LOCATION MAP**

NOT TO SCALE

EAST BAY MUNICIPAL UTILITY DISTRICT

**LELAND AND ALMOND RESERVOIR
ROOF IMPROVEMENTS**

SPECIFICATION 2127

EAST BAY MUNICIPAL UTILITY DISTRICT
SPECIFICATION 2127
LELAND AND ALMOND RESERVOIR ROOF IMPROVEMENTS
Bids Opened June 21, 2017

	BIDDER	TOTAL AMOUNT BID
1.	Commercial Waterproofing Systems, Inc. (SBE/DVBE) DBA ERC Roofing and Waterproofing 216 Ave Fabricante #111 San Clemente, CA 92672 (949) 492-8985	\$1,797,395 / \$1,707,525.25*
2.	State Roofing Systems, Inc. (SBE/DVBE) 15444 Hesperian Blvd. San Leandro, CA 94570 (510) 317-1477	\$1,884,951 / \$1,795,081.25*
3.	Stronger Building Services (SBE/DVBE) 580 Harlan St. San Leandro, CA 94577 (510) 487-8363	\$1,945,000 / \$1,855,130.25*
4.	Andy's Roofing Co., Inc. 2161 Adams Ave. San Leandro, CA 94577 (510) 777-1100	\$2,158,300
5.	Roofing Constructors, Inc. DBA Western Roofing Service 15002 Wicks Blvd. San Leandro, CA 94577 (510) 686-4951	\$2,293,008
6.	Best Contracting Services, Inc. 19027 S. Hamilton Ave. Gardena, CA 90248 (310) 328-6969	\$3,682,480

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

* Effective Bid Amount due to SBE/DVBE discount (5% of the low bid amount, not to exceed \$250,000)

Engineer's Estimate: \$1,999,684



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE SPECIFICATION NO.: 2127 Leland and Almond Reservoir Roof Improvements						DATE: June 29, 2017						
CONTRACTOR: Commercial Waterproofing Systems, Inc. dba ERC Roofing and Waterproofing San Clemente, CA 92672			Small Business			PERCENTAGE OF CONTRACT DOLLARS						
						Availability Group		Contracting Objectives		Participation		
BID/PROPOSER'S PRICE:			FIRM'S OWNERSHIP			White Men		25%		100.0%		
			Ethnicity		Gender	White Women		9%		0.0%		
\$1,797,395			White		Men	Ethnic Minorities		25%		0.0%		
CONTRACT EQUITY PARTICIPATION												
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
				M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIME: Commercial Waterproofing Systems, Inc. dba ERC Roofing and Waterproofing		\$1,797,395	White	X		100.0%						
SUBS: None												
TOTAL		\$1,797,395					100.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
			White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:			17		1		69		87			
Percent of Total Employees:			19.5%		1.1%		79.3%					
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 Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval 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 Minority Percentages From U.S. Census Data								
			B	H	A/PI	AI/AN	TOTAL			
Leland and Almond Reservoir Roof Improvements		National	10.5	10.7	3.7	0.7	27.3			
		9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9			
		Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2			
Spec. No.:	2127	DATE:	6/29/2017							
R=Recommd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees								
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %	
RP	WM: SBE	Company Wide	0	43	0	1	44	50.6%	48.4%	
Commercial Waterproofing Systems, Inc. dba ERC Roofing and Waterproofing Garrett Clark 216 Avenida Fabricante, #111 San Clemente, CA 92672 949-492-8985		Manager/Prof	0	6	0	1	7	53.8%		
		Technical/Sales	0	18	0	0	18	50.0%		
		Clerical/Skilled	0	6	0	0	6	50.0%		
		Semi/Unskilled	0	13	0	0	13	50.0%		
		Bay Area	0	0	0	0	0	0.0%	39.9%	
		AA Plan on File:	NA		Date of last contract with District:					NA
		Co. Wide MSA:	California		# Employees-Co. Wide:		87		Bay Area:	0
P	WM: LBE	Company Wide	0	81	6	0	87	79.8%	53.9%	
State Roofing Systems, Inc. Mary McAllister 15444 Hesperian Blvd. San Leandro, CA 94578 510-317-1477		Manager/Prof	0	0	2	0	2	25.0%		
		Technical/Sales	0	0	1	0	1	16.7%		
		Clerical/Skilled	0	79	2	0	81	88.0%		
		Semi/Unskilled	0	2	1	0	3	100.0%		
		Bay Area	0	0	0	0	0	0.0%	39.9%	
				Co. Wide MSA:	Alameda		# Employees-Co. Wide:		109	
P	EMM: H - L/SBE	Company Wide	0	14	1	0	15	100.0%	39.9%	
Stronger Building Services Claudia Chavez 580 Harlan St. San Leandro, CA 94577 510-487-8363		Manager/Prof	0	4	1	0	5	100.0%		
		Technical/Sales	0	0	0	0	0	0.0%		
		Clerical/Skilled	0	0	0	0	0	0.0%		
		Semi/Unskilled	0	10	0	0	10	100.0%		
		Bay Area	0	14	1	0	0	0.0%	39.9%	
				Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		15	
P	EMM: H - L/SBE	Company Wide	1	24	1	0	26	86.7%	39.9%	
Andy's Roofing Co., Inc. Therese Engquist 2161 Adams Avenue San Leandro, CA 94577 510-777-1100		Manager/Prof	0	2	1	0	3	75.0%		
		Technical/Sales	0	1	0	0	1	100.0%		
		Clerical/Skilled	1	21	0	0	22	88.0%		
		Semi/Unskilled	0	0	0	0	0	0.0%		
		Bay Area	1	24	1	0	26	86.7%	39.9%	
				Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		30	
P	WM: LBE	Company Wide	5	58	2	0	65	90.3%	53.9%	
Roofing Constructors Inc. dba Western Roofing Services Veronica Iniguez 15002 Wicks Boulevard San Leandro, CA 94577 510-686-4951		Manager/Prof	1	1	0	0	2	50.0%		
		Technical/Sales	1	3	1	0	5	62.5%		
		Clerical/Skilled	3	54	1	0	58	96.7%		
		Semi/Unskilled	0	0	0	0	0	0.0%		
		Bay Area	5	58	2	0	65	90.3%	39.9%	
				Co. Wide MSA:	Alameda County		# Employees-Co. Wide:		72	
P	Publicly Held Corporation	Company Wide	21	400	38	2	461	81.6%	48.4%	
Best Contracting Services, Inc. Mojj Tabazadeh 19027 S. Hamilton Ave. Gardena, CA 90248 310-328-6969		Manager/Prof	0	0	8	0	8	40.0%		
		Technical/Sales	1	2	2	0	5	33.3%		
		Clerical/Skilled	20	394	27	2	443	84.4%		
		Semi/Unskilled	0	4	1	0	5	100.0%		
		Bay Area	0	0	0	0	0	0.0%	39.9%	
				Co. Wide MSA:	California		# Employees-Co. Wide:		565	

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)



Director of Engineering

JUN 29 2017

June 28, 2017

Director of Engineering and Construction
East Bay Municipal Utility District
P.O. Box 24055
Oakland, CA 94623-1055

**RE: PROTEST LOW BIDDER
SPECIFICATION 2127 - LELAND AND ALMOND RESERVOIR ROOF IMPROVEMENTS**

Dear Director of Engineering and Construction,

We are writing this letter to formally submit our protest of the Low Bidder/Contractor's award of the above roof project.

We are protesting the apparent low bid based upon the requirements in addendum 1. According to Addendum 1, Section 07 54 00 Thermoplastic Membrane Roofing, Article 1.3, Paragraph F, "Contractor shall have an office within 50 miles of project location to ensure prompt mobilization of any leak or service problem."

The awarded contractor's office location is in San Clemente, CA, which is approx 400 miles from the Leland and Almond roof projects, and does not have an office, physical staffed, within the required radius.

Commercial Waterproofing Systems Inc.
DBA ERC Roofing and Waterproofing
216 Avenida Fabricante, Suite 111A
San Clemente, CA 92627
949-492-8985

Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink that reads "Stephen Tong". The signature is written in a cursive style.

State Roofing Systems
Stephen Tong
Project Manager



June 15, 2017

ADDENDUM 1

TO PROSPECTIVE BIDDERS UNDER SPECIFICATION 2127, LELAND AND ALMOND RESERVOIR ROOF IMPROVEMENTS

Notice is hereby given that SPECIFICATION 2127 of the East Bay Municipal Utility District has been revised as follows:

VOLUME I – BIDDING DOCUMENTS AND SPECIFICATIONS

1. Section 07 54 00 - THERMOPLASTIC MEMBRANE ROOFING
 - A. In Article 1.3, after Paragraph E, insert:
 - “F. Contractor to provide sample copy of contractor’s workmanship warranty (minimum of 2 years) to the Engineer. Contractor shall have an office within 50 miles of project location to ensure prompt mobilization for any leak or service problem.
 - G. Manufacturer shall provide sample copy of specified manufacturer’s warranty to the Engineer.”
 - B. In Article 1.6, after Paragraph B, insert:
 - “C. Contractor Warranty: Contractor shall submit a minimum 2-year warranty to membrane manufacturer and Owner.”
 - C. In Article 2.1, after Paragraph A, insert:
 - “B. All submitted products must meet performance requirements of specified products.”
 - D. In Article 2.2,
 1. Retitle “TPA ROOFING MEMBRANE” to “PVC ROOFING MEMBRANE”
 2. In subparagraph A.3, replace “lbf” with “lbf/in”
 - E. In Article 2.3, replace Paragraph E in its entirety with:
 - “E. Adhesives: Water based, VOC compliant one sided application, designed for bonding fleece back membrane to properly prepared and pre-approved horizontal cover boards. Adhesive and applications shall be acceptable to membrane roofing system manufacturer. Adhesive shall have VOC content less than 10 gm/L.”
 - F. In Article 2.4, after Subparagraph B.1.c, insert:

SPECIFICATION 2127 - ADDENDUM 1

June 15, 2017

Page 2

"d. Cover board shall be pre-primed and designed for use of fully adhered roof systems."

G. In Article 2.5 , replace Paragraph B in its entirety with:

"B. Cover Board Adhesive: Designed for bonding cover board to substrate and acceptable to membrane roofing system manufacturer. Adhesive shall be a one step, highly elastomeric, high rise insulation adhesive that contains no solvents. Insulation adhesive shall contain zero VOCs."

ADDRESS ANY QUESTIONS REGARDING THIS ADDENDUM TO THE PROJECT WEBSITE AT <https://www.ebmud.com/business-center/construction-bids>.

ACKNOWLEDGMENT OF RECEIPT OF THIS ADDENDUM SHALL BE INDICATED BY INSERTING THE ADDENDUM NUMBER AND ITS DATE ON THE BIDDING FORM.

Xavier J. Irias for XJI

XAVIER J. IRIAS
DIRECTOR OF ENGINEERING AND CONSTRUCTION

XJI:JKT:ejc 2127



Contractor's License Detail for License # 781499

DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.

CSLB complaint disclosure is restricted by law (B&P 7124.6) If this entity is subject to public complaint disclosure, a link for complaint disclosure will appear below. Click on the link or button to obtain complaint and/or legal action information.

Per B&P 7071.17, only construction related civil judgments reported to the CSLB are disclosed.

Arbitrations are not listed unless the contractor fails to comply with the terms of the arbitration.

Due to workload, there may be relevant information that has not yet been entered onto the Board's license database.

Data current as of 6/23/2017 1:06:12 PM

Business Information

**COMMERCIAL WATERPROOFING SYSTEMS INC
DBA ERC ROOFING AND WATERPROOFING**

216 AVE FABRICANTE # 111 A
SAN CLEMENTE, CA 92672
Business Phone Number:(949) 492-8985

Entity Corporation

Issue Date 07/12/2000

Expire Date 07/31/2018

License Status

This license is current and active.

All information below should be reviewed.

Classifications

C39 - ROOFING
A - GENERAL ENGINEERING CONTRACTOR
B - GENERAL BUILDING CONTRACTOR

Bonding Information

Contractor's Bond

This license filed a Contractor's Bond with SURETEC INDEMNITY COMPANY.

Bond Number: 5162644

Bond Amount: \$15,000

Effective Date: 01/01/2016

Contractor's Bond History

Bond of Qualifying Individual

The qualifying individual GARRETT ROBERT CLARK certified that he/she owns 10 percent or more of the voting stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.

Effective Date: 11/21/2016

BQI's Bond History

This license filed Bond of Qualifying Individual number T1582L10 for ERIC JOHN SPINK in the amount of \$12,500 with CASH DEPOSIT FROM A BANK.

Effective Date: 08/10/2007

Workers' Compensation

This license has workers compensation insurance with the MIDWEST EMPLOYERS CASUALTY COMPANY

Policy Number: BNUWC0134579

Effective Date: 01/01/2016

Expire Date: 01/01/2018

Workers' Compensation History

Stephen Tong

(510) 317-1477
Fax (510) 317-1470
Direct (510) 317-1487

State Roofing Systems
Inc.



15444 Hesperian Blvd.
San Leandro, CA 94578-3959
CA#417692 • NV#0065327

steve@stateroofingsystems.com
www.stateroofingsystems.com



Andy's Roofing Company Inc.

"A Professional Roofing Service Since 1957"

June 28, 2017

Director of Engineering and Construction
East Bay Municipal Utility District
P.O. Box 24055
Oakland, CA 94623-1055

Subject: Bid Protest
Leland and Almond Reservoir Roof Improvements

Dear Director of Engineering and Construction,

Please allow this letter to serve as official notice of our intent to protest the bid results of the Leland and Almond Reservoir Roof Improvements project, which bid on June 21, 2017.

The project's specifications require lead abatement, which must be handled in compliance with federal, state, county, and local agencies. Per CA DIR Title 8, Division 1, Chapter 4, Subchapter 4, Article 4, §1532.1. Lead, a contractor performing work on a public building:

*... shall ensure that all employees and supervisors who are engaged in lead related construction work as defined in Title 17, California Code of Regulations, Section 35040, and have been shown to be exposed to lead at or above the permissible exposure limit, meet the training requirements of this section; are trained by an accredited training provider and are **certified by the California Department of Health Services.***

It is our understanding that none of the top three apparent low bidders (Commercial Waterproofing Systems Inc. DBA ERC Roofing and Waterproofing, State Roofing Systems Inc., and Stronger Building Services) possess a CDHS lead abatement certification, and none of the top three apparent low bidders listed a certified lead abatement subcontractor.

Per CA Public Contract Code Section 4104 requires bidders on public works projects to list:

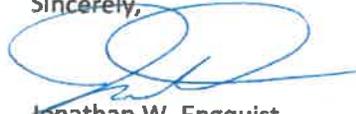
The name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a

portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

Andy's Roofing Co., Inc. listed Alliance Contracting Services, who is certified with CDHS, as our lead abatement subcontractor. Accordingly, we assert that none of the three apparent low bidders can legally self-perform the required lead abatement work and request that their bids be deemed non-responsive. In this case, Andy's Roofing Co., Inc. should be considered the lowest responsive bidder, and awarded the contract for this project.

We thank you for your time in reviewing this matter, and look forward to your response. Please do not hesitate to contact our company if you have any questions or need any assistance in making your determination.

Sincerely,



Jonathan W. Engquist

President

Andy's Roofing Co., Inc.

VIA FAX AND FEDERAL EXPRESS

July 6, 2017

Steven Tong, Project Manager
State Roofing Systems, Inc.
15444 Hesperian Blvd
San Leandro, CA 94578

Subject: Specification 2127 – Leland and Almond Reservoir Roof Improvements;
Bid Protest by State Roofing Systems, Inc.

Dear Mr. Tong:

We have reviewed the point raised in your June 28, 2017 bid protest letter and, following investigation, have determined that there is no basis to deem Commercial Waterproofing Systems, Inc. DBA ERC Roofing and Waterproofing's (ERC) bid non-responsive or non-responsible.

In the protest, you believe ERC's office is in San Clemente, CA and that ERC does not have an office within 50 miles from the project location is in violation of Section 07 54 00, Article 1.3, Paragraph F, which requires that the Contractor have an office within 50 miles of the project location to ensure prompt mobilization of any leak or service problem.

The District received a letter from ERC stating that ERC has an office in Martinez, CA, which will be its main operations office through the construction and warranty periods of this contract. The address ERC provided is in Martinez, which is approximately 5 miles and 20 miles from Leland Reservoir and Almond Reservoir, respectively. We have no factual basis for challenging this assertion.

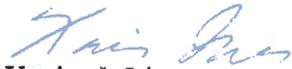
Additionally, the District is ensured of compliance because as its normal course of contract administration, the District actively enforces all provisions of its plans and specifications during construction and warranty periods in accordance with the law.

Based on these findings, the District has determined that ERC's bid meets the contract documents' requirements and is therefore considered responsive. State Roofing Systems, Inc.'s bid protest is hereby denied. Should you wish to file an appeal of this

Mr. Steven Tong, Project Manager
State Roofing Systems, Inc.
Specification 2127 – Leland and Almond Reservoir Roof Improvements
July 6, 2017
Page 2

determination, you have five working days from the receipt of this letter to set forth your grounds for appeal in accordance with Article 26 of the Instructions to Bidders.

Sincerely,



Xavier J. Irias
Director of Engineering and Construction

XJI:JKT:ejc

VIA FAX AND FEDERAL EXPRESS

July 7, 2017

Jonathan W. Engquist, President
Andy's Roofing Co., Inc.
2161 Adams Avenue
San Leandro, CA 94577

Subject: Specification 2127 – Leland and Almond Reservoir Roof Improvements;
Bid Protest by Andy's Roofing Co., Inc.

Dear Mr. Engquist:

We have reviewed the points raised in your June 28, 2017 bid protest letter and, following investigation, have determined that there is no basis to deem Commercial Waterproofing Systems, Inc. DBA ERC Roofing and Waterproofing's (ERC) bid non-responsive or non-responsible.

In the protest, you raised three points with respect to the lead-containing materials in the contract. You believe: 1) The contract documents require lead abatement, 2) ERC's staff does not have the appropriate certification or training for performing lead abatement work, and 3) ERC's bid did not list a specialty subcontractor for the lead abatement work, which would have been required for a subcontract amount in excess of 0.5% of ERC Roofing's total bid amount.

Our findings and conclusions in response to these points are as follows:

1. The Contract Documents do not require lead abatement.
 - a. The contract documents require the contractor not to disturb the lead-containing sealants. Section 07 54 00 Paragraphs 1.1.A.1 and 3.2.A state that "Do not power wash surface or use any cleaning method that could discharge water or dust into the reservoir. Use caution to ensure that cleaning will not blow out grout or sealant or enlarge any cracks."
 - b. In addition, the project Q&A #1 and #12 posted on the project webpage clarifying that the design intent is not to disturb the lead-containing sealant. If disturbed, the

contractor shall comply with the requirements specified in Section 02 83 13 for handling, removal and disposal of the sealant.

1. *Question: Several areas mention "handling, removal, and proper disposal of lead-containing sealant". However during the site walk through it was not clear what this "lead containing sealant". On each site the only sealant apparent covered approximately 5-10% of the joints. Is this the sealant mentioned. Please clarify.*

Response: Please refer to documents included in Appendix C. The intent is for the sealant to not be disturbed. However, if disturbed, the handling, removal, and proper disposal shall be in accordance with section 02 83 13.

12. *Question: Since the specifications prohibit the use of pressure washing, air blowing, brushing, vacuuming the surface due to lead contamination; what preparation method did they have in mind for preparing the surface for the roofing material?*

Response: Only pressure washing is prohibited. Contractor can use mechanical surface preparation (leaf blowers, vacuum, shovel, ect) but must take care not to disturb existing roof grout sealant or enlarge cracks.

2. ERC has informed the District that, if necessary, the lead abatement work will be subcontracted to a properly trained subcontractor. Since ERC does not intend to perform lead abatement work with its own work force, ERC's staff is not required to be certified or trained for performing lead abatement work. In addition, ERC's Project Manager has undergone Cal/OSHA training on Lead Safety in the Workplace. In the event, minor lead abatement is required, ERC Roofing is able to address.
3. We received a letter from ERC stating that ERC expects any minor lead abatement to be below 0.5% of ERC's total bid amount; therefore, ERC is not required to list a lead abatement subcontractor in its bid. We have no factual basis for challenging this assertion.

Additionally, the District is ensured of compliance because as its normal course of contract administration, the District actively enforces all provisions of its plans and specifications during construction in accordance with the law.

After careful consideration of the points raised in your protest, the District rejects the protest. Should you wish to file an appeal of this determination, you have five working days from the receipt of this letter to set forth your grounds for appeal in accordance with Article 26 of the Instructions to Bidders.

Mr. Jonathan W. Engquist, President
Andy's Roofing Co., Inc.
Specification 2127 – Leland and Almond Reservoir Roof Improvements
July 7, 2017
Page 3

The District only reviews protests against the bid submitted by the apparent low bidder; bid protests against the second and third low bidders are not reviewed.

Sincerely,



Xavier J. Irias
Director of Engineering and Construction

XJI:JKT:ejc



Andy's Roofing Company Inc.
"A Professional Roofing Service Since 1957"

RECEIVED

JUL 12 2017

Secretary's Office

July 10, 2017

Secretary of the District
East Bay Municipal Utility District
P.O. Box 24055
Oakland, CA 94623-1055

**Subject: Bid Protest Appeal
Leland and Almond Reservoir Roof Improvements**

Dear Board of Directors,

Please allow this letter to serve as official notice of our intent to appeal the Director of Engineering and Construction's rejection of our protest of the bid results of the Leland and Almond Reservoir Roof Improvements project, which bid on June 21, 2017.

We have included copies of the relevant Specification Sections, our original protest letter, dated June 28, 2017, and the Director's rejection letter, dated July 7, 2017. We offer the following responses to the Director's points addressed in his rejection letter.

Response to Director's Point 1:

Per Appendix C of the Project Documents, which is a lead survey report, there is currently lead-containing sealant on the existing roof deck surface. Per that report, "lead was detected at a concentration of 13,000 mg/kg in a single sample of the roof sealant material taken at north-east side of the roof (the threshold for hazardous waste is 1,000mg/kg per the California Department of Toxic Substance Control regulations)."

The Director's rejection letter, contends that the Contract Documents do not require lead abatement and that, "the intent is for the [lead-containing] sealant to not be disturbed. However, if disturbed, the handling, removal, and proper disposal shall be in accordance with section 028313." Here, the Contract Documents are saying that there is indeed a chance, that the lead-containing sealant could be disturbed.

The Director's letter goes on to quote the answer to Question #12 of the pre-bid Q & A, which asked what type of roof deck preparation methods are intended:

"Response: Only pressure washing is prohibited. Contractor can use mechanical surface preparation (leaf blowers, vacuum, shovel, etc.) but must take care not to disturb existing roof grout sealant or enlarge cracks."

These mechanical methods would all inherently disturb the existing lead-containing sealant. The specified, fully-adhered roofing application requires a clean surface, free of debris and particulates, to which the Contractor will adhere the coverboard and roofing. Answer #12 (above) directs the contractor to use mechanical surface preparation methods, including leaf blowers, vacuums, shovels, and similar methods. There is a high probability, bordering on absolute certainty, that these mechanical methods described, as well as the subsequent adhering of the coverboard and roofing, would disturb the lead-containing sealant to a degree that would require it to be monitored by a State-certified lead-abatement Contractor, per the California Department of Health Services. The mere fact that construction tools and materials will be coming into direct contact with lead-containing sealants means that they will be disturbed.

Section 028313 – Lead Hazard Control Activities in the Project Documents outlines the requirements and directions for the containment and abatement of the lead-containing sealants during construction. Among these requirements are:

"Part 1.1.A – Furnish all labor, materials, facilities, equipment, services, employee training and testing, permits, and agreement necessary to perform the lead removal in accordance with these specifications and with the latest regulations from the U.S. Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Air Quality Management District with authority over the project, the Cal/EPA Department of Toxic Substance Control, the California Occupational Safety and Health Administration (Cal/OSHA), and the federal, state, county, and local agencies."

"Part 1.2.A - Scope of Work – The work covered by this specification section includes the handling, removal, and proper disposal of lead-containing sealant as required as a result of the work at Leland and Almond Reservoirs."

"Part 1.2.C – The hazardous materials removal and disposal include the following: 1. Properly remove and dispose of all lead-containing sealant material that is dislodged or otherwise disturbed during the preparation and installation of the roofing membrane atop the reservoir tank."

Part 1.4.D.1 of this Section also requires **"All Contractor's supervisors and workers performing work that may disturb the existing lead-containing sealant material shall meet the requirements of the California Department of Health Services (DHS) lead-related construction interim certification (17 CCR 350001)."**

Part 1.5.A requires the Contractor to "provide to the Director, within 72 hours of sampling, test results of the personal air sampling described in Article 3.2". This is something a State-certified, lead-abatement contractor must provide.

Part 2.1.C requires the posting of a sign that reads:

**WARNING
LEAD WORK AREA
POISON
NO SMOKING OR EATING**

Part 3 – Execution goes on to specify the methods of Area Isolation, Air Monitoring, and Decontamination, which requires that **“the Contractor shall remove all evidence of sealant from the jobsite that are related to the project construction activities.”** This must be completed by a State-certified, lead-abatement contractor.

Appendix C of the Specifications states **“RCO recommends that all of the Leland Reservoir roof sealant be presumed lead containing material and that all regulations pertaining to disturbing lead based construction materials be followed.”**

Given these statements contained within the project's Specifications, we do not agree with the Director's assessment that the Project Documents do not require, at minimum, for the lead-containing sealant to be handled correctly by a State-certified Contractor, in accordance with State and Federal laws.

Response to Director's Point 2:

The Director's letter indicates that, if necessary, ERC will subcontract the lead-abatement work to a properly trained subcontractor. However, as stated earlier, the specified mechanical methods for cleaning the existing roof deck would inherently disturb the lead-containing sealant. And even if ERC goes to great lengths to not disturb the lead-containing sealant, both ERC and the Director acknowledge that there is, at minimum, a possibility of disturbance, which would require contamination prevention by a State-certified lead-abatement contractor. The fact that ERC has a Project Manager who completed a Cal/OSHA training is irrelevant and not conforming with the pertinent laws.

Response to Director's Point 3:

The Director's letter states that ERC does not anticipate their lead abatement costs to be above 0.5% of their total bid price. If both the Director and ERC contend that there are no lead abatement control measures required on this project, how can they estimate the total cost for these procedures to be below 0.5%? This is just conjecture.

Two of the bidding contractors are on record as listing State-certified lead abatement subcontractors, whose services ranged from \$150,000 to \$220,000 to complete the specified work. ERC is contending that any hazardous material control measures would cost less than \$9,000 (0.5% of their bid), when our State-certified lead abatement contractor estimated the work to cost \$150,000. The Director says that they do not have any factual basis for challenging ERC's assertion, but we think these numbers speak for themselves.

Part 1.1.B of Section 028313 – Lead Hazard Control Activities requires that “During preparation and installation of the roofing membrane materials, the Contractor shall protect against contamination of soils, water, adjacent buildings and properties, and the airborne release of hazardous materials and dust. The costs associated with the implementation of controls will be incurred by the Contractor.” So, the submitted bid must contain costs for these lead hazard control activities. And, in conjunction with CA Public Contract Code Section 4104, a State-certified lead-abatement subcontractor needs to have been listed on ERC’s bid. No such subcontractors were listed, and ERC is not certified to complete the work themselves, so their bid must be considered incomplete and non-responsive.

I’d like to end this appeal letter with a personal anecdote, which is that my family lives in the neighborhood adjacent to the Almond Reservoir, and most likely receives water from this reservoir to their property or neighboring community properties. It saddens me that a higher standard is not being used to ensure that lead does not contaminate the local water supply. With the unfortunate events in Flint, MI fresh in everyone’s minds, I am disheartened that the Director’s rejection letter of our original protest seems to play fast and loose with State and Federal regulations and does not do more to protect the public from bad construction practices that could lead to lead exposure.

As a leader in environmental and health safety, I implore you to ensure that all State and Federal regulations are strictly followed during this and any future construction projects that the District may oversee, especially when it has the potential to affect the health of our communities.

I appreciate your attention to the matter, and eagerly look forward to your response. If necessary, we will be happy to attend any public hearing to discuss our concerns on this matter with you.

Sincerely,



Jonathan W. Engquist
President
Andy’s Roofing Co., Inc.



EAST BAY MUNICIPAL UTILITY DISTRICT ENGINEERING SERVICES DIVISION

FAX TRANSMISSION SHEET
FAX NUMBER: (510) 287-1260

Date: July 7, 2017

Send To: Jonathan W. Unquist, President
Andy's Roofing Co., Inc.
2161 Adams Avenue
Location: San Leandro, CA 94577
FAX Number: (510) 777-1102

From: Vanilla Garcia, Spec & Eng Svcs

Messages / Special Instructions: _____

We are transmitting 4 pages (including this cover sheet)



XAVIER J. IRIAS
DIRECTOR OF ENGINEERING AND CONSTRUCTION

VIA FAX AND FEDERAL EXPRESS

July 7, 2017

Jonathan W. Engquist, President
Andy's Roofing Co., Inc.
2161 Adams Avenue
San Leandro, CA 94577

Subject: Specification 2127 – Loland and Almond Reservoir Roof Improvements;
Bid Protest by Andy's Roofing Co., Inc.

Dear Mr. Engquist:

We have reviewed the points raised in your June 28, 2017 bid protest letter and, following investigation, have determined that there is no basis to deem Commercial Waterproofing Systems, Inc. DBA ERC Roofing and Waterproofing's (ERC) bid non-responsive or non-responsible.

In the protest, you raised three points with respect to the lead-containing materials in the contract. You believe: 1) The contract documents require lead abatement, 2) ERC's staff does not have the appropriate certification or training for performing lead abatement work, and 3) ERC's bid did not list a specialty subcontractor for the lead abatement work, which would have been required for a subcontract amount in excess of 0.5% of ERC Roofing's total bid amount.

Our findings and conclusions in response to these points are as follows:

1. The Contract Documents do not require lead abatement.
 - a. The contract documents require the contractor not to disturb the lead-containing sealants. Section 07 54 00 Paragraphs 1.1.A.1 and 3.2.A state that "Do not power wash surface or use any cleaning method that could discharge water or dust into the reservoir. Use caution to ensure that cleaning will not blow out grout or sealant or enlarge any cracks."
 - b. In addition, the project Q&A #1 and #12 posted on the project webpage clarifying that the design intent is not to disturb the lead-containing sealant. If disturbed, the

Mr. Jonathan W. Engquist, President
Andy's Roofing Co., Inc.
Specification 2127 – Leland and Almond Reservoir Roof Improvements
July 7, 2017
Page 2

contractor shall comply with the requirements specified in Section 02 83 13 for handling, removal and disposal of the sealant.

1. *Question: Several areas mention "handling, removal, and proper disposal of lead-containing sealant". However during the site walk through it was not clear what this "lead containing sealant". On each site the only sealant apparent covered approximately 5-10% of the joints. Is this the sealant mentioned. Please clarify.*

Response: Please refer to documents included in Appendix C. The intent is for the sealant to not be disturbed. However, if disturbed, the handling, removal, and proper disposal shall be in accordance with section 02 83 13.

12. *Question: Since the specifications prohibit the use of pressure washing, air blowing, brushing, vacuuming the surface due to lead contamination; what preparation method did they have in mind for preparing the surface for the roofing material?*

Response: Only pressure washing is prohibited. Contractor can use mechanical surface preparation (leaf blowers, vacuum, shovel, ect) but must take care not to disturb existing roof grout sealant or enlarge cracks.

2. ERC has informed the District that, if necessary, the lead abatement work will be subcontracted to a properly trained subcontractor. Since ERC does not intend to perform lead abatement work with its own work force, ERC's staff is not required to be certified or trained for performing lead abatement work. In addition, ERC's Project Manager has undergone Cal/OSHA training on Lead Safety in the Workplace. In the event, minor lead abatement is required, ERC Roofing is able to address.
3. We received a letter from ERC stating that ERC expects any minor lead abatement to be below 0.5% of ERC's total bid amount; therefore, ERC is not required to list a lead abatement subcontractor in its bid. We have no factual basis for challenging this assertion.

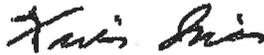
Additionally, the District is ensured of compliance because as its normal course of contract administration, the District actively enforces all provisions of its plans and specifications during construction in accordance with the law.

After careful consideration of the points raised in your protest, the District rejects the protest. Should you wish to file an appeal of this determination, you have five working days from the receipt of this letter to set forth your grounds for appeal in accordance with Article 26 of the Instructions to Bidders.

Mr. Jonathan W. Engquist, President
Andy's Roofing Co., Inc.
Specification 2127 - Leland and Almond Reservoir Roof Improvements
July 7, 2017
Page 3

The District only reviews protests against the bid submitted by the apparent low bidder;
bid protests against the second and third low bidders are not reviewed.

Sincerely,



Xavier J. Irias
Director of Engineering and Construction

XJI:JKT:ejc



Andy's Roofing Company Inc.

"A Professional Roofing Service Since 1957"

June 28, 2017

Director of Engineering and Construction
East Bay Municipal Utility District
P.O. Box 24055
Oakland, CA 94623-1055

Subject: Bid Protest
Leland and Almond Reservoir Roof Improvements

Dear Director of Engineering and Construction,

Please allow this letter to serve as official notice of our intent to protest the bid results of the Leland and Almond Reservoir Roof Improvements project, which bid on June 21, 2017.

The project's specifications require lead abatement, which must be handled in compliance with federal, state, county, and local agencies. Per CA DIR Title 8, Division 1, Chapter 4, Subchapter 4, Article 4, §1532.1. Lead, a contractor performing work on a public building:

... shall ensure that all employees and supervisors who are engaged in lead related construction work as defined in Title 17, California Code of Regulations, Section 35040, and have been shown to be exposed to lead at or above the permissible exposure limit, meet the training requirements of this section, are trained by an accredited training provider and are certified by the California Department of Health Services.

It is our understanding that none of the top three apparent low bidders (Commercial Waterproofing Systems Inc. DBA ERC Roofing and Waterproofing, State Roofing Systems Inc., and Stronger Building Services) possess a CDHS lead abatement certification, and none of the top three apparent low bidders listed a certified lead abatement subcontractor.

Per CA Public Contract Code Section 4104 requires bidders on public works projects to list:

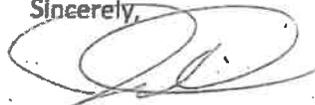
The name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under-subcontract to the prime contractor, specially fabricates and installs a

portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater.

Andy's Roofing Co., Inc. listed Alliance Contracting Services, who is certified with CDHS, as our lead abatement subcontractor. Accordingly, we assert that none of the three apparent low bidders can legally self-perform the required lead abatement work and request that their bids be deemed non-responsive. In this case, Andy's Roofing Co., Inc. should be considered the lowest responsive bidder, and awarded the contract for this project.

We thank you for your time in reviewing this matter, and look forward to your response. Please do not hesitate to contact our company if you have any questions or need any assistance in making your determination.

Sincerely,



Jonathan W. Engquist
President
Andy's Roofing Co., Inc.

SECTION 02 83 13

LEAD HAZARD CONTROL ACTIVITIES

PART 1 - GENERAL

1.1 COMPLIANCE AND INTENT

- A. Furnish all labor, materials, facilities, equipment, services, employee training and testing, permits, and agreements necessary to perform the lead removal in accordance with these specifications and with the latest regulations from the U.S. Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Air Quality Management District with authority over the project, the Cal/EPA Department of Toxic Substance Control, the California Occupational Safety and Health Administration (Cal/OSHA), and other federal, state, county, and local agencies. Whenever there is a conflict or overlap of the above references, the most stringent provision is applicable.
- B. During preparation and installation of the roofing membrane materials, the Contractor shall protect against contamination of soils, water, adjacent buildings and properties, and the airborne release of hazardous materials and dusts. The costs associated with the implementation of controls will be incurred by the Contractor.
- C. Any information developed from exploratory work done by the District and any investigation done by the Contractor to acquaint himself with available information will not relieve the Contractor from the responsibility of properly estimating the difficulty or cost of successfully performing the work. The District is not responsible for any conclusions or interpretations made by the Contractor based on the information made available by the District or District's representative.
- D. Hazardous materials that are uncovered during the construction activities shall be disposed of in an approved manner complying with all applicable federal, state, and local regulations. Appropriate waste manifests shall be furnished to the Engineer as per Section 01 35 44, Environmental Requirements. Materials are conveyed to the Contractor "as is," without any warranty, expressed or implied, including but not limited to, any warranty to marketability or fitness for a particular purpose, or any purpose.

1.2 SCOPE OF WORK

- A. The work covered by this specification includes the handling, removal, and proper disposal of lead-containing sealant as required as a result of the work at Leland and Almond Reservoirs. See Appendix C for laboratory test results of roof sealant samples, including lead and other hazardous constituents.
- B. The Contractor shall perform all work according to the procedures outlined in these specifications.

- C. The hazardous materials removal and disposal include the following:
 - 1. Properly remove and dispose of all lead-containing sealant material that is dislodged or otherwise disturbed during the preparation and installation of the roofing membrane atop the reservoir tank.

1.3 RELATED WORK IN OTHER SECTIONS

- A. Section 01 35 24 - Project Safety Requirements
- B. Section 01 35 44 - Environmental Requirements
- C. Section 01 35 53 – Security Procedures

1.4 SUBMITTALS (PRE-JOB)

- A. Site safety plan: The Contractor shall provide a site safety plan prior to project initiation as specified in Section 01 35 24.
- B. Lead hazard material disposal plan: Lead-containing sealant handling, engineering control, removal, and disposal procedures.
- C. Cal/OSHA Lead Work Pre-Job Notification, if required.
- D. Submittal of worker documentation for employees used on the job.
 - 1. Lead-Containing Sealant: All Contractor's supervisors and workers performing work that may disturb the existing lead-containing sealant material shall meet the requirements of the California Department of Health Services (DHS) lead-related construction interim certification (17 CCR 350001).
- E. Licenses: Submit copies of state and local licenses and evidence of Cal-OSHA certification and permits necessary to perform the work of this contract.
- F. Submit name and Environmental Laboratory Accreditation Program Certificate number of laboratory that will test samples collected during air monitoring. See Article 3.2 below.

1.5 SUBMITTALS (JOB IN PROGRESS)

- A. The Contractor shall provide to the Engineer, within 72 hours of sampling, test results of the personal air sampling described in Article 3.2.

1.6 SUBMITTALS (POST-JOB)

- A. Upon completion of on-site work, Contractor is to provide a detailed project summary which will include each of the items listed below. The project Summary

shall be submitted and approved by the Engineer prior to contract acceptance and shall include the following:

1. Receipt and weight tickets from the landfill operator acknowledging the Contractor's delivery of wastes and including dates of delivery, waste container types, quantities, tare weight of waste delivered, and all appropriate signatures.
2. All completed waste manifests; and copies of all accident reports during the course of the project.

PART 2 - MATERIALS AND EQUIPMENT

2.1 SIGNS AND LABELS

- A. Provide labeling in accordance with U.S. EPA requirements. Provide the required signs, labels, warnings, or posted instructions for containers used to transport contaminated material to the landfill.
- B. Location of Caution Signs and Labels: Provide bilingual caution signs at all approaches to work area. Locate signs at such a distance that personnel may read them and take the necessary protective steps required before entering the area.
- C. Warning Sign Format: Vertical format conforming to Title 8 CCR Section 1532.1:

**WARNING
LEAD WORK AREA
POISON
NO SMOKING OR EATING**

2.2 SCAFFOLDING

- A. Scaffolding, as required to do the specified work, shall meet all applicable safety regulations and OSHA standards. A non-skid surface shall be furnished on all scaffold surfaces subject to foot traffic.

2.3 TRANSPORTATION EQUIPMENT

- A. Transportation equipment, as required, shall be lockable and suitable for loading, temporary storage, transit and unloading of waste without exposure to persons or property. Any vehicle used to transport waste shall be properly registered with all applicable controlling agencies.

PART 3 - EXECUTION

3.1 INITIAL AREA ISOLATION (LEAD)

- A. Establish designated limits for the lead work area with continuous barriers. Use caution tape for lead work. Provide signs around the perimeter of the work area according to EPA, OSHA and Cal-OSHA requirements.**
- B. Contractor shall secure the entire job site at all times. Area entrances and exits shall be secured by the Contractor during the abatement phase. Unauthorized visitors are strictly prohibited, only the Contractor and District's representatives are permitted at the job site. Contractor shall ensure that all doors, gates, windows, and potential entrances in the buildings and surrounding fences are secured and locked at the end of each work day. See also Site Access Control in Section 01 35 53 Security Procedures.**

3.2 AIR MONITORING - LEAD

- A. The purpose of any air monitoring conducted by the Engineer will be to detect possible release of dusts (lead) emanating from the work area. This testing will be conducted independently of the air monitoring described in Section 01 35 24.**
- B. The Contractor shall be responsible for all personal air sampling. During the performance of any work in the contaminated work area that is likely to create airborne lead exposure, sufficient personnel breathing zone samples shall be taken to constitute representative sampling. These samples shall be taken each shift and for each distinct crew operation, and shall be used to verify adequacy of respiratory protection. Personal breathing zone air sampling shall be in accordance with CAL/OSHA lead standards.**

3.3 DECONTAMINATION - LEAD

- A. Lead Decontamination: The Contractor shall remove all evidence of sealant from the jobsite that are related to the project construction activities.**

END OF SECTION

VIA FAX AND FEDERAL EXPRESS

July 19, 2017
Jonathan W. Engquist, President
Andy's Roofing Co., Inc.
2161 Adams Avenue
San Leandro, CA 94577

Subject: Specification 2127 – Leland and Almond Reservoir Roof Improvements;
Bid Protest by Andy's Roofing Co., Inc.

Dear Mr. Engquist:

We have reviewed the points raised in your July 10, 2017 bid protest appeal letter and following further investigation, have determined that there is no basis for deeming Commercial Waterproofing Systems, Inc. DBA ERC Roofing and Waterproofing's (ERC) bid non-responsive or non-responsible.

In the appeal, you refute the District's determination that the Contract Documents for the subject project do not require lead abatement. You believe: 1) Any mechanical cleaning methods would disturb the existing lead-containing sealant, 2) Any inherent minimum disturbance would require contamination prevention by a State-certified lead-abatement contractor to address the chance of disturbance, and 3) The cost of lead abatement is greater than 0.5% and therefore a lead abatement subcontractor had to be listed in the bid pursuant to Public Contract Code Section 4104.

Our findings and conclusions in response to these points are as follows:

1. It is up to the Contractor's judgment and responsibility to determine, based on the contract documents, the level of sealant disturbance, and consequently, the level of required lead hazard control activities. Mechanical cleaning methods will not necessarily disturb the existing lead-containing sealant. For example, during construction, the Contractor may, within its means and methods, employ various methods to encapsulate the substrate, if needed, to minimize or eliminate any required lead hazard control activities.
2. The chance of disturbance is not the same as certainty of disturbance. As this is not a lead abatement project under Title 17, CCR § 35001, a State-certified lead-abatement contractor is not required.

Mr. Jonathan W. Engquist, President
Andy's Roofing Co., Inc.
Specification 2127 – Leland and Almond Reservoir Roof Improvements
July 19, 2017
Page 2

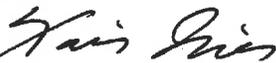
The applicable lead related requirements pertain to worker safety under Title 8 CCR § 1532.1. Section 02 83 13, Article 1.4 of the Contract Documents details requirements should the work disturb lead-containing sealant, and Article 3.2 details the District's air monitoring for lead dust independent of the Contractor's air monitoring required in this section and in Section 01 35 24, Article 3.1. Collectively, these requirements provide means to evaluate lead exposure levels and specific handling procedures during construction.

3. It is the District's position that this project is not a lead abatement project. There is no project requirement to either remove or disturb lead. The California Department of Public Health provides a definition of lead abatement that specifically excludes containment or cleaning activities. While it may be that two bidders chose means and methods that required the use of a subcontractor with state certified lead abatement workers in an amount greater than 0.5% of their bid price, it does not make it unreasonable for the other four bidders to choose a means and method that would not necessitate the use of state certified lead abatement workers.

Please know, the District is committed to the highest standards of public safety. District staff is trained to monitor projects such as this one to ensure worker and community safety. In fact, improving the reliability and safety of the water supply is the primary driver of this project.

After careful consideration of the points raised in your protest, the District rejects the appeal. In accordance with Article 26 of the Instructions to Bidders, should you wish to address the Board of Directors, this project is currently scheduled for award on July 25, 2017.

Sincerely,


Xavier J. Irias
Director of Engineering and Construction

XJI:JKT:ejc



AGENDA NO.
MEETING DATE

5.
July 25, 2017

TITLE NETAPP DATA STORAGE CONSOLIDATION

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

Award a contract to Integrated Archive Systems, Inc. (IAS) in an amount, after the addition of taxes, not to exceed \$824,520 for supplying NetApp, Inc. data storage equipment, installation, and staff training for District data centers located at the Administration Building in Oakland and the Disaster Recovery/Business Continuity site in Sacramento with three years of maintenance and support, beginning on or after August 1, 2017.

SUMMARY

As part of the long term strategy to standardize and simplify data storage technology in the District, this action will replace an end of life data storage system located in Sacramento and update a NetApp storage system at the Administration Building. The purchase amount includes data storage equipment, installation, training for District staff, and support. The NetApp storage in Sacramento will provide recoverability of business critical Oracle databases per the District’s Business Continuity Plan. Additionally, the update of NetApp storage at the Administration Building will increase storage capacity to meet the growing needs of the business.

DISCUSSION

The District utilizes production data storage systems daily to manage key functions of District operations, such as Customer Watch, work order management systems, email and electronic file management. The existing systems utilize NetApp storage and are managed by NetApp software tools. The Sacramento data storage system designated for disaster recovery storage and business continuity functions is at the end of its useful life and requires replacement. Replacement of the Sacramento data system with new NetApp storage will address reliability issues and simplify operations by allowing staff to manage both regular production and disaster recovery storage with the same NetApp tools and processes. The aging NetApp storage equipment at the Administration Building will also be updated for increased capacity and reliability.

Funds Available: FY18		Budget Code: WSO/252/1013973/8547/8523	
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR		APPROVED
Information Systems	 Nicholas J. Irias		 General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

This contract provides data storage equipment and related components, installation, and training for District staff to successfully manage the day-to-day operations of the NetApp infrastructure. Three years of hardware and software maintenance is also included.

This item supports the District's Strategic Plan goal of Long-Term Financial Stability by implementing technologies that improve the efficiency and effectiveness of business processes.

VENDOR SELECTION

IAS has been the lowest responsive/responsible bidder on all previous 14 NetApp competitive bidding processes since 2011. As a Small Woman-Owned Business Enterprise (SBE/WBE), IAS receives manufacturer discounts that result in savings to the District. Given pricing structures and manufacturers discounts, staff has confirmed that should the District conduct a bid process, IAS will once again prevail as the low bidder. This direct award contract will save the District time and money, and ensure improved service and support provided through a single vendor for all District NetApp products.

SUSTAINABILITY

Economic

This item is included in the FY18 budget for the ISD Equipment Replacement Fund to replace critical equipment that has reached end of life. For the Disaster Recovery/Business Continuity site in Sacramento, it replaces the end of life equipment with more reliable technology to reduce outages, consolidate, and simplify the District's data storage infrastructure.

Social

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

Environmental

NetApp data storage solutions have earned U.S. EPA Energy Star certification by reducing power consumption to help customers meet their green IT objectives. NetApp also practices sustainable operations in-house through energy conservation, waste reduction, recycling, and other programs that allow them to meet or exceed international certification and compliance standards.

ALTERNATIVES

Continue using the existing system. This alternative is not recommended as the current systems are aging and in need of replacement and upgrades. The reliability of these systems is essential to avoid disruption to critical business applications.

Select another manufacturer solution. This alternative is not recommended because District staff thoroughly evaluated other solutions and determined that NetApp can best provide the required services.

NetApp Data Storage Consolidation
July 25, 2017
Page 3

Attachments

P-035 – Contract Equity Program Summary
P-061 – Affirmative Action Summary

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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 General Services Agreement NetApp Data Storage Consolidation - Three-Year Contract						DATE: <p style="text-align: right;">July 13, 2017</p>						
CONTRACTOR: Integrated Archive Systems, Inc. (IAS) Palo Alto, CA 94303			Direct Award / Small Business			PERCENTAGE OF CONTRACT DOLLARS						
						Availability Group		Contracting Objectives		Participation		
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP				White Men		25%		0.0%		
		Ethnicity		Gender		White Women		6%		100.0%		
\$824,520 *		White		Women		Ethnic Minorities		25%		0.0%		
CONTRACT EQUITY PARTICIPATION												
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
				M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIME: Integrated Archive Systems, Inc. (IAS)		\$824,520	White		X		100.0%					
SUBS: None												
TOTAL		\$824,520				0.0%	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
			White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:			28		17		14		59			
Percent of Total Employees:			47.5%		28.8%		23.7%					
MSA Labor Market %:			28.0%		23.6%		48.4%					
MSA Labor Market Location:			California									
COMMENTS												
Contract Equity Participation - 100% White Women participation.												
*Total not to exceed: \$824,520												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
YES				NA								



AGENDA NO. 6.
MEETING DATE July 25, 2017

TITLE RENTAL WELDING SERVICES

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

A. Authorize an amendment to Board Motion No. 071-15 dated April 28, 2015, to increase the estimated agreement amounts by \$570,000 for the rental of fully maintained and operated (FM&O) portable welding services from the vendors listed below, beginning on or after July 25, 2017 through the remainder of the agreement period ending April 30, 2020.

Eyeball Engineering
Ferguson Welding Services
T.A.Z. Welding & Fabrication
Larsson Welding

Mid Mountain Mechanical
Nicole Welding
Woods Welding

B. Authorize additional agreements for FM&O portable welding rental services with vendors that meet District standards and offer pricing at or below the range in the amended agreements above. These additional agreements may be issued, on an as-needed basis, to increase flexibility and ensure availability of FM&O portable welding rental services to the District. The Board of Directors will be notified of additional qualified vendors by means of the General Manager’s monthly report.

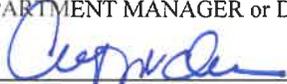
In awarding these contracts, the Board of Directors finds that this work cannot be satisfactorily performed under civil service.

SUMMARY

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

DISCUSSION

The District has been renting FM&O welding services since 1975 to augment staff during peak workloads. The FM&O welders are held to ANSI/AWWA C200 requirements – Welding Standard for Steel Water Pipe 6 inches and larger, and the welders must have 6-G certification and pass the EBMUD field welding test. In April 2015, the Board approved a contract for welding service rentals

Funds Available: FY18 – FY19		Budget Code: WSO/755/7999/5296/5311
DEPARTMENT SUBMITTING <u>Maintenance and Construction</u>	DEPARTMENT MANAGER or DIRECTOR  Clifford C. Chan	APPROVED  General Manager

Rental Welding Services

July 25, 2017

Page 2

in the estimated annual amount of \$86,000 per year or \$430,000 over five years. The use of these services has increased since 2015 due to an increase in the size and scope of pipeline projects, increase demand for leak repairs, and the increase of crews under the Pipeline Rebuild Program. The amount in the original authorization is nearly expended. This request seeks authorization to increase the original authorization by \$570,000.

Staff will continue to monitor and manage these rental resources. These agreements present no obligation on the part of the District to use these services and their use may be adjusted at any time. As the District identifies additional vendors that meet District standards, and to increase flexibility and ensure vendor availability, the District will also consider awarding contracts to those currently unidentified contractors pursuant to this recommendation. This work supports the Strategic Plan goal for Long-Term Infrastructure Investment.

SERVICE PROVIDER SELECTION

Requests for proposals were sent to seven vendors who met the minimum performance requirements. These requirements include the ability to provide services on a one-day notice, have a 6-G certification, and pass an EBMUD field welding test with the test sample analyzed by an independent laboratory. Vendors on this list will be assigned work opportunities on a rotational basis to ensure a fair and equitable distribution of the total workload.

Lynn Lefevre Welding and NorCal Welding were removed from the original vendor list due to their failure to respond to service requests. Woods Welding was added to the list in May 2017.

SUSTAINABILITY

Economic

Funds for renting welder services are included in the FY18/19 budget.

Social

The completed P-035 and P-061 forms for the Contract Equity Program are attached. The use of FM&O welder rental services keeps pipeline production and repair moving, thus reducing service outages and replacement impacts to our customers.

Local 444 was notified of this work on July 5, 2017 and the District met with Local 444 on July 18, 2017. Local 444 does not object to increasing the award of this contract in recognition of the District's intent to fill an additional welder position bringing the number of filled welder positions from 7 to 8 and commitment to continue meeting with Local 444 to discuss resource needs related to this work.

Environmental

The use of FM&O welder rental services helps to maintain efficient main break repair and replacement projects and reduces impacts to local environments around District jobsites.

ALTERNATIVES

Do not contract for welder rental services. This alternative is not recommended as the welding services are critical to long-term District operations.

Add staff and equipment to eliminate the need for rental welding services. This alternative is not recommended as the projected long-term workload is insufficient to justify the addition of welding staff beyond the addition of the 8th welder.

Attachments

P-035 Contract Equity Program Summary
P-061 Affirmative Action Summary

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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 <i>General Services Agreement - Amendment</i> Rental Welding Services - Three-Year Contract						DATE: July 17, 2017						
CONTRACTOR:				PERCENTAGE OF CONTRACT DOLLARS								
Various Firms (See below)				Availability Group			Contracting Objectives		Participation			
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men			25%		57.1%			
		Ethnicity	Gender	White Women			6%		0.0%			
\$570,000		See Below	Men	Ethnic Minorities			25%		42.9%			
CONTRACT EQUITY PARTICIPATION												
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
				M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIMES:												
Eyeball Engineering		\$81,429	White	X		14.3%						
Ferguson Welding Service, Inc.		\$81,429	White	X		14.3%						
Larsson Welding		\$81,429	White	X		14.3%						
Woods Welding		\$81,429	Black	X				14.3%				
Mid Mountain Mechanical		\$81,429	White	X		14.3%						
Nicole Welding, Inc.		\$81,429	Hispanic	X				14.3%				
T.A.Z. Welding & Fabrication		\$81,429	Black	X				14.3%				
TOTAL		\$570,000					57.1%	0.0%	42.9%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form)												
				White Men		White Women		Ethnic Minorities		Total Employees		
No. of Employees:				See attached P-61 Form								
Percent of Total Employees:												
MSA Labor Market %:												
MSA Labor Market Location:												
COMMENTS												
<i>Contract Equity Participation</i> - 57.1% White Men participation and 42.9% Ethnic Minority participation.												
*Total Not to Exceed \$1,000,000 = \$430,000 (Original) + \$570,000 (Amendment)												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: Rental Welding Services - Three-Year Contract		Ethnic Minority Percentages From U.S. Census Data								
				B	H	A/PI	AI/AN	TOTAL		
		National		10.5	10.7	3.7	0.7	27.3		
General Services Agreement		DATE: 7/17/2017	9 Bay Area Counties		5.5	16.2	14.2	0.4	39.9	
		Alameda/CC Counties		10.7	15.6	15.4	0.5	46.2		
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees								
Company Name, Owner/Contact Person, Address, and Phone Number		B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %		
RP	WM - SBE	Company Wide		1	1	0	0	2	66.7%	48.4%
Eyeball Engineering Miriam Bresnyan, Office Manager 537 Este Madera Dr Sonoma, CA 95476 707-291-7687		Manager/Prof		0	0	0	0	0	0.0%	
		Technical/Sales		0	0	0	0	0	0.0%	
		Clerical/Skilled		1	1	0	0	2	66.7%	
		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: 6/14/2017						
		Co. Wide MSA: California		# Employees-Co. Wide: 3		Bay Area: 3				
RP	WM - L/SBE	Company Wide		1	1	1	0	3	30.0%	39.9%
Ferguson Welding Service, Inc Bob L. Ferguson, President 30050 Industrial Parkway SW Hayward, CA 94544 510-487-5906		Manager/Prof		0	1	0	0	1	50.0%	
		Technical/Sales		0	0	0	0	0	0.0%	
		Clerical/Skilled		1	-	1	0	2	25.0%	
		Semi/Unskilled		0	0	0	0	0	0.0%	
		Bay Area		1	1	1	0	3	37.5%	39.9%
		Co. Wide MSA: 9 Bay Area Counties		# Employees-Co. Wide: 10		Bay Area: 8				
RP	EMM: B - SBE	Company Wide		INFORMATION NOT PROVIDED						
Woods Welding		Manager/Prof								
		Technical/Sales								
		Clerical/Skilled								
		Semi/Unskilled								
		Bay Area								
		Co. Wide MSA:								
RP	WM - SBE	Company Wide		0	0	0	0	0	0.0%	37.3%
Larsson Welding Jeanne Larson 8971 Coan Lane Orangevale, CA 95662 916-201-3387		Manager/Prof		0	0	0	0	0	NA	
		Technical/Sales		0	0	0	0	0	NA	
		Clerical/Skilled		0	1	0	0	0	50.0%	
		Semi/Unskilled		0	0	0	0	0	NA	
		Bay Area		0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA: Sacramento		# Employees-Co. Wide: 2		Bay Area: 1				
RP	WM - SBE	Company Wide		0	0	0	0	0	0.0%	48.4%
Mid Mountain Mechanical Dave Hushour 4415 Olive Ave Fairfield, CA 94533 707-372-8652		Manager/Prof		0	0	0	0	0	0.0%	
		Technical/Sales		0	0	0	0	0	0.0%	
		Clerical/Skilled		0	0	0	0	0	0.0%	
		Semi/Unskilled		0	0	0	1	0	0.0%	
		Bay Area		0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA: California		# Employees-Co. Wide: 1		Bay Area: 1				
RP	EMM:H - SBE	Company Wide		0	1	0	0	1	100.0%	38.5%
Nicole Welding Victor Nicole, Owner 20 Broadway Ln Oakley, CA 94561 925-679-9636		Manager/Prof		0	1	0	0	1	100.0%	
		Technical/Sales		0	0	0	0	0	0.0%	
		Clerical/Skilled		0	0	0	0	0	0.0%	
		Semi/Unskilled		0	0	0	0	0	0.0%	
		Bay Area		0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA: Contra Costa		# Employees-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)



AGENDA NO. 7.
MEETING DATE July 25, 2017

TITLE COLLECTION SERVICES AGREEMENT

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

Authorize an agreement with Collection Bureau of America (CBA) to provide collection services on unpaid terminated District customer accounts for a fee of 18 percent on the collected amount on accounts referred from September 1, 2017 through August 31, 2020, with two options to renew for an additional one-year period.

SUMMARY

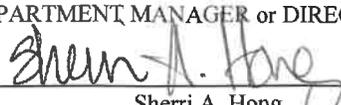
Staff suspends internal collection activity on most unpaid final customer bills within sixty (60) days of account termination. These accounts are written-off and transferred to a collection agency which retains a percentage of the revenue it successfully collects for the District. Under the proposed agreement, CBA would retain 18 percent of the amount collected.

DISCUSSION

CBA is the District's current collections vendor and has successfully provided collection services for the District for the past 5 years. CBA is a full service, small, local, minority-owned collection agency with 58 years of experience. Their client list is reflective of our service area and provides services to other local agencies. The proposed agreement has a term of three years with two one-year options for renewal to be exercised at the sole discretion of the District.

On March 23, 2017, the Finance/Administration Committee was apprised of the District's intent to participate in the Franchise Tax Board (FTB) Intercept Collection Pilot Program this fall, where the FTB will intercept personal tax refunds for unpaid customer water bill debt owed to the District. The FTB program will be integrated into existing collections work with CBA.

This action supports the District's Strategic Plan goal for Long-Term Financial Stability to manage the District's finances to meet funding needs and maintain fair and reasonable water and wastewater rates.

Funds Available: FY18/19		Budget Code: WSG/332/6021/5231
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR	APPROVED
Customer & Community Services	 Sherri A. Hong	 General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

CONSULTANT SELECTION

Requests for proposals were sent to forty-three firms, including one minority-owned firm and posted on the District's website. Seven responses were received. CBA was selected based on their fee, rate of recovery for collections, debt-recovery methods, and experience serving public sector clients.

SUSTAINABILITY

Economic

Funding for this item is included in the FY18-19 budget for the collection services agreement. There is no fiscal impact resulting from this contract because there is no outlay of District funds. The District receives revenue from the collection agency based on the amount of debt recovered.

Social

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

ALTERNATIVES

Perform the collection function using District staff. This alternative is not recommended as staff does not have the proper tools available and it is not cost-effective for staff to perform professional collection work on accounts that remain unpaid for several months following termination.

Do not contract for collection services. This alternative is not recommended because it would eliminate the possibility of collecting outstanding debt owed by customers, thereby reducing revenue.

Attachments

P-035 – Contract Equity Program Summary

P-061 – Affirmative Action Summary



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE: <i>Professional Services Agreement</i> Collection Services Agreement						DATE: June 19, 2017						
CONTRACTOR:			Small / Local Business			PERCENTAGE OF CONTRACT DOLLARS						
Collection Bureau of America Hayward, CA 94545						Availability Group		Contracting Objectives		Participation		
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%		0.0%				
		Ethnicity	Gender	White Women		6%		0.0%				
NA		White	Men	Ethnic Minorities		25%		100.0%				
CONTRACT EQUITY PARTICIPATION												
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
				M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIME: Collection Bureau of America		NA	Hispanic	X				100.0%				
SUBS: None												
TOTAL		\$0				0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
			White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:			6		8		24		38			
Percent of Total Employees:			15.8%		21.1%		63.2%					
MSA Labor Market %:			30.8%		25.1%		44.0%					
MSA Labor Market Location:			9 Bay Area Counties									
COMMENTS												
<i>Contract Equity Participation - 100.0% Ethnic Minority participation</i>												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title:		Ethnic Minority Percentages From U.S. Census Data							
				B	H	A/PI	AI/AN	TOTAL	
		National		10.5	10.7	3.7	0.7	27.3	
Collection Services Agreement		DATE:							
		6/19/2017	9 Bay Area Counties		5.5	16.2	14.2	0.4	39.9
		Alameda/CC Counties		10.7	15.6	15.4	0.5	46.2	
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	EMM: H - S/LBE	Company Wide	13	11	0	0	24	63.2%	39.9%
Collection Bureau of America Ltd. Denise Smiley 25954 Eden Landing Road Hayward, CA 94545 510-781-5196		Manager/Prof	3	6	0	0	9	64.3%	
		Technical/Sales	0	1	0	0	1	20.0%	
		Clerical/Skilled	10	4	0	0	14	73.7%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	13	11	0	0	24	63.2%	
		AA Plan on File:	NA		Date of last contract with District:		6/21/2016		
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		38	Bay Area:	38
P	WW	Company Wide	150	170	45	7	372	53.1%	27.3%
Account Control Technology Fabian Grijalva 21700 Oxnard Street, Suite 1400 Woodland Hills, CA 91367 800-394-4228		Manager/Prof	9	22	8	0	39	41.9%	
		Technical/Sales	0	1	1	0	2	20.0%	
		Clerical/Skilled	141	146	36	7	330	55.4%	
		Semi/Unskilled	0	1	0	0	1	100.0%	
		Bay Area	0	0	0	0	0	0.0%	
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		700	Bay Area:	33
P	WM	Company Wide	125	217	0	0	342	66.8%	42.4%
Municipal Services Bureau David Andrukot 8325 Tuscany Way Austin, TX 78754 512-323-4272		Manager/Prof	16	54	0	0	70	53.4%	
		Technical/Sales	0	3	0	0	3	27.3%	
		Clerical/Skilled	109	160	0	0	269	72.7%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	
		Co. Wide MSA:	Texas		# Employees-Co. Wide:		512	Bay Area:	0
P	WM	Company Wide	3	7	6	3	19	11.3%	27.3%
Professional Credit Service Wade Isbell 12204 SE Mill Plain Blvd., Ste. 101 Vancouver, WA 98684 541-335-2159		Manager/Prof	1	4	4	1	10	21.3%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	2	3	2	2	9	8.2%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		168	Bay Area:	0
P	WM	Company Wide	15	23	6	0	44	55.7%	47.6%
Rash Curtis Rosario Valdez 190 S. Orchard Avenue, A-200 Vacaville, CA 95688 707-359-2824		Manager/Prof	14	23	6	0	43	61.4%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	1	0	0	0	1	14.3%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	15	23	6	0	44	55.7%	
		Co. Wide MSA:	Solano		# Employees-Co. Wide:		79	Bay Area:	79

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



AGENDA NO.
MEETING DATE

8.
July 25, 2017

TITLE MICROSTATION ANNUAL LICENSING

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

Authorize the extension of an agreement with Bentley Systems, Inc. (Bentley) in an amount, after the addition of taxes, not to exceed \$496,500 for supplying Microstation software licenses and maintenance for three years beginning on or after August 1, 2017.

SUMMARY

District drafters, design staff, and survey teams depend on Microstation computer-aided design and drafting (CADD) software in their daily work for designing new facilities and improvements to existing structures. This agreement provides for an annual licensing fee, software updates, and technical support for the Microstation products used by the District.

DISCUSSION

The District has used Microstation CADD software since 1991. It is necessary to extend the software license to use, receive periodic updates, and have support available for an essential component of our engineering business. This item supports the District's Strategic Plan goal of Long Term Financial Stability by implementing technologies that improve the efficiency and effectiveness of business processes.

VENDOR SELECTION

It is necessary to continue the use of the District's existing Microstation CADD software which is only available from one source, Bentley, who does not use resellers or other partners to provide licensing, updates, and support for their software.

Funds Available: FY18		Budget Code: WSO/252/8547/5243
DEPARTMENT SUBMITTING Information Systems	DEPARTMENT MANAGER or DIRECTOR Nicholas J. Irias	APPROVED General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

SUSTAINABILITY

Economic

This item is included in the FY18 budget to maintain the District's infrastructure blueprints.

Social

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

ALTERNATIVES

Do not use Microstation software. This alternative is not recommended because Microstation is used for a number of District applications. Unlike many other software products, which are licensed with the payment of an upfront fee for perpetual use, Bentley licenses Microstation based upon the payment of an annual fee, or subscription. Therefore, the District must pay an annual fee to continue to use Microstation.

Select another CADD software. This alternative is not recommended because numerous design drawings have been created using Microstation and work flows have been built around this software. It would be costly to convert existing drawings to new CADD software, abandon all the in-house knowledge and require staff to learn the functionality of new software.

Attachments

P-035 – Contract Equity Program Summary
P-061 – Affirmative Action Summary



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE <i>General Services Agreement - Amendment</i> Microstation Annual Licensing - Three-Year Contract						DATE: July 13, 2017						
CONTRACTOR:			Sole Source			PERCENTAGE OF CONTRACT DOLLARS						
Bentley Systems, Inc. Exton, PA 19341						Availability Group		Contracting Objectives		Participation		
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP			White Men		25%		100.0%			
		Ethnicity	Gender		White Women		6%		0.0%			
\$496,500 *		White	Men		Ethnic Minorities		25%		0.0%			
CONTRACT EQUITY PARTICIPATION												
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
				M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
<i>PRIME:</i> Bentley Systems, Inc.		\$496,500	White	X		100.0%						
<i>SUBS:</i> None												
TOTAL		\$496,500				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
			White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:			673		279		240		1,192			
Percent of Total Employees:			56.5%		23.4%		20.1%					
MSA Labor Market %:			46.4%		40.2%		13.4%					
MSA Labor Market Location:			Pennsylvania									
COMMENTS												
<i>Contract Equity Participation - 100% White Men participation.</i> *Total not to exceed: \$496,500												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								



AGENDA NO. 9.
 MEETING DATE July 25, 2017

TITLE LAFAYETTE WATER TREATMENT PLANT STANDBY GENERATOR RENTAL

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

Authorize a third amendment to the agreement with SR Bray LLC, dba Power Plus approved under Board Motion No. 018-16 dated January 26, 2016, to increase the authorization by \$260,000, to an amount not to exceed \$616,370, to continue the rental of a standby generator at Lafayette Water Treatment Plant (WTP) beginning on or after July 25, 2017.

SUMMARY

This agreement will extend the rental of a standby generator for an additional five months at the Lafayette WTP while the permanent standby generator engine is repaired and returned to service. The facility's standby generator engine will be repaired under another contract and is not expected be ready for service until November 30, 2017.

DISCUSSION

In January 2016, the Board approved an agreement to rent a standby generator for the Lafayette WTP for an estimated amount of \$136,150 over four months. The original agreement amount was increased to \$222,930 under Board Motion No. 110-16 dated June 14, 2016 and increased a second time to \$356,370 under Board Motion No. 047-17 dated March 28, 2017. The rental standby generator provides backup power during repairs to the facility's fixed backup engine-generator, which failed on November 11, 2015. The Board awarded a contract to California Generator Services to evaluate and repair the facilities standby generator engine on May 23, 2017. The repairs are taking longer than planned and are currently scheduled for completion in November 2017.

Lafayette WTP is critical to supplying water to the cities of Lafayette, Moraga, and Orinda. The Lafayette WTP's standby generator provides backup power to the WTP, should there be a Pacific Gas and Electric (PG&E) outage. The District owns one portable generator that is large enough for this site, but that unit is currently deployed as backup power at El Cerrito Center. Contracting for this service supports the District's Strategic Plan goal for Long-Term Infrastructure Investment.

Funds Available: FY18		Budget Code: WSO/733/0372720/5296
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR	APPROVED
Maintenance and Construction	 Clifford C. Chan	 General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

SERVICE PROVIDER SELECTION

In December 2015, requests for proposals (RFP) were sent to five potential proposers. The District received three proposals. The second lowest responsive/responsible bidder was chosen after the low bidder was disqualified due to failure to submit all the required Contract Equity Program documents and by requesting the District to indemnify them. In January 2016, requests for quotations were sent to the three vendors who responded to the December 2015 RFP, and all three responded. The results were the same with SR Bray LLC, dba Power Plus as the lowest responsive/responsible bidder.

SUSTAINABILITY

Economic

Funds are available for this work in the FY18 operating budget.

Social

The completed P-035 and P-061 forms for the Contract Equity Program are attached. Providing a rental standby generator at the Lafayette WTP will ensure operation in the event of a PG&E outage, thus reducing the potential for water service interruptions to our customers.

Environmental

The rental of a fully contained and properly maintained generator provides a standby unit with the latest emission controls, fully contained fuel tank, and sound reducing enclosure.

ALTERNATIVES

Do not rent a generator. This alternative is not recommended because operating the Lafayette WTP without a standby generator will leave the plant without needed backup power should a PG&E failure occur.

Use a District-owned generator. This alternative is not recommended because the only District generator that has sufficient capacity is located at another critical facility. If this unit is used, it will leave that facility without needed backup power should a PG&E failure occur.

Attachments

P-035 – Contract Equity Program Summary

P-061 – Affirmative Action Summary



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 Lafayette Water Treatment Plant Standby Generator Rental	DATE: July 25, 2017
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CONTRACTOR: SR Bray, LLC dba Power Plus Anaheim, CA 92806	PERCENTAGE OF CONTRACT DOLLARS		
	Availability Group	Contracting Objectives	Participation
BID/PROPOSER'S PRICE:	FIRM'S OWNERSHIP		White Men
	Ethnicity	Gender	White Women
\$260,000 *	White	Male	Ethnic Minorities
			25%
			25%
			100.0%
			6%
			0.0%

CONTRACT EQUITY PARTICIPATION												
COMPANY NAME	ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION							
			M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign	
			PRIME: SR Bray, LLC dba Power Plus	\$260,000	White	X		100.0%				
SUBS: None												
TOTAL	\$260,000				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)				
	White Men	White Women	Ethnic Minorities	Total Employees
No. of Employees:	150	33	183	366
Percent of Total Employees:	41.0%	9.0%	50.0%	
MSA Labor Market %:	28.0%	23.6%	48.4%	
MSA Labor Market Location:	California			

COMMENTS

Contract Equity Participation - 100% White Men participation

*Total Not to Exceed \$616,370 = \$356,370 (Multiple previous amendments) + \$260,000 (Amendment)

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



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: Lafayette Water Treatment Plant Standby Generator Rental		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
General Services Agreement		DATE: 7/25/2017							
			National	10.5	10.7	3.7	0.7	27.3	
			9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9	
		Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2		
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM	Company Wide	9	159	12	0	180	49.2%	27.2%
SR Bray, LLC dba Power Plus Joe Perez 1210 N. Red Gum St. Anaheim, CA 92806 714-765-7551		Manager/Prof	1	17	2	0	20	33.9%	
		Technical/Sales	4	56	1	0	61	45.2%	
		Clerical/Skilled	3	64	7	0	74	52.1%	
		Semi/Unskilled	1	22	2	0	25	83.3%	
		Bay Area	0	0	0	0	0	0.0%	
		AA Plan on File:	NA		Date of last contract with District:		NA		
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		366	Bay Area:	0
P	WM: LBE	Company Wide	INFORMATION NOT PROVIDED						
Cummins Pacific Justin McCaffery 14775 Wicks Blvd. San Leandro, CA 94577 510-351-6101		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							
P	WM: LBE	Company Wide	INFORMATION NOT PROVIDED						
Peterson Power Systems Skip Ray 2828 Teagarden Street San Leandro, CA 94577 510-618-5510		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							

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



AGENDA NO. 10.
 MEETING DATE July 25, 2017

TITLE GROUNDWATER SUSTAINABILITY PLAN MEMORANDUM OF UNDERSTANDING WITH THE CITY OF HAYWARD

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

Authorize staff to execute a Memorandum of Understanding (MOU) with the City of Hayward to jointly prepare a Groundwater Sustainability Plan (GSP) for the East Bay Plain Sub-basin (Sub-basin), a grant application, and a cooperating agreement.

SUMMARY

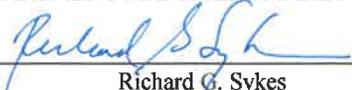
Pursuant to the Sustainable Groundwater Management Act (SGMA), the District became the Groundwater Sustainability Agency (GSA) on November 29, 2016, for the portion of the Sub-basin which underlies the District’s service area. Likewise, the City of Hayward became the GSA for the portion of the Sub-basin which underlies its service area.

The MOU documents the intention of the City of Hayward and the District to develop a cooperating agreement to detail the governance structure, decision-making procedures, and allocation of responsibilities relative to developing a single, joint GSP for the Sub-basin. In addition, the agencies will jointly prepare a grant application under Proposition 1 to fund GSP development.

DISCUSSION

The MOU commits the parties to working together in good faith to ensure SGMA compliance for the entire Sub-basin. The cooperating agreement would include the following elements:

- Equitable cost-sharing
- Decision making based on mutual understanding and respect
- Commitment to inclusive and transparent stakeholder outreach and input
- A governance structure that would set forth roles and responsibilities of each party to ensure sustainable groundwater management in compliance with SGMA
- Dispute resolution procedures

Funds Available: FY18		Budget Code: WSC/WNR/455/2010561	
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR		APPROVED
Water and Natural Resources	 Richard G. Sykes		 General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

The goal of both parties is to complete the cooperating agreement by early 2018. In the meantime, for the grant application, the MOU will demonstrate the District's and the City of Hayward's commitment to cooperate on GSP development. The MOU is consistent with the Strategic Plan Long-Term Water Supply goal to ensure a reliable high quality water supply for the future.

SUSTAINABILITY

Economic

The estimated cost of GSP development is \$1.9 million. This amount is included in the District's five-year capital budget. The District and the City of Hayward will apply for a GSP planning grant under Proposition 1. The maximum available grant amount is \$1 million per basin, with grant recipients sharing 50 percent of total project costs. If the grant application is successful, the funding will help offset the cost of GSP development. In addition, the City of Hayward will contribute a proportionate share of the GSP development.

Social

This MOU will benefit well owners and the regional water supply by leading to long-term protection for local groundwater resources and ensuring they are sustainable.

Environmental

The purpose of the MOU is to sustainably manage the East Bay Plain Groundwater Sub-basin. SGMA exempts GSP planning activities from the California Environmental Quality Act. Projects required by GSP implementation may be subject to applicable state and federal environmental regulations. A GSP for the Sub-basin will help maximize the use of this local water supply resource thereby minimizing the need for supplies from the Mokelumne River.

ALTERNATIVE

Do not execute a GSP MOU with the City of Hayward. This alternative is not recommended because it would cost the District more to independently create the GSP than to cooperate on a combined GSP with the City of Hayward.

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: July 20, 2017

MEMO TO: Board of Directors

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

SUBJECT: Cancel the August 22, 2017 Closed Session and Regular Meetings
of the Board of Directors

The Board of Directors has traditionally cancelled the Board meetings scheduled for the fourth Tuesday in late August, provided it did not adversely impact the operations of the District, to accommodate planned vacations of Directors and staff. This action would provide an opportunity for a vacation period from August 9 through September 8, 2017.

The first regular meetings of the Board after the vacation would be held on Tuesday, September 12, 2017 at 11:00 a.m. and 1:15 p.m., respectively.

ARC:rsc

I:\SEC\2017 Board Related Items\072517 Board Packet\OGM – Cancellation of 082217 Board Mtgs.docx



AGENDA NO. 12.
 MEETING DATE July 25, 2017

TITLE MONTHLY INVESTMENT TRANSACTIONS REPORT

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

Approve the June 2017 Monthly Investment Transactions Report.

SUMMARY

Per the Policy 4.07 – Investment Policy, staff presents monthly transactions report for the Finance/Administration Committee to review and for the Board to consider each month. The June 2017 report is being submitted for Board consideration.

This item was reviewed with the Finance/Administration Committee on July 25, 2017.

DISCUSSION

Following the adoption of the updated Policy 4.07 – Investment Policy on April 25, 2017, staff now produces a monthly transactions report. This report includes transactions generated by Treasury staff (buys, sales, deposits, withdrawals) as well as transactions that happen as a feature of the securities held (interest, calls, matured).

These transactions are reported in a summary table that also includes the net non-investment transactions from the consolidated banking account of the District to fully capture the changes to the District’s portfolio. Transaction details are also summarized in additional tables that separate interest transactions from others to more clearly detail all activity during the month.

This item supports the District’s Strategic Plan Long-Term Financial Stability goal by ensuring integrity, accountability and transparency in financial management.

Attachments

I:\Sec\2017 Board Related Items\072517 Board Agenda Items\FIN - BD1 Monthly Investment Transactions Report 072517.doc

Funds Available FY18 and FY19		Budget Code:
DEPARTMENT SUBMITTING: Finance	DEPARTMENT MANAGER or DIRECTOR: Sophia D. Skoda	APPROVED: General Manager

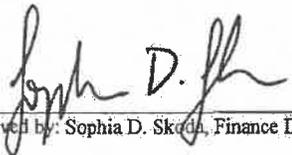
Contact the Office of the District Secretary with questions about completing or submitting this form.

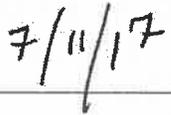
**Monthly Investment Transactions Report
June 2017**

This report is presented to the Board pursuant to Government Code Section 53607 and in accordance with the District's Investment Policy 4.07.

The attached report details transactions in the District's portfolio as follows:

- **Monthly Investment Transactions Summary** **Page 1**
- **Monthly Investment Activity** **Page 2**
 - Buys Page 3
 - Deposits Page 4
 - Matured Page 5
 - Calls Page 6
 - Sales Page 7
 - Withdrawals Page 8
- **Monthly Interest Activity** **Page 9**
 - Interest Received (Transferred to Wells Fargo) Page 10
 - Interest Received (Reinvested) Page 11


Approved by: Sophia D. Skoda, Finance Director


Date

SDS:DSK:MH



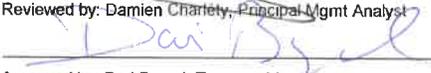
EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
June 2017

Portfolio	Non-Investment Transactions*	Buys	Deposits	Matured	Calls	Sales	Withdrawals	Net Transaction Activity
001 - Water System Consolidated	-	91,911,000.00	207,500,000.00	-	(3,000,000.00)	-	(25,000,000.00)	271,411,000.00
007 - Wastewater Consolidated	-	13,883,000.00	31,500,000.00	-	(550,000.00)	-	-	44,833,000.00
049 - Ferc Partnership	-	-	-	-	-	-	-	-
009 - BACWA	-	300,000.00	-	-	-	-	(250,000.00)	50,000.00
015 - DERWA	-	-	-	-	-	-	(3,750,000.00)	(3,750,000.00)
002 - FRWA	-	-	-	-	-	-	-	-
014 - IICP	-	-	-	-	-	-	-	-
010 - UMRWA	-	-	-	-	-	-	-	-
003 - Employees Retirement	-	-	2,105,000.00	-	-	-	-	2,105,000.00
065 - Water S2008A DSRF	-	-	-	-	-	-	-	-
068 - Water 2010A DSRF	-	-	4,668,321.34	-	-	(4,665,000.00)	(8,932,071.90)	(8,928,750.56)
Investment Activity Total	-	106,094,000.00	245,773,321.34	-	(3,550,000.00)	(4,665,000.00)	(37,932,071.90)	305,720,249.44
099 - Wells Fargo	291,980,936.72	(106,094,000.00)	(245,773,321.34)	-	3,550,000.00	4,665,000.00	37,932,071.90	(13,739,312.72)
Total	291,980,936.72	-	-	-	-	-	-	291,980,936.72

*Non-investment transactions are net receipts and expenditures in Wells Fargo resulting from activities other than investment and interest transactions detailed in this report.

Reviewed by: 
 Damien Charley, Principal Mgmt Analyst


 Date


 Approved by: Dari Barzel, Treasury Manager


 Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
June 2017

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Buys										
001 - Water System Consolidated	Municipal Bonds	Alameda County Improvement C	010775BA1	05/12/2017	06/07/2017	09/01/2020	225,000.00	223,182.00	0.00	223,182.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 1.06 11/19/2018-16	3133EGBE4	06/22/2017	06/23/2017	11/19/2018	1,500,000.00	1,494,045.00	1,501.67	1,495,546.67
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 1.18 11/26/2019	3133EC4K7	06/27/2017	06/28/2017	11/26/2019	1,700,000.00	1,688,032.00	1,783.11	1,689,815.11
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 1.25 11/21/2018	3133EHNY5	06/26/2017	06/27/2017	11/21/2018	15,000,000.00	14,986,050.00	3,125.00	14,989,175.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 1.74 11/25/2020-17	3133EHKS1	06/22/2017	06/23/2017	11/25/2020	3,325,000.00	3,321,675.00	4,499.83	3,326,174.83
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1 5/10/2018-17	3130A8XH1	06/26/2017	06/27/2017	05/10/2018	1,000,000.00	998,250.00	1,305.56	999,555.56
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.02 5/24/2019-17	3130A8YU1	06/22/2017	06/23/2017	05/24/2019	2,200,000.00	2,184,204.00	1,807.67	2,186,011.67
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.05 11/8/2018-13	313381VJ1	06/22/2017	06/23/2017	11/08/2018	500,000.00	498,165.00	656.25	498,821.25
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.2 5/23/2019-16	3130A7ZW8	06/22/2017	06/26/2017	05/23/2019	6,000,000.00	5,969,820.00	6,600.00	5,976,420.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.25 5/23/2019-16	3130A86T5	06/22/2017	06/23/2017	05/23/2019	500,000.00	498,210.00	520.83	498,730.83
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.375 5/28/2019	3130ABF92	06/28/2017	06/29/2017	05/28/2019	4,315,000.00	4,315,560.95	7,746.02	4,323,306.97
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.5 11/4/2019	3130ABCH7	06/27/2017	06/28/2017	11/04/2019	5,780,000.00	5,782,890.00	13,005.00	5,795,895.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.5 11/4/2019	3130ABCH7	06/22/2017	06/23/2017	11/04/2019	4,250,000.00	4,251,955.00	8,677.08	4,260,632.08
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 5 11/17/2017	3133XMQ87	06/23/2017	06/26/2017	11/17/2017	1,995,000.00	2,025,144.45	10,806.25	2,035,950.70
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 1.05 5/25/2018-16	3134G9LS4	06/21/2017	06/22/2017	05/25/2018	2,666,000.00	2,660,747.98	2,099.48	2,662,847.46
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 1.5 11/27/2019-17	3134GA4E1	06/26/2017	06/27/2017	11/27/2019	6,700,000.00	6,705,025.00	8,375.00	6,713,400.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 1.55 11/27/2019-17	3134GA2P8	06/29/2017	06/30/2017	11/27/2019	5,420,000.00	5,422,605.80	7,700.92	5,430,306.72
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 1.6 11/25/2019-17	3134GBMF6	06/27/2017	06/28/2017	11/25/2019	980,000.00	980,666.40	1,437.33	982,103.73
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 5/22/2019-17	3134GBLF7	06/23/2017	06/26/2017	05/22/2019	300,000.00	299,970.00	283.33	300,253.33
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 5/28/2020-17	3134GBPS5	06/27/2017	06/28/2017	05/28/2020	9,850,000.00	9,846,552.50	11,491.67	9,858,044.17
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 5/9/2019-17	3134GBPG1	06/23/2017	06/26/2017	05/09/2019	5,000,000.00	4,999,450.00	7,343.75	5,006,793.75
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA 0.875 5/21/2018	3135G0WJ8	06/27/2017	06/28/2017	05/21/2018	8,815,000.00	8,786,263.10	7,927.38	8,794,190.48
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA 0.875 5/21/2018	3135G0WJ8	06/23/2017	06/26/2017	05/21/2018	440,000.00	438,520.28	374.31	438,894.59
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA 0.875 5/21/2018	3135G0WJ8	06/23/2017	06/26/2017	05/21/2018	3,000,000.00	2,990,250.00	2,552.08	2,992,802.08
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA 1.5 11/30/2018-14	3136G0HK0	06/23/2017	06/26/2017	11/30/2018	450,000.00	450,909.90	487.50	451,397.40
					Sub Total		91,911,000.00			
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FFCB 1.19 12/28/2018-16	3133EFT49	06/29/2017	06/30/2017	12/28/2018	100,000.00	99,617.00	6.61	99,623.61
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB 1.07 11/26/2018-17	3130A7XG5	06/28/2017	06/29/2017	11/26/2018	155,000.00	154,397.67	152.03	154,549.70
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC 1.05 11/28/2018-17	3134GAWM2	06/29/2017	06/30/2017	11/28/2018	500,000.00	497,560.00	466.67	498,026.67
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC 1.3 5/24/2019-16	3134G9MU8	06/28/2017	06/29/2017	05/24/2019	400,000.00	398,780.00	505.56	399,285.56
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC 1.75 5/30/2019	3137EADG1	06/28/2017	06/29/2017	05/30/2019	3,000,000.00	3,022,974.00	4,229.17	3,027,203.17
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FNMA 0.875 5/21/2018	3135G0WJ8	06/26/2017	06/27/2017	05/21/2018	4,378,000.00	4,363,859.06	3,830.75	4,367,689.81
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FNMA 1.4 11/25/2019-17	3136G4GU1	06/27/2017	06/28/2017	11/25/2019	350,000.00	348,950.00	449.17	349,399.17
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FNMA 1.625 11/27/2018	3135G0YT4	06/26/2017	06/27/2017	11/27/2018	2,000,000.00	2,009,440.00	2,708.33	2,012,148.33
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FNMA 1.625 11/27/2018	3135G0YT4	06/26/2017	06/27/2017	11/27/2018	3,000,000.00	3,013,956.00	4,062.50	3,018,018.50
					Sub Total		13,883,000.00			
009 - BACWA	Federal Agency Issues Coupon	FHLMC Step 5/28/2020-17	3134GBPS5	06/27/2017	06/28/2017	05/28/2020	300,000.00	299,895.00	350.00	300,245.00
					Sub Total		300,000.00			
							106,094,000.00	106,027,573.09	128,867.81	106,156,440.90



EAST BAY MUNICIPAL UTILITY DISTRICT
 Monthly Investment Activity
 June 2017

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Deposits										
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	06/09/2017	06/09/2017	N/A	10,000,000.00	10,000,000.00	0.00	10,000,000.00
001 - Water System Consolidated	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1001	06/09/2017	06/09/2017	N/A	15,000,000.00	15,000,000.00	0.00	15,000,000.00
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	06/22/2017	06/22/2017	N/A	41,000,000.00	41,000,000.00	0.00	41,000,000.00
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	06/22/2017	06/22/2017	N/A	99,000,000.00	99,000,000.00	0.00	99,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Fidelity Investments	MM0057	06/22/2017	06/22/2017	N/A	40,000,000.00	40,000,000.00	0.00	40,000,000.00
001 - Water System Consolidated	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1001	06/30/2017	06/30/2017	N/A	2,500,000.00	2,500,000.00	0.00	2,500,000.00
					Sub Total		207,500,000.00			
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	06/30/2017	06/30/2017	N/A	2,105,000.00	2,105,000.00	0.00	2,105,000.00
					Sub Total		2,105,000.00			
007 - Wastewater Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	06/21/2017	06/21/2017	N/A	20,000,000.00	20,000,000.00	0.00	20,000,000.00
007 - Wastewater Consolidated	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1001	06/30/2017	06/30/2017	N/A	11,500,000.00	11,500,000.00	0.00	11,500,000.00
					Sub Total		31,500,000.00			
068 - Water 2010A DSRF	Money Market Mutual Funds	Dreyfus MM	MM2642	06/05/2017	06/05/2017	N/A	4,668,321.34	4,668,321.34	0.00	4,668,321.34
					Sub Total		4,668,321.34			
							245,773,321.34	245,773,321.34	0.00	245,773,321.34



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
June 2017

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
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Matured

No Transaction this Period

0.00 0.00 0.00 0.00



EAST BAY MUNICIPAL UTILITY DISTRICT
 Monthly Investment Activity
 June 2017

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Calls										
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB Step 6/30/2020-17	3130AAHA9	06/30/2017	06/30/2017	06/30/2020	550,000.00	550,000.00	0.00	550,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA Step 3/9/2020-16	3136G2ZB6	06/09/2017	06/09/2017	03/09/2020	1,000,000.00	1,000,000.00	3,125.00	1,003,125.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA Step 3/9/2020-16	3136G2ZB6	06/09/2017	06/09/2017	03/09/2020	2,000,000.00	2,000,000.00	6,250.00	2,006,250.00

3,550,000.00 3,550,000.00 9,375.00 3,559,375.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
June 2017

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Sales										
068 - Water 2010A DSRF	Federal Agency Issues Coupon	FNMA 1 6/27/2018	3136G16F1	06/05/2017	06/05/2017	06/27/2018	4,665,000.00	4,647,847.17	20,474.17	4,668,321.34

4,665,000.00 4,647,847.17 20,474.17 4,668,321.34



EAST BAY MUNICIPAL UTILITY DISTRICT
 Monthly Investment Activity
 June 2017

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Withdrawals										
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	06/30/2017	06/30/2017	N/A	15,000,000.00	15,000,000.00	0.00	15,000,000.00
001 - Water System Consolidated	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1001	06/30/2017	06/30/2017	N/A	10,000,000.00	10,000,000.00	0.00	10,000,000.00
009 - BACWA	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1001	06/30/2017	06/30/2017	N/A	250,000.00	250,000.00	0.00	250,000.00
015 - DERWA	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1001	06/30/2017	06/30/2017	N/A	2,500,000.00	2,500,000.00	0.00	2,500,000.00
015 - DERWA	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1001	06/30/2017	06/30/2017	N/A	1,250,000.00	1,250,000.00	0.00	1,250,000.00
068 - Water 2010A DSRF	Money Market Mutual Funds	Dreyfus MM	MM2642	06/22/2017	06/22/2017	N/A	8,932,071.90	8,932,071.90	0.00	8,932,071.90
							22,932,071.90	22,932,071.90	0.00	22,932,071.90



EAST BAY MUNICIPAL UTILITY DISTRICT
 Monthly Interest Activity
 June 2017

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Interest Received (Transferred to Wells Fargo)										
001 - Water System Consolidated	Medium Term Notes	Johnson & Johnson 1.65 12/5/2018	478160BG8	06/05/2017	06/05/2017	12/05/2018	0.00	0.00	4,125.00	4,125.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB Step 6/20/2019-16	3130ABAT0	06/20/2017	06/20/2017	06/20/2019	0.00	0.00	40,000.00	40,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB Step 12/28/2021-17	3130AABN7	06/28/2017	06/28/2017	12/28/2021	0.00	0.00	19,743.75	19,743.75
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB Step 9/30/2019-16	3130A9HF1	06/30/2017	06/30/2017	09/30/2019	0.00	0.00	8,109.38	8,109.38
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 6/30/2020-16	3134G9YE1	06/30/2017	06/30/2017	06/30/2020	0.00	0.00	20,000.00	20,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Fidelity Investments Gov MM MM	MM0057	06/30/2017	06/30/2017	N/A	0.00	0.00	8,002.44	8,002.44
									Sub Total	99,980.57
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC Step 6/28/2019-16	3134G9YQ4	06/28/2017	06/28/2017	06/28/2019	0.00	0.00	5,750.00	5,750.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB Step 6/30/2020-17	3130AAHA9	06/30/2017	06/30/2017	06/30/2020	0.00	0.00	3,437.50	3,437.50
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC Step 6/30/2020-16	3134G9YE1	06/30/2017	06/30/2017	06/30/2020	0.00	0.00	12,125.00	12,125.00
									Sub Total	21,312.50

0.00 0.00 121,293.07 121,293.07



EAST BAY MUNICIPAL UTILITY DISTRICT
 Monthly Interest Activity
 June 2017

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Interest Received (Reinvested)										
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	06/30/2017	06/30/2017	N/A	0.00	0.00	43,044.01	43,044.01
007 - Wastewater Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	06/30/2017	06/30/2017	N/A	0.00	0.00	6,379.11	6,379.11
065 - Water S2008A DSRF	Money Market Mutual Funds	Dreyfus MM	MM6999	06/02/2017	06/02/2017	N/A	0.00	0.00	1,048.30	1,048.30
068 - Water 2010A DSRF	Money Market Mutual Funds	Dreyfus MM	MM2642	06/27/2017	06/27/2017	N/A	0.00	0.00	1,675.00	1,675.00
068 - Water 2010A DSRF	Money Market Mutual Funds	Dreyfus MM	MM2642	06/02/2017	06/02/2017	N/A	0.00	0.00	1,362.26	1,362.26
							0.00	0.00	53,508.68	53,508.68



AGENDA NO. 13.
 MEETING DATE July 25, 2017

TITLE SALE OF SURPLUS PROPERTY – STONEWALL RESERVOIR

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

- A. Approve the sale of the Stonewall Reservoir property in Oakland, as shown on the attached Exhibit A to JB Stonewall, LLC for the purchase price of \$1,200,000; and
- B. Authorize District staff to execute the Grant Deed (“Deed”) for the sale of the property to JB Stonewall, LLC.

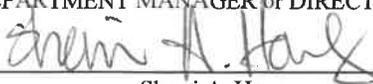
SUMMARY

The Stonewall Reservoir property is approximately 1.97 acres and is located off of Stonewall Road in Oakland. The District acquired the property in June 1925 to accommodate a 210,000 gallon tank constructed in 1931. The reservoir was demolished this year and the property identified as surplus. Selling the property eliminates costs associated with maintaining the site, including ownership liability.

The property was offered for sale to local, qualifying public agencies; however, there was no interest from any public agency. Staff then engaged in extensive conversations with the community and a successful offer was accepted on July 7, 2017, subject to Board approval.

DISCUSSION

The District has owned the Stonewall Reservoir property since June 1925 and maintained a reservoir there since 1931 to supply the Stonewall Pressure Zone serving approximately 173 customers in the cities of Oakland and Berkeley. The reservoir was identified for rehabilitation or replacement as part of the 2012 Infrastructure Rehabilitation Plan. Additional analysis and hydraulic modeling identified significant costs to upgrade and maintain the reservoir and staff recommended demolishing the tank. The reservoir tank was removed from service in December 2015, and demolished in 2017.

Funds Available: FY18		Budget Code: 326
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR	APPROVED
Customer and Community Svcs.	 Sherri A. Hong	 General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

In December 2015, pursuant to California Government Code Section 65402, the District notified the City of Oakland of the District's intent to sell the property and requested a determination that the proposed sale conformed to the City's General Plan. The City responded stating that the property is zoned RH-3 (Hillside Residential, Zone 3, a low-density residential district) and the General Plan designation is Hillside Residential.

In February 2016, pursuant to California Government Code Section 54222, the District notified the California Natural Resources Agency, City of Oakland Parks & Recreation, East Bay Regional Park District, Oakland Housing Authority, City of Oakland Human Services, Oakland Unified School District and Alameda County Public Works of the property's availability. No agency expressed an interest in the property.

In August 2016, the District notified all Limited Land Use Permit (LLUP) holders who had been using the property of the District's plans to sell the property. The neighborhood community expressed interest in the property remaining as open space and was willing to pursue legal action if necessary. One of the neighbors, a LLUP holder, agreed to purchase the property and intends to maintain it as open space.

The reservoir was removed in January 2017 and site clean-up is anticipated to be completed this year. The prospective buyer has agreed to all of the District's terms of the sale including the site delivery conditions and the reservation of an easement for the District pipeline that will remain on a portion of the property. Upon the Board's approval of the sale, the District will execute the deed to the property and deliver it to escrow for recordation following completion of all obligations by both parties.

This action supports the District's Strategic Plan goal for Long-Term Financial Stability by utilizing asset management principles that reduce operating costs, improve financial efficiency, and maximize asset values.

SUSTAINABILITY

Economic

The offer provides a fair-market value for the property. If approved by the Board, the District will receive \$1,200,000 of revenue in FY18. In addition, the District will save annual property maintenance costs and eliminate the liability inherent in retaining an unutilized property of this size.

Social

The sale of the property will add value to the surrounding community by returning the property to open space. The prospective buyer has pledged to preserve the property as open space and has the support of the surrounding community.

Environmental

The sale of the surplus property is exempt from the California Environmental Quality Act (CEQA) under Section 15312 of the State CEQA Guidelines.

ALTERNATIVES

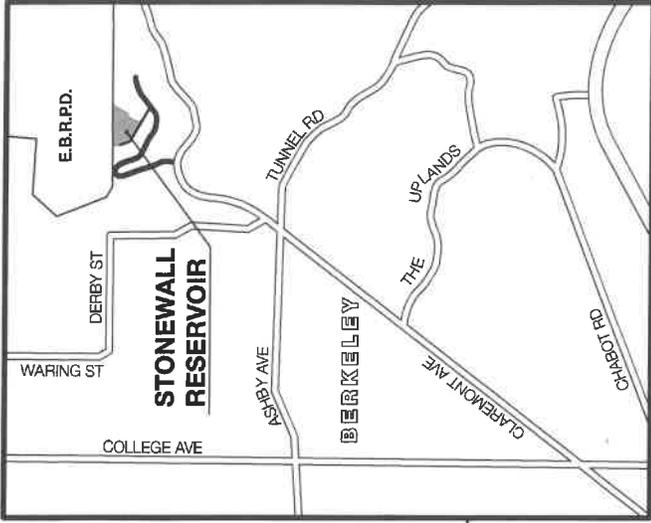
Reject the offer and seek other offers. This alternative is not recommended because it could result in a lower purchase price for the property and may not include the same community benefits as noted above.

Do not sell the property. This alternative is not recommended because it is surplus property and the District would forego the one-time revenue associated with the sale. The District would also continue to incur property maintenance and insurance costs.

Attachment

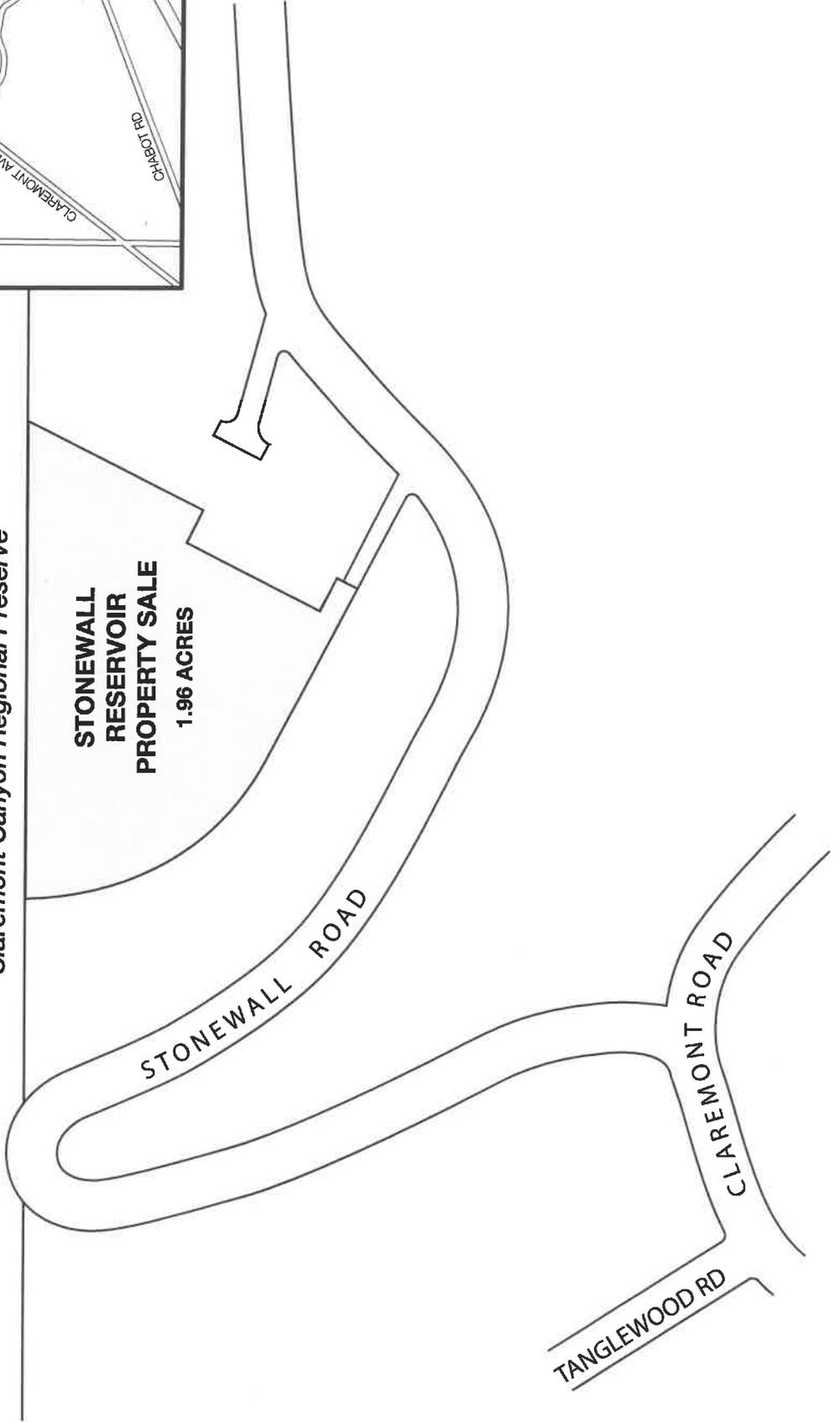
**EXHIBIT A
STONEWALL RESERVOIR
PROPERTY SALE**

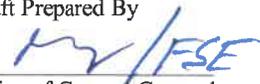
VICINITY



**EAST BAY REGIONAL PARK DISTRICT
Claremont Canyon Regional Preserve**

**STONEWALL
RESERVOIR
PROPERTY SALE
1.96 ACRES**





RESOLUTION NO. _____

AUTHORIZING THE SALE OF THE STONEWALL RESERVOIR PROPERTY
IN OAKLAND, CALIFORNIA, TO JB STONEWALL, LLC

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, East Bay Municipal Utility District (“District”) has determined that property known as the Stonewall Reservoir Property, consisting of approximately 1.97 acres of land located off Stonewall Road in the City of Oakland, Alameda County, California, as more particularly shown on Exhibit A, attached hereto and incorporated herein, is surplus to the District’s needs; and

WHEREAS, in accordance with the provisions of Government Code section 54222, the District offered the property to the California Natural Resources Agency, City of Oakland Parks & Recreation, East Bay Regional Park District, Oakland Housing Authority, City of Oakland Human Services, Oakland Unified School District and Alameda County Public Works Agency and did not receive an expression of interest in purchasing the property from any of these agencies; and

WHEREAS, pursuant to District Policy 4.21, the District notified all neighbors adjacent to the Stonewall Reservoir Property of its intent to offer the property for sale, and Mr. Jesse Brill expressed interest in purchasing the property in order to preserve it as open space; and

WHEREAS, the District had the property appraised by an independent appraiser at its “highest and best use” market value and the appraiser valued it at \$1.25 million as of November 9, 2016; and

WHEREAS, the District offered the property for sale at the appraised market value to Mr. Jesse Brill and the District and Mr. Jesse Brill negotiated a purchase price of \$1.2 million; and

WHEREAS, Mr. Jesse Brill has formed JB Stonewall, LLC for the purposes of purchasing and owning the property; and

WHEREAS, the proposed sale is in conformance with the General Plan of Alameda County, and is categorically exempt from the California Environmental Quality Act under Section 15312 of the State CEQA Guidelines; and

WHEREAS, it is in the best interest of the District to sell the surplus property;

NOW, THEREFORE, BE IT RESOLVED that the Manager of Real Estate Services and the Secretary of the District are authorized and directed to execute a grant deed, in a form approved by the General Counsel, conveying said real property to JB Stonewall, LLC, and any and all

other documents necessary to close escrow, and the proper officers of the District are hereby authorized and directed to deliver said deed to JB Stonewall, LLC upon receipt of \$1.2 million.

BE IT FURTHER RESOLVED that the Secretary of the District is hereby directed to file a notice of exemption in accordance with the law, with the County Clerk of Alameda County.

ADOPTED this 25th day of July, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

President

Secretary

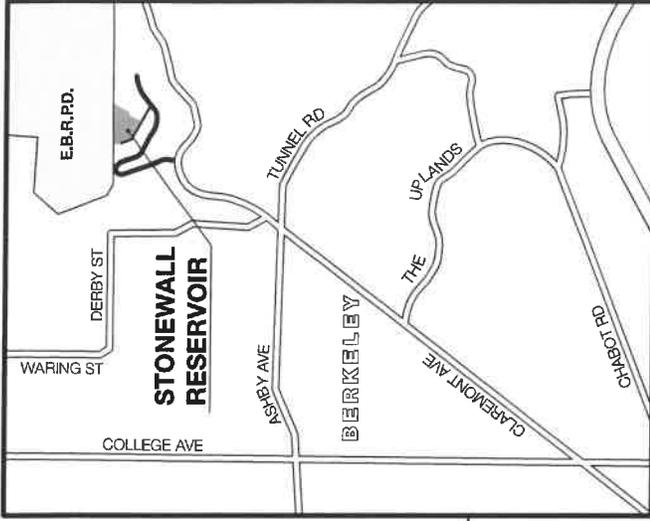
APPROVED AS TO FORM AND PROCEDURE:

General Counsel

ATTACHMENT

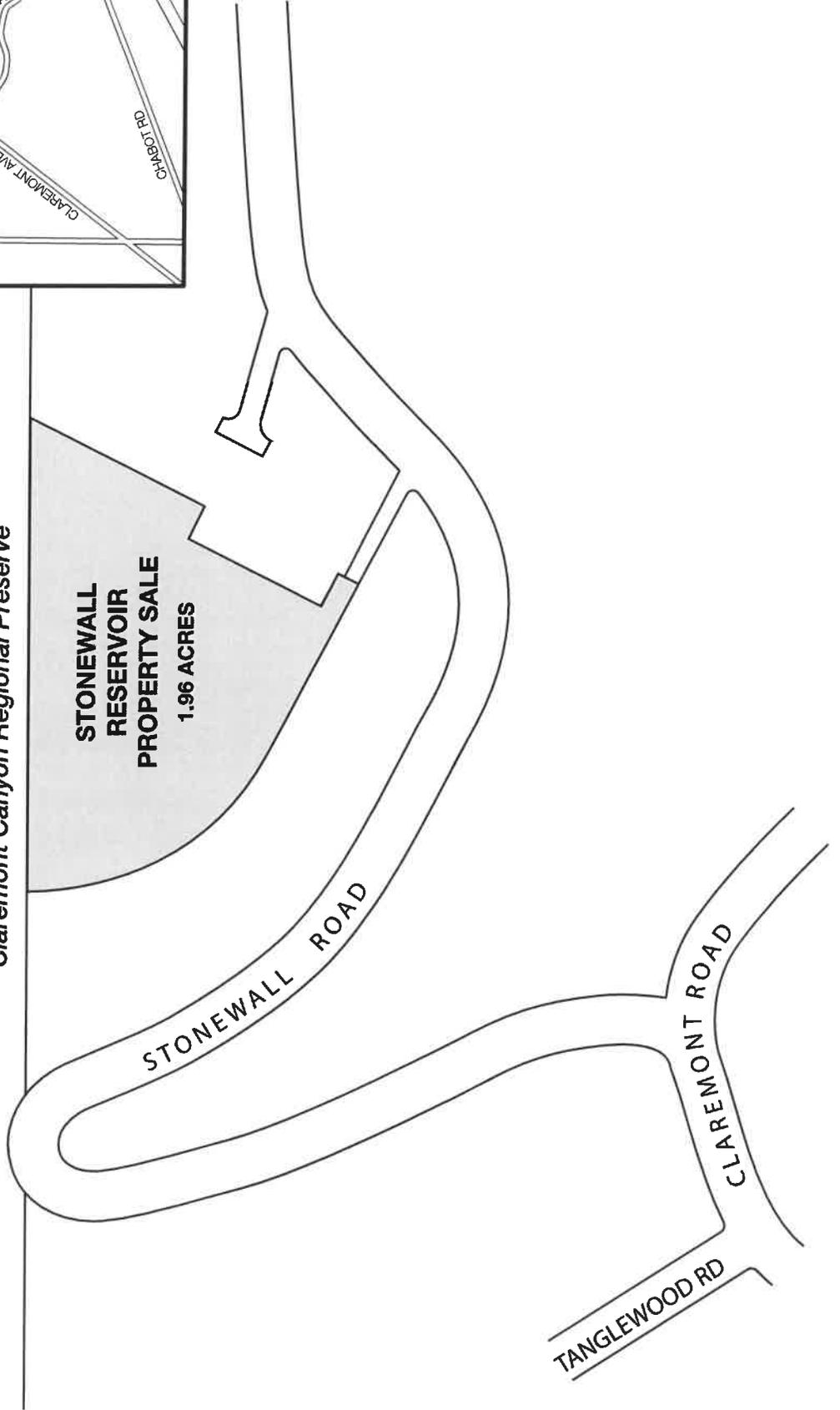
EXHIBIT A STONEWALL RESERVOIR PROPERTY SALE

VICINITY



EAST BAY REGIONAL PARK DISTRICT
Claremont Canyon Regional Preserve

STONEWALL
RESERVOIR
PROPERTY SALE
1.96 ACRES





AGENDA NO.
MEETING DATE

14.
July 25, 2017

TITLE APPOINTMENT OF MANAGER OF MAINTENANCE AND CONSTRUCTION/WATER OPERATIONS

MOTION RESOLUTION ORDINANCE

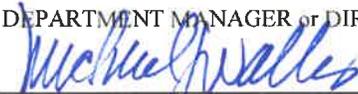
RECOMMENDED ACTION

Appoint David A. Briggs as Manager of Maintenance and Construction/Water Operations (managing the Water Operations Department), effective August 21, 2017. The Manager of Maintenance and Construction/Water Operations is exempt from the civil service provisions of the MUD Act in accordance with Section 12055 which excludes officers, assistant officers, and other persons and employees appointed by the Board.

SUMMARY

Mr. Briggs has twenty-two years of experience in increasingly responsible positions with Contra Costa Water District and the San Francisco Public Utilities Commission (SFPUC), most recently as the Local and Regional Water System Manager. As the manager at SFPUC, Mr. Briggs has been responsible for the local water distribution system comprised of 1,300 miles of pipelines, three water treatment plants, a 130 mile water system dedicated to fire-fighting, and numerous pump stations, reservoirs, tanks, dams, and buildings/grounds facilities within the City of San Francisco. In addition, Mr. Briggs developed a team to triple the distribution main replacement rate.

Mr. Briggs graduated from Stanford University with a Master's degree in Mechanical Engineering and a Doctorate in Applied Mathematics.

Funds Available: FY18		Budget Code: WSO/733/0372720/5296
DEPARTMENT SUBMITTING Operations and Maintenance	DEPARTMENT MANAGER or DIRECTOR  Michael J. Wallis	APPROVED  General Manager

I:\SEC\2017 Board Related Items\Board Packets 2017\072517 Board Agenda Items\Mgr Water Operations.docx

Contact the Office of the District Secretary with questions about completing or submitting this form.

RESOLUTION NO. _____

APPOINTING DAVID A. BRIGGS AS MANAGER OF MAINTENANCE AND
CONSTRUCTION/WATER OPERATIONS

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, the Board of Directors has established the position of Manager of Maintenance and Construction/Water Operations in the Water Operations Department and such position has been assigned a salary range under the Management Salary Plan heretofore established for District officers, assistant officers, civil service exempt and certain civil service classes; and

WHEREAS, the Manager of Maintenance and Construction/Water Operations position is exempt from the District civil service pursuant to State of California Public Utilities Code section 12055; and

WHEREAS, the position of Manager of Maintenance and Construction/Water Operations is vacant, and the General Manager has recommended that David A. Briggs be appointed to serve as Manager of Maintenance and Construction/Water Operations for the District;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that it hereby appoints David A. Briggs to serve as Manager of Maintenance and Construction/Water Operations effective August 21, 2017.

Adopted this 25th day of July, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

President

Secretary

APPROVED AS TO FORM AND PROCEDURE

General Counsel

ITEM 15

PUBLIC HEARING

Conduct a public hearing to consider objections and protests to the General Manager's Report to Transfer Delinquent EBMUD Charges to the 2017-2018 Property Tax Rolls.



AGENDA NO. 16.
 MEETING DATE July 25, 2017

TITLE TRANSFER DELINQUENT EBMUD CHARGES TO THE ALAMEDA AND CONTRA COSTA COUNTIES' 2017-2018 PROPERTY TAX ROLLS

MOTION RESOLUTION ORDINANCE

RECOMMENDED ACTION

Conduct a Public Hearing to consider objections and protests to the General Manager's Report to Transfer Delinquent EBMUD Charges to the 2017-2018 Property Tax Rolls. Adopt the General Manager's Report and authorize the General Manager to exclude from the report any affected parcels or amounts as appropriate, including those that the District receives payment for on or before the reports are sent to Alameda and Contra Costa counties in electronic form by August 10, 2017.

SUMMARY

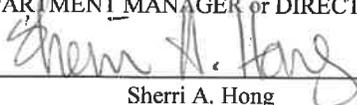
Staff recommends that the Board adopt the report filed at the public hearing on July 25, 2017, to transfer the District's multi-family residential (MFR) delinquent charges to the 2017-2018 property tax rolls, and authorize the General Manager to transfer the delinquent charges if unpaid by August 10, 2017 and includes the following:

Delinquent EBMUD Charges for Transfer to the Alameda County 2017-2018 Property Tax Roll (Attachment 1)

- The Assessor's Parcel Number (APN) and delinquent charges excluded by the Board at the Public Hearing on July 25, 2017;
- Any APN and delinquent charges excluded by the General Manager after July 25, 2017; and
- Any APN and delinquent charges that the District receives payment for on or before August 10, 2017.

Delinquent EBMUD Charges for Transfer to the Contra Costa County 2017-2018 Property Tax Roll (Attachment 2)

- The Assessor's Parcel Number (APN) and delinquent charges excluded by the Board at the Public Hearing on July 25, 2017;
- Any APN and delinquent charges excluded by the General Manager after July 25, 2017; and
- Any APN and delinquent charges that the District receives payment for on or before August 10, 2017.

Funds Available: FY18		Budget Code:	
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR		APPROVED
Customer & Community Services	 Sherri A. Hong		 General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

DISCUSSION

Since January 1, 2011, under the authority of MUD Act Section 12811.1, the District is able to collect MFR delinquent charges by monthly lien filings or annual transfers to the property tax rolls. District-sponsored legislation (SB188) removed the sunset date from the MUD Act, effective January 1, 2016 to allow the District to transfer these delinquent charges on a yearly basis going forward. The District has used this authority as an alternative to terminating water service provided to tenants, when the property owner or customer of record fails to pay the delinquent charges for \$100 or more.

The District has filed 2,314 liens totaling \$1,883,453 on parcel owners' properties for unpaid MFR delinquent charges from July 1, 2016 to June 30, 2017. Of this total, 1,777 liens affecting 400 parcels of property with \$1,443,737 in delinquent charges remain unpaid. The General Manager's Report filed with the Board on June 27, 2017, identified all 400 affected parcels' APNs and the associated delinquent charges recommended for transfer to the Alameda and Contra Costa counties' 2017-2018 Property Tax Rolls. Staff will file a revised report on July 25, 2017, reflecting payments received after June 27, 2017.

State law requires that a public hearing be held before unpaid delinquent charges are transferred to the property tax rolls and owners of affected parcels must be given 14 days advance notice of the specific day, time and place of the public hearing. Notices of the July 25, 2017 public hearing were mailed to the property owners of 443 affected parcels on or before July 7, 2017. Newspaper ads regarding the public hearing were published on June 30 and July 7, 2017.

This action support the District's Strategic Plan goal for Long-Term Financial Stability goal to manage the District's finances to meet funding needs and maintain fair and reasonable water and wastewater rates.

SUSTAINABILITY

Economic

The District expects to recover approximately 85 to 90 percent (\$1,230,000 to \$1,300,000) of the unpaid MFR delinquent charges in FY18 after transferring them to the counties' 2017-2018 property tax rolls.

Social

The lien process is an effective alternative to terminating water service to tenants at multi-family residential accounts when the customer of record fails to pay delinquent charges.

Attachments

ATTACHMENT 1 – Delinquent EBMUD Charges for Transfer to the Alameda County 2017-2018 Property Tax Roll

APN Number				Legend Number		Tax Amount	
00	006	0003	021	00	897	\$443.65	
00	429	0005	020	00	897	\$1,093.46	
00	432	0008	006	00	897	\$5,398.67	
00	002	0009	004	00	897	\$3,328.18	
00	431	0012	025	00	897	\$7,662.04	
00	006	0013	046	00	897	\$5,767.88	
00	004	0015	012	00	897	\$3,867.14	
00	004	0015	035	00	897	\$2,253.63	
00	019	0019	014	00	897	\$2,718.40	
00	075	0028	004	00	897	\$2,252.39	
00	004	0033	022	00	897	\$1,086.53	
00	006	0033	011	00	897	\$4,404.57	
00	019	0035	020	00	897	\$1,126.65	
00	006	0035	040	00	897	\$1,053.87	
00	429	0037	069	00	897	\$423.12	
00	429	0037	069	00	897	\$3,102.10	
00	003	0041	004	00	897	\$6,098.46	
00	414	0041	024	00	897	\$1,425.81	
00	428	0041	078	00	897	\$2,974.20	
00	003	0043	017	00	897	\$1,857.83	
00	003	0049	006	00	897	\$2,772.06	
00	004	0063	030	00	897	\$6,068.39	
00	004	0067	011	00	897	\$2,826.81	
00	004	0067	003	00	897	\$2,866.06	
00	080	0069	056	00	897	\$3,145.79	
00	080	0069	060	00	897	\$3,517.48	
00	426	0070	029	01	00	897	\$3,231.62
00	080	0076	025	00	897	\$4,028.46	
00	003	0077	035	02	00	897	\$3,198.97
00	414	0081	018	00	897	\$3,778.73	
00	075	0085	003	00	897	\$2,730.18	
00	004	0085	013	00	897	\$3,536.67	
00	004	0087	034	00	897	\$3,332.70	
00	429	0091	073	00	897	\$2,782.61	
00	080	A 0108	001	00	897	\$1,665.95	
00	084	A 0124	005	02	00	897	\$2,684.05
00	020	0141	012	00	897	\$6,530.19	
00	020	0147	015	00	897	\$428.93	
00	020	0149	005	00	897	\$1,162.83	
00	070	0161	056	02	00	897	\$2,295.03
00	070	0166	017	00	897	\$1,134.68	
00	020	0178	011	00	897	\$3,619.58	
00	070	0182	050	00	897	\$1,165.63	
00	020	0188	011	00	897	\$2,560.49	
00	020	0189	011	01	00	897	\$6,335.48
00	020	0204	014	00	897	\$2,429.99	
00	020	0205	009	00	897	\$4,575.50	
00	020	0211	016	00	897	\$2,916.08	
00	020	0214	006	00	897	\$1,768.55	
00	020	0215	012	00	897	\$3,249.26	

ATTACHMENT 1 – Delinquent EBMUD Charges for Transfer to the Alameda County 2017-2018 Property Tax Roll

APN Number				Legend Number		Tax Amount
00	020	0218	007	00	897	\$4,490.64
00	021	0228	004	00	897	\$662.64
00	021	0236	003	00	897	\$4,591.77
00	021	0240	007	00	897	\$3,574.48
00	021	0242	003	00	897	\$1,056.07
00	021	0242	009	00	897	\$3,870.57
00	021	0251	005	00	897	\$2,880.66
00	076	0274	038	00	897	\$2,931.48
00	076	0274	039	00	897	\$3,082.68
00	021	0286	025	00	897	\$3,780.10
00	021	0290	031	00	897	\$2,467.06
00	022	0296	002	00	897	\$2,581.60
00	072	0321	011	00	897	\$4,199.39
00	072	0332	003	00	897	\$3,078.21
00	022	0332	007	00	897	\$5,249.85
00	022	0349	033	00	897	\$2,485.57
00	022	0357	026	01	00	\$1,112.80
00	005	0377	012	00	897	\$2,935.08
00	005	0378	010	00	897	\$2,995.39
00	022	0381	018	03	00	\$4,647.96
00	005	0382	003	00	897	\$2,550.23
00	005	0382	007	00	897	\$4,309.36
00	005	0384	021	02	00	\$375.06
00	005	0386	011	00	897	\$4,802.99
00	073	0388	018	00	897	\$2,239.96
00	023	0390	024	00	897	\$3,596.87
00	023	0390	009	01	00	\$4,399.88
00	005	0405	003	00	897	\$3,303.53
00	005	0405	004	00	897	\$3,109.86
00	005	0407	013	00	897	\$4,089.41
00	073	0414	026	00	897	\$4,024.52
00	023	0416	008	02	00	\$2,305.46
00	023	0433	012	00	897	\$524.23
00	005	0452	008	00	897	\$4,168.25
00	005	0453	017	00	897	\$357.28
00	005	0455	016	00	897	\$1,510.07
00	005	0463	003	02	00	\$3,498.58
00	023	0469	018	00	897	\$1,640.44
00	023	0496	010	00	897	\$1,859.34
00	024	0531	028	00	897	\$2,972.39
00	007	0596	014	00	897	\$2,289.29
00	008	0647	033	00	897	\$2,661.80
00	008	0677	007	00	897	\$5,549.15
00	009	0693	015	00	897	\$3,563.63
00	009	0708	003	00	897	\$10,182.16
00	009	0709	014	01	00	\$5,524.10
00	009	0709	015	00	897	\$3,224.23
00	025	0714	020	00	897	\$3,959.94
00	009	0715	050	00	897	\$2,509.48
00	009	0719	025	00	897	\$4,494.96

ATTACHMENT 1 – Delinquent EBMUD Charges for Transfer to the Alameda County 2017-2018 Property Tax Roll

		APN Number			Legend Number		Tax Amount
00	025	0724	006		00	897	\$1,296.93
00	009	0724	026		00	897	\$1,914.44
00	009	0725	030		00	897	\$1,928.72
00	009	0726	011	04	00	897	\$875.16
00	009	0726	045	01	00	897	\$2,752.10
00	009	0726	006		00	897	\$3,904.52
00	009	0726	007		00	897	\$4,108.45
00	009	0726	003		00	897	\$3,494.25
00	009	0726	030		00	897	\$3,489.62
00	025	0733	014	01	00	897	\$2,117.88
00	025	0734	001		00	897	\$17,693.24
00	025	0734	030		00	897	\$19,887.17
00	009	0735	016		00	897	\$3,805.88
00	025	0736	025	01	00	897	\$2,322.30
00	009	0738	020		00	897	\$1,078.61
00	026	0738	002		00	897	\$11,045.91
00	009	0738	027		00	897	\$3,689.40
00	009	0740	033		00	897	\$2,792.28
00	009	0745	027		00	897	\$4,964.29
00	026	0769	008		00	897	\$5,274.69
00	010	0770	001		00	897	\$7,952.98
00	026	0778	021		00	897	\$3,877.94
00	026	0789	005		00	897	\$3,770.61
00	010	0793	010		00	897	\$3,819.92
00	010	0794	037		00	897	\$4,319.10
00	026	0798	027		00	897	\$3,019.41
00	010	0822	025		00	897	\$16,375.24
00	026	0829	005		00	897	\$2,098.53
00	027	0863	031	02	00	897	\$2,480.78
00	027	0872	005	06	00	897	\$1,506.19
00	027	0876	012		00	897	\$3,597.76
00	027	0888	001		00	897	\$3,154.85
00	028	0902	019		00	897	\$1,696.49
00	028	0906	020		00	897	\$3,385.16
00	012	0935	004		00	897	\$3,362.77
00	012	0944	010		00	897	\$2,241.90
00	012	0944	042		00	897	\$3,845.88
00	012	0947	026		00	897	\$5,348.79
00	012	0958		13	00	897	\$2,464.73
00	012	0972	023		00	897	\$2,381.79
00	012	0973	034		00	897	\$4,293.56
00	029	0989	013	04	00	897	\$1,491.13
00	029	0993	006	04	00	897	\$2,723.74
00	012	1012	050	02	00	897	\$3,279.60
00	012	1018	020	01	00	897	\$2,465.37
00	029	1062	010	03	00	897	\$1,363.96
00	049	1079	010	01	00	897	\$2,389.91
00	049	1079	011	02	00	897	\$2,610.76
00	049	1079	011	03	00	897	\$3,706.42
00	013	1090	008	03	00	897	\$3,646.77

ATTACHMENT 1 – Delinquent EBMUD Charges for Transfer to the Alameda County 2017-2018 Property Tax Roll

APN Number				Legend Number		Tax Amount		
00	013	1094	009	00	897	\$5,443.67		
00	013	1099	015	00	897	\$3,431.73		
00	013	1139	022	00	897	\$3,841.97		
00	013	1145	021	00	897	\$1,207.67		
00	013	1170	001	00	897	\$3,168.70		
00	013	1170	005	00	897	\$3,264.32		
00	049	1174	002	00	897	\$2,877.60		
00	049	1175	011	00	897	\$5,375.60		
00	013	1184	009	00	897	\$3,218.10		
00	014	1193	014	00	897	\$3,262.15		
00	014	1194	030	00	897	\$460.08		
00	014	1213	007	00	897	\$5,916.87		
00	074	1225	023	00	897	\$3,125.35		
00	014	1275	011	02	00	897	\$1,417.84	
00	015	1277	124	01	00	897	\$4,512.87	
00	015	1281	003	00	897	\$3,121.56		
00	015	1291	015	00	897	\$3,068.76		
00	015	1297	013	00	897	\$3,220.20		
00	015	1300	003	01	00	897	\$2,567.92	
00	015	1300	018	00	897	\$4,134.87		
00	029	A	1302	005	00	897	\$3,990.66	
00	029	A	1306	007	05	00	897	\$3,757.58
00	015		1311	002	01	00	897	\$6,202.01
00	077	C	1313	045	00	897	\$600.28	
00	029	A	1318	004	00	897	\$842.00	
00	015		1335	019	00	897	\$3,307.29	
00	015		1339	011	00	897	\$1,947.95	
00	015		1352	024	00	897	\$3,357.95	
00	015		1353	022	02	00	897	\$3,338.26
00	015		1358	020	00	897	\$3,215.81	
00	015		1361	002	06	00	897	\$3,272.92
00	015		1361	015	00	897	\$3,277.93	
00	016		1410	035	00	897	\$1,018.37	
00	016		1425	053	02	00	897	\$3,791.84
00	016		1427	027	01	00	897	\$1,216.99
00	016		1428	007	00	897	\$4,231.45	
00	016		1437	018	00	897	\$2,827.63	
00	016		1515	008	00	897	\$4,255.02	
00	052		1520	014	00	897	\$2,899.14	
00	052		1521	019	00	897	\$2,097.99	
00	052		1522	017	00	897	\$2,601.97	
00	052		1536	022	00	897	\$2,777.86	
00	052		1538	009	00	897	\$1,853.34	
00	052		1573	021	00	897	\$3,044.74	
00	052		1575	002	00	897	\$3,217.97	
00	052		1579	002	00	897	\$3,414.51	
00	052		1580	007	00	897	\$4,916.66	
00	052		1581	020	00	897	\$2,912.84	
00	052		1584	035	00	897	\$2,622.58	
00	053		1592	007	00	897	\$3,730.45	

ATTACHMENT 1 – Delinquent EBMUD Charges for Transfer to the Alameda County 2017-2018 Property Tax Roll

APN Number				Legend Number		Tax Amount	
00	053	1592	014	00	897	\$531.26	
00	053	1612	024	00	897	\$1,768.53	
00	053	1669	001	00	897	\$1,031.89	
00	053	1676	004	00	897	\$2,922.60	
00	053	1679	010	00	897	\$887.46	
00	053	1698	008	00	897	\$624.26	
00	054	1734	007	00	897	\$3,182.99	
00	054	1790	022	00	897	\$4,211.34	
00	055	1845	019	00	897	\$356.68	
00	056	1927	021	00	897	\$2,043.86	
00	030	1976	009	00	897	\$1,075.37	
00	030	1980	091	00	897	\$2,455.03	
00	032	2057	014	00	897	\$10,355.43	
00	032	2058	086	00	897	\$2,382.02	
00	032	2058	023	00	897	\$3,419.37	
00	032	2069	020	00	897	\$3,139.12	
00	057	2073	017	00	897	\$14,997.82	
00	032	2078	007	00	897	\$1,787.88	
00	057	2079	004	00	897	\$1,845.73	
00	057	2081	024	00	897	\$4,125.63	
00	057	2081	025	00	897	\$3,538.11	
00	032	2084	022	02	00	897	\$49,993.31
00	057	2088	012	00	897	\$10,300.02	
00	032	2100	036	00	897	\$2,763.40	
00	032	2105	017	00	897	\$4,610.72	
00	032	2107	010	00	897	\$3,001.76	
00	032	2109	020	00	897	\$3,030.16	
00	033	2118	012	00	897	\$8,307.44	
00	033	2119	013	00	897	\$25,603.87	
00	033	2122	015	00	897	\$985.31	
00	033	2128	002	00	897	\$312.80	
00	033	2130	026	01	00	897	\$688.80
00	033	2135	023	00	897	\$4,289.95	
00	033	2136	024	00	897	\$1,328.50	
00	058	2141	009	00	897	\$3,968.85	
00	058	2142	015	00	897	\$1,683.75	
00	058	2163	014	00	897	\$404.48	
00	058	2163	004	00	897	\$2,734.53	
00	058	2168	011	00	897	\$1,201.04	
00	058	2171	027	00	897	\$4,564.94	
00	033	2178	012	00	897	\$3,657.91	
00	033	2188	010	00	897	\$6,912.43	
00	033	2189	009	00	897	\$638.83	
00	033	2189	013	02	00	897	\$3,446.67
00	058	2195	018	00	897	\$1,390.00	
00	034	2275	056	00	897	\$962.58	
00	059	2335	013	00	897	\$5,078.69	
00	035	2358	035	03	00	897	\$4,815.77
00	035	2364	010	01	00	897	\$1,808.12
00	035	2381	025	00	897	\$7,118.52	

ATTACHMENT 1 – Delinquent EBMUD Charges for Transfer to the Alameda County 2017-2018 Property Tax Roll

		APN Number			Legend Number		Tax Amount		
00		035	2387	010	00	897	\$3,877.80		
00		035	2387	009	00	897	\$3,048.86		
00		035	2390	014	00	897	\$3,561.32		
00		036	2438	055	00	897	\$5,423.56		
00		036	2476	013	02	00	897	\$3,362.20	
00		036	2502	071	00	897	\$1,500.85		
00		036	2502	125	00	897	\$7,004.88		
00		036	2503	094	00	897	\$1,311.61		
00		036	2503	098	00	897	\$4,524.26		
00		037	2551	004	00	897	\$1,280.03		
00		061	2551	023	00	897	\$2,855.58		
00		037	2552	026	00	897	\$5,306.45		
00		061	2556	037	00	897	\$1,668.02		
00		037	2605	016	02	00	897	\$3,298.10	
00		066	2732	006	00	897	\$1,929.51		
00		037	A	2737	013	00	897	\$5,406.86	
00		037	A	2748	024	00	897	\$201.93	
00		037	A	2755	026	02	00	897	\$22,132.70
00		037	A	2755	027	00	897	\$28,540.49	
00		037	A	2770	003	00	897	\$5,731.06	
00		038	3177	005	00	897	\$2,990.96		
00		038	3189	056	00	897	\$4,636.90		
00		038	3194	012	01	00	897	\$8,700.32	
00		038	3199	023	00	897	\$3,002.99		
00		038	3207	008	00	897	\$3,825.20		
00		038	3210	019	00	897	\$5,308.35		
00		038	3211	001	02	00	897	\$4,791.78	
00		038	3227	004	00	897	\$3,655.94		
00		038	3236	025	00	897	\$5,253.94		
00		038	3237	038	00	897	\$3,298.68		
00		039	3245	056	02	00	897	\$3,843.52	
00		039	3259	020	00	897	\$3,808.40		
00		039	3263	028	00	897	\$2,253.95		
00		039	3280	009	01	00	897	\$4,222.48	
00		039	3308	015	00	897	\$3,259.67		
00		040	3326	036	00	897	\$11,348.37		
00		040	3330	019	00	897	\$3,388.26		
00		040	3366	001	00	897	\$604.03		
00		040	3374	010	00	897	\$4,125.09		
00		040	3374	013	01	00	897	\$5,067.67	
00		040	3389	005	00	897	\$2,708.04		
00		040	3391	006	00	897	\$1,498.21		
00		040	A	3414	024	01	00	897	\$4,992.21
00		040	A	3443	029	00	897	\$4,379.59	
00		040	A	3457	076	00	897	\$7,254.05	
00		041	3887	046	00	897	\$1,693.04		
00		041	3895	045	00	897	\$2,801.05		
00		041	4052	029	01	00	897	\$2,238.19	
00		041	4133	017	00	897	\$2,727.90		
00		041	4137	025	02	00	897	\$5,710.54	

ATTACHMENT 1 – Delinquent EBMUD Charges for Transfer to the Alameda County 2017-2018 Property Tax Roll

		APN Number			Legend Number		Tax Amount
00	041	4146	002		00	897	\$3,671.62
00	041	4189	018	03	00	897	\$6,000.68
00	041	4189	021		00	897	\$4,665.90
00	041	4189	020		00	897	\$11,021.08
00	041	4202	006		00	897	\$499.58
00	042	4260	016		00	897	\$5,160.80
00	042	4266	004	01	00	897	\$5,195.72
00	042	4268	003		00	897	\$291.68
00	042	4269	013		00	897	\$2,669.45
00	042	4269	023		00	897	\$4,813.84
00	042	4269	001		00	897	\$11,738.26
00	043	4553	004		00	897	\$4,730.31
00	050	4558	008		00	897	\$2,774.73
00	043	4568	007		00	897	\$1,187.42
00	043	4575	008	02	00	897	\$4,940.07
00	043	4583	014		00	897	\$444.00
00	043	4589	024	01	00	897	\$5,646.79
00	043	4609	016		00	897	\$4,089.41
00	043	A 4639	021	01	00	897	\$4,872.60
00	044	4961	021	01	00	897	\$3,173.77
00	044	4975	016		00	897	\$4,527.79
00	044	4975	001	01	00	897	\$6,759.09
00	044	4979	013		00	897	\$9,244.18
00	044	4981	007	03	00	897	\$1,308.71
00	044	4983	010	01	00	897	\$1,075.72
00	044	4983	010	01	00	897	\$1,206.86
00	044	4986	008	02	00	897	\$990.02
00	044	5064	002		00	897	\$2,932.23
00	045	5191	016	01	00	897	\$3,542.05
00	045	5246	003	01	00	897	\$4,327.29
00	045	5320	024	02	00	897	\$2,581.46
00	046	5430	004		00	897	\$5,457.90
00	046	5442	012		00	897	\$2,258.53
00	046	5457	023		00	897	\$866.38
00	046	5459	012	01	00	897	\$790.03
00	046	5461	009	01	00	897	\$3,543.50
00	047	5498	009	13	00	897	\$2,346.81
00	047	5498	017		00	897	\$6,625.45
00	047	5570	007		00	897	\$1,464.88
00	047	5583	014	01	00	897	\$4,577.23
00	048	5661	026		00	897	\$2,913.85
00	048	6247	002	02	00	897	\$4,674.04
00	047	5582	026		00	897	\$4,428.20
00	009	0740	032		00	897	\$3,101.81
Total							\$1,314,008.12

**ATTACHMENT 2 – Delinquent EBMUD Charges for Transfer to the Contra Costa
County 2017-2018 Property Tax Roll**

	Parcel Number	Levy Code	Fund	Revenue	Levy Amount
A	354124007	AD	4001	9895	\$886.97
A	411100020	AD	4001	9895	\$231.98
A	413012028	AD	4001	9895	\$618.19
A	413012031	AD	4001	9895	\$2,801.34
A	413172009	AD	4001	9895	\$2,283.93
A	413330024	AD	4001	9895	\$3,271.05
A	435035035	AD	4001	9895	\$2,058.65
A	507130001	AD	4001	9895	\$1,034.57
A	510031002	AD	4001	9895	\$523.21
A	513164006	AD	4001	9895	\$987.72
A	514110010	AD	4001	9895	\$2,139.97
A	514110012	AD	4001	9895	\$1,726.32
A	514130011	AD	4001	9895	\$2,307.85
A	515292018	AD	4001	9895	\$721.80
A	518360026	AD	4001	9895	\$2,518.01
A	529130032	AD	4001	9895	\$3,288.55
A	529230027	AD	4001	9895	\$926.53
A	534081029	AD	4001	9895	\$461.89
A	534181003	AD	4001	9895	\$1,965.65
A	534302011	AD	4001	9895	\$2,220.00
A	534314023	AD	4001	9895	\$8,261.09
A	534314028	AD	4001	9895	\$298.67
A	534330015	AD	4001	9895	\$580.12
A	538050030	AD	4001	9895	\$2,251.88
A	540350029	AD	4001	9895	\$2,923.33
A	540380022	AD	4001	9895	\$3,037.08
A	550201007	AD	4001	9895	\$3,252.43
A	558164011	AD	4001	9895	\$325.63
A	3571980162	AD	4001	9895	\$766.97
A	4011730092	AD	4001	9895	\$3,254.14
A	4090510019	AD	4001	9895	\$869.78
A	4092910183	AD	4001	9895	\$2,540.11
A	4100800160	AD	4001	9895	\$5,662.50
A	4191250028	AD	4001	9895	\$933.98
A	4311310108	AD	4001	9895	\$952.58
A	5032460130	AD	4001	9895	\$3,309.74
A	5041510271	AD	4001	9895	\$2,829.93
A	5053510185	AD	4001	9895	\$4,535.71
A	5100350015	AD	4001	9895	\$2,112.39
A	5130840092	AD	4001	9895	\$260.93
A	5141200252	AD	4001	9895	\$6,620.50
A	5260400030	AD	4001	9895	\$3,255.12
A	5290800183	AD	4001	9895	\$1,144.01
A	5341930120	AD	4001	9895	\$2,688.11
A	5342020087	AD	4001	9895	\$2,331.91
A	5343140207	AD	4001	9895	\$372.97
A	5380410117	AD	4001	9895	\$2,901.67
A	5383000295	AD	4001	9895	\$1,168.39

**ATTACHMENT 2 – Delinquent EBMUD Charges for Transfer to the Contra Costa
County 2017-2018 Property Tax Roll**

	Parcel Number	Levy Code	Fund	Revenue	Levy Amount
A	5383100103	AD	4001	9895	\$3,546.77
A	5383500401	AD	4001	9895	\$3,570.64
A	5402600307	AD	4001	9895	\$6,283.57
A	5403800237	AD	4001	9895	\$170.72
A	5441200101	AD	4001	9895	\$231.76
A	5442320155	AD	4001	9895	\$3,857.77
A	5501510290	AD	4001	9895	\$5,029.20
A	5503310012	AD	4001	9895	\$4,622.60
Total					\$129,728.88

RESOLUTION NO. _____

APPROVING TRANSFER OF UNPAID DELINQUENT CHARGES TO ALAMEDA AND
CONTRA COSTA COUNTIES' 2017-2018 PROPERTY TAX ROLLS

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District ("District") approved the Program for Delinquent Charge Collection Through Liens and Property Tax Bills for Multi-Family Accounts (the "Program") effective January 1, 2011, pursuant to Municipal Utility District ("MUD") Act section 12811.1; and

WHEREAS, the Program is intended to collect from multi-family residential ("MFR") customers, delinquent fees, tolls, rates, rentals, or other charges for services ("delinquent charges") by lien filings and annual transfers of delinquent charges to the property tax rolls in lieu of service termination; and

WHEREAS, on June 9, 2017, the District mailed to MFR customers of record with delinquent charges and corresponding property owners notices of intent to transfer delinquent charges from unpaid liens to the property tax bills; and

WHEREAS, on June 27, 2017, and again on July 25, 2017, the General Manager filed with the Board of Directors ("Board") the Report and Recommendation of the General Manager to Transfer Unpaid Delinquent Charges to the 2017-2018 Property Tax Rolls (the "Report"), copies of which are on file with the Secretary of the District and available for public inspection and review; and

WHEREAS, on July 25, 2017, the Board conducted a public hearing, noticed in the manner and for the time required by law, at which time all interested persons were afforded an opportunity to be heard on matters pertaining to the transfer of delinquent charges from unpaid liens to the property tax rolls, as well as to the Report; and .

WHEREAS, all comments, objections, and protests to the Report have been given full opportunity to be heard by the Board, and the Board has fully considered the Report;

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

1. Incorporation of Recitals. The Recitals set forth above are incorporated herein and made an operative part of this Resolution.
2. Objections Overruled and Report Approved. All objections and protests to the Report and Recommendation of the General Manager to Transfer Delinquent

Charges to the 2017-2018 Property Tax Rolls are hereby overruled and denied and said Report is hereby accepted and approved as final; provided however that the General Manager or his designee is hereby authorized to revise the Report prior to submitting it to the Alameda County and Contra Costa County Auditors in order to reflect: (i) the payment of delinquent charges, in whole or in part, for any of the parcels identified in the Report, or (ii) any other downward adjustments applicable to any of the parcels identified in the Report for any other appropriate reason such as correction of error.

3. Filing of the Report with the Counties. On or before the 10th day of August 2017, the General Manager or his designee is hereby authorized and directed to file a copy of the Report with the Alameda County and Contra Costa County Auditors, indicating that the Report has been adopted by the Board in order to request that the delinquent charges rendered by the District be collected on the property tax bills for the taxable parcels in the District identified in the Report and such delinquent charges, together with any interest and penalties thereon, shall be collected for the District at the same time and in the same manner and by the same persons as, together with and not separately from, general taxes, and shall be delinquent at the same time and thereafter be subject to the same delinquency penalties to be levied on and collected from the owners of said parcels.

ADOPTED this 25th day of July, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel



AGENDA NO. 17.
 MEETING DATE July 25, 2017

TITLE AMEND RESOLUTION NO. 35048-17 AUTHORIZING THE NUMBER AND CHARACTER OF POSITIONS AND AUTHORIZING THE GENERAL MANAGER TO TAKE ACTION IN CONNECTION THEREWITH

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

Amend Exhibit A – Summary of Changes – of Board Position Resolution No. 35048-17 approved on July 11, 2017 for Fiscal Year 2018/2019 to correct a typographical error on the numbers of full-time and temporary construction and limited-term positions allocated.

DISCUSSION

This action is being requested to correct a typographical error in the numbers listed in Exhibit A of Board Position Resolution No. 35048-17 which was adopted on July 11, 2017. Exhibit A incorrectly listed 2,008 full-time positions and 62 temporary construction and limited-term positions. The correct numbers are 2,007 full-time positions and 63 temporary construction and limited-term positions.

SUSTAINABILITY

Economic

There is no economic impact because there is no change in full-time equivalents and the positions, and these amended numbers accurately reflect what was approved in Exhibit B – Position Additions/Deletions/Conversions/Reallocations/Flex Staff – of Resolution No. 35048-17.

Social

There is no impact to the unions as this correction reflects the position changes previously discussed with them.

Funds Available: FY18/19		Budget Code:
DEPARTMENT SUBMITTING Human Resources	DEPARTMENT MANAGER or DIRECTOR <i>Laura Brunson</i> Laura Brunson	APPROVED <i>Matthew R. Lee</i> General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

Amend Resolution No. 35048-17 Authorizing the Number and Character of Positions and Authorizing
the General Manager to Take Action in Connection Therewith
July 25, 2017
Page 2

ALTERNATIVE

Do not amend the resolution to correct the recommended position allocation numbers. This alternative is not recommended as the position allocation numbers adopted on July 11, 2017 are incorrect.

I:\Sec\2017 Board Related Items\072517 Board Agenda Items\HRD\Amend Resolution No. 35048-17.doc

RESOLUTION NO. _____

AMEND RESOLUTION NO. 35048-17 AUTHORIZING THE NUMBER AND CHARACTER OF POSITIONS AND AUTHORIZING THE GENERAL MANAGER TO TAKE ACTION IN CONNECTION THEREWITH

Introduced by Director

; Seconded by Director

WHEREAS, the Board of Directors of the East Bay Municipal Utility District is charged with the responsibility to determine and create the number and character of positions required to carry on the functions of the District, and to establish an appropriate salary, salary range, or wage for each position so created; and

WHEREAS, on July 11, 2017, the Board of Directors adopted Resolution No. 35048-17 Authorizing the Number and Character of Positions and Authorizing the General Manager to Take Action in Connection Therewith; and

WHEREAS, after the Board of Directors adopted Resolution No. 35048-17, staff discovered an error in Exhibit A, which incorrectly listed the number of full-time positions as 2,008 for Fiscal Year 2018 and the number of temporary construction and limited-term positions as 62 for Fiscal Year 2018; and

WHEREAS, the correct amounts in Exhibit A should reflect the number of full-time positions as 2,007 for Fiscal Year 2018 and the number of temporary construction and limited-term positions as 63 for Fiscal Year 2018; and

WHEREAS, all other provisions adopted in Resolution No. 35048-17 shall remain in effect;

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

1. Exhibit A is hereby corrected to reflect that the number of full-time positions shall be 2,007 for Fiscal Year 2018 and the number of temporary construction and limited-term positions shall be 63 for Fiscal Year 2018.

BE IT FURTHER RESOLVED that this Resolution amending Resolution No. 35048-17 shall become effective July 25, 2017.

ADOPTED this 25th day of July, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel

**EXHIBIT A Amended
SUMMARY OF STAFF CHANGES
(July 25, 2017)**

Group/Department	FY17 Amended Staff Years ⁽¹⁾	FY18 Recommended Staff Years ⁽²⁾	FY18 Net Change	FY19 Recommended Staff Years ⁽²⁾	FY19 Net Change
ADMINISTRATION	<u>2</u>	<u>2</u>	<u>0</u>	<u>2</u>	<u>0</u>
CUSTOMER AND COMMUNITY SERVICES	<u>153.5</u>	<u>152.5</u>	<u>-1</u>	<u>152.5</u>	<u>0</u>
ENGINEERING AND CONSTRUCTION	<u>267.5</u>	<u>275.5</u>	<u>8</u>	<u>275.5</u>	<u>0</u>
FINANCE	<u>193.5</u>	<u>195.5</u>	<u>2</u>	<u>195.5</u>	<u>0</u>
Finance	99.5	99.5	0	99.5	0
Information Systems	94	96	2	96	0
HUMAN RESOURCES	<u>56.5</u>	<u>59.5</u>	<u>3</u>	<u>59.5</u>	<u>0</u>
OFFICE OF THE GENERAL COUNSEL	<u>17</u>	<u>17</u>	<u>0</u>	<u>17</u>	<u>0</u>
OFFICE OF THE GENERAL MANAGER	<u>25.5</u>	<u>25.5</u>	<u>0</u>	<u>25.5</u>	<u>0</u>
MAINTENANCE AND CONSTRUCTION	<u>714</u>	<u>738</u>	<u>24</u>	<u>744</u>	<u>6</u>
OPERATIONS & MAINTENANCE SUPPORT	<u>50</u>	<u>51</u>	<u>1</u>	<u>51</u>	<u>0</u>
WATER OPERATIONS	<u>188</u>	<u>189</u>	<u>1</u>	<u>189</u>	<u>0</u>
WATER AND NATURAL RESOURCES	<u>106</u>	<u>106</u>	<u>0</u>	<u>106</u>	<u>0</u>
Water Resources	37.5	37.5	0	37.5	0
Natural Resources	68.5	68.5	0	68.5	0
WATER RECYCLING PROGRAM	<u>8</u>	<u>8</u>	<u>0</u>	<u>8</u>	<u>0</u>
WATER SYSTEM TOTAL	1781.5	1819.5	37	1825.5	6
WASTEWATER	<u>286.5</u>	<u>286.5</u>	<u>1</u>	<u>287.5</u>	<u>1</u>
DISTRICT-WIDE TOTAL IN FTEs⁽³⁾	2068	2106	38	2113	7

Notes^{(1), (2), (3)} - See page 2

**EXHIBIT A Amended
SUMMARY OF STAFF CHANGES
(July 25, 2017)**

TOTAL POSITIONS AUTHORIZED BY TYPE OF STATUS	FY18 Positions	FY18 Net Change	FY19 Positions	FY19 Net Change
Full-Time	2007	37	2014	7
Temporary	49	-10	49	0
Part-Time	17	0	17	0
Intermittent	4	0	4	0
Temporary Construction and Limited-Term	63	10	63	0
DISTRICT-WIDE TOTAL IN POSITIONS⁽³⁾	2140	33	2147	7

Notes to Exhibit A:

- (1) Amended staffing applies mid-year Board actions, changes to the FY15 position Resolution under the General Manager's authority, position transfers, and administrative corrections.
- (2) Regular Full-Time, Temporary Construction, and Limited Term Positions = 1.0 staff year
 Part-Time and Temporary = .5 staff year
 Intermittent = .75 staff year
- (3) The District-wide full-time equivalent (FTE) total takes into account that temporary, part-time and intermittent positions are valued at less than 1.0 staff years each. The District-wide position total does not make that distinction.



AGENDA NO. 18.
 MEETING DATE July 25, 2017

TITLE VIRIDIS FUELS, LLC SIXTH LEASE AMENDMENT

MOTION _____ RESOLUTION _____ ORDINANCE _____

RECOMMENDED ACTION

Consider a request from Viridis Fuels, LLC (Viridis) to extend the current deferred Additional Value payment of \$175,244.36 due under the lease agreement between Viridis and the District for a portion of the District's West End property until December 1, 2017, for a total deferment of Additional Value payments of \$260,000.04.

SUMMARY

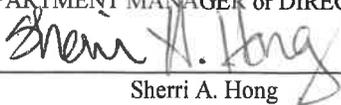
Viridis is currently in default of their lease agreement as they have not paid the deferred Additional Value payment amount of \$175,244.36 and they have not paid the Additional Value portion of the monthly rent for the July 1, 2017 invoice. A default letter was mailed to Viridis on July 11, 2017. On July 13, 2017, Viridis submitted a request for continuing deferment of the \$175,244.36 and deferment of the August, September, October and November 2017 Additional Value portions of the monthly rent (\$21,666.67) until December 1, 2017.

Extension of the deferred Additional Value amount and the Additional Value portion of the monthly rent will require a sixth amendment to the lease agreement.

DISCUSSION

The District entered into a lease agreement with Viridis on October 27, 2011, for a portion of the West End Property adjacent to the District's Main Wastewater Treatment Plant, which Viridis plans to develop as a biodiesel fuel refining facility. The lease requires Viridis to make monthly rental payments for the use of the property, as well as monthly Additional Value payments. These Additional Value payments were meant to compensate the District in lieu of providing the District with glycerin from the refining process. Rental payments were to begin on the lease "commencement date," and Additional Value payments were to begin one year later.

The lease has been amended five times since it was originally executed. The first three amendments extended the lease start date or commencement date, and the last two amendments provided for various financial concessions from the District to Viridis.

Funds Available: FY18		Budget Code: 326
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR	APPROVED
Customer and Community Svcs.	 Sherri A. Hong	 General Manager

On December 2, 2016, Viridis requested that the District defer the Additional Value payments for a period beginning December 2016 for up to six months. Viridis proposed to make these deferred Additional Value payments with interest in one lump sum payment at the end of six months or upon receiving \$24,165,000 in funding from the California Pollution Control Finance Authority (CPCFA).

Following the District's July 11, 2017 written notice of default, on July 13, 2017, the District received a letter from Viridis requesting a further extension of the Additional Value payments until December 1, 2017. The letter did not state any specific financial reasons for the extension of the deferment period or indicate a change in financial position which would ensure funds are available by December 1, 2017. Viridis proposed to make these deferred Additional Value payments with interest upon the monthly rent due date of December 1, 2017 and noted that this extension request would be made effective as of July 1, 2017. Any further deferral of Viridis' obligation to make Additional Value payments requires a sixth amendment to the lease agreement.

While staff is advancing this request from Viridis for an extension to the Board for consideration, due to the increasing amount of the deferral, staff will not entertain a future extension request after this one unless directed to do so by the Board.

SUSTAINABILITY

Economic

An additional deferral of the Additional Value payment until December 1, 2017 would temporarily result in a cost of \$283,577.71 to the District; however, Viridis proposes to pay this full amount to the District with interest on December 1, 2017. It is unclear if Viridis will have the cash flow available to support the required repayment.

Environmental

The District finalized and certified the Environmental Impact Report (EIR) for the Main Wastewater Treatment Plant Land Use Master Plan EIR, in accordance with the California Environmental Quality Act, on June 28, 2011. The District is waiting for information from Viridis to complete a required addendum or amendment to the EIR to account for Viridis' planned project on the site.

Social

When constructed, the Viridis biodiesel project intends to support local community efforts to reduce pollution in West Oakland and to provide jobs for local community members.

ALTERNATIVES

Accept the request to defer payments. Authorize staff to prepare and execute a sixth amendment to the lease agreement that will provide for the continued suspension of the Additional Value payments from December 1, 2016 through December 1, 2017. The amendment shall include an interest rate the same as the District pays on its debt for the deferred payments and Viridis will have the right to pay the deferred amount and accumulated interest sooner than December 1, 2017. It is uncertain if Viridis will be able to pay the deferred Additional Value payments by December 1, 2017 should it fail to obtain its financing.

Viridis Fuels, LLC Sixth Lease Amendment
July 25, 2017
Page 3

Reject the request to defer payments. Do not accept Viridis' request. Should Viridis default, the District will pursue leasing opportunities with a new party.

Attachments

I:\Sec\2017 Board Related Items\ 072517 Board Agenda Items\CCS - BD-1 Viridis Fuels LLC Sixth Lease Amendment Final



July 12, 2017

Board Members
General Manager
EBMUD
375 11th St
Oakland, CA 94607

Dear Chair McIntosh, Board Members Coleman, Katz, Linney, Mellon, Patterson and Young; and General Manager Coate:

As you know, Viridis Fuels, LLC is currently obligated to pay \$46,796.16 monthly to EBMUD. This payment is comprised of two components, \$25,129.49 rent and an "Additional Value Payment" of \$21,666.67. Viridis LLC is hereby requesting an extension of the deferred Additional Value payment that was approved by the EBMUD Board in December 2016 for reasons explained below.

Base Rent was originally determined by fair market value and the Additional Value Payment was in response to EBMUD's insistence that compensation be paid in lieu of receiving all the crude glycerin by product of biodiesel processing. It was anticipated that the Additional Value Payment would derive from refining crude glycerin to technical grade and the resulting sales by Viridis to outside customers.

When glycerin refinement was removed from the project Viridis offered to give the crude glycerin to EBMUD as this was EBMUD's initial desire. EBMUD has informed Viridis that the agency is no longer interested in receiving the crude glycerin, however the Additional Value Payment remains in place. As operations have not commenced, the Additional Value Payment continues to apply substantial pressure on our development resources.

Viridis continues to make significant development progress; however unforeseen delays often beyond our control include the fact that, although we paid for two, received one and were about to receive the other Bay Area Air Quality Management Quality District (BAAQMD) permits to construct for the original design, the entirely new design, driven by EBMUD's parcel reconfiguration, required us to redo these permits, thus adding more permitting time and expense.

Further, acquisition of a Port Planning Permit, necessary to proceed with Oakland building permits, cannot move forward until EBMUD confirmation of an approved EIR is received. Equally important, closure of pending project funding is awaiting award of these permits.

Through meetings and discussions with EBMUD, Viridis believed that the only development aspect not addressed in the currently approved EIR was construction impact of the rail spur. A detailed report was delivered to EBMUD with this data. Ultimately we were informed that detailed engineering data for the entire project, including the technology, was required by EBMUD. Of note, the original project design was for a 20 million gallons per year biodiesel output and the current design reduces that level and related impacts by 25%. This requested data is nearly complete and we anticipate its delivery to EBMUD within the next two weeks, possibly sooner; however this has added more unanticipated time and expense to project development.

Following recent communications with EBMUD, attached is a Viridis permits and funding schedule outlining EBMUD EIR action, permit acquisitions and funding closure, which is scheduled for mid-November, 2017.

Pursuant to this schedule, request is made for a continued deferral of the "Additional Value Payment" and its attendant interest until the monthly rent due date in December, 2017; and that this extension be made effective as of July 1, 2017. By granting this request, EBMUD will continue to collect market based rent on the project site. As a side note, to date EBMUD has received \$1,085,193.95 from Viridis.

Viridis thanks EBMUD staff for guidance on this matter and the Board for considering this request. We respectfully ask that this request be granted to support our mutual success.

Best regards,



Kathy Neal

Cc: Matt Elawady, Manager, Real Estate

Attachment



Exhibit A

VIRIDIS FUELS SCHEDULE OF PERMITS AND FUNDING	Jul 3-7	Jul 10-14	Jul 17-21	Jul 24-28	Jul 31 - Aug 4	Aug 7 - 11	Aug 14 - 18	Aug 21 - 25	Aug 28 - Sep 1	Sep 4 - 8	Sep 11 - 15	Sep 18 - 22	Sep 25 - 29	Oct 2-6	Oct 9-13	Oct 16-20	Oct 23-27	Oct 30 - Nov 3	Nov 6-10	Nov 13-17	Nov 20-24	
FUNDING																						
USDA Funding (contingent of fed processing before fiscal year end):																						
Phase 2 Underwriting																						
Federal Processing																						
Federal fiscal year end																						
CFCFA Funding (90 days)*:																						
Underwriting (approx 60 days)																						
Bond Sales (20 - 30 days)																						
KEY ENTITLEMENTS																						
Air Permit Preparation																						
BAAQMD Air Permit Determination																						
EBMUD CEQA Review Submission																						
EBMUD CEQA Review																						
EBMUD EIR Action (Notice/Action)																						
Port Planning Permit*																						
Building, etc. permits																						

* Dependent on Final EIR

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: July 20, 2017

MEMO TO: Board of Directors

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

SUBJECT: Legislative Report No. 08-17

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) Oppose Unless Amended – as proposed to be amended SB 623 (Monning) Water Quality: Safe and Affordable Drinking Water Fund and 2) Oppose H.R. 23 (Valadao) Gaining Responsibility on Water Act of 2017.

STATE LEGISLATION

RECOMMENDED POSITION

SB 623 (Monning)	WATER QUALITY: SAFE AND AFFORDABLE DRINKING WATER FUND	OPPOSE UNLESS AMENDED (AS PROPOSED TO BE AMENDED)
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Existing law establishes the state policy that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” In addition, the California Safe Drinking Water Act requires the State Water Resources Control Board (SWRCB) to administer provisions relating to the regulation of drinking water to protect public health. Existing law also establishes the Office of Sustainable Water Solutions within the SWRCB with the purpose of promoting permanent and sustainable drinking water and wastewater treatment solutions to ensure the effective and efficient provision of safe, clean, affordable, and reliable drinking water and wastewater treatment services.

SB 623 (Monning), as amended on July 3, 2017, is intended to address the issue of access to safe drinking water by assisting communities and domestic well owners in addressing contaminants in drinking water that exceed safe drinking water standards. To do this, SB 623 would do two primary things: 1) establish the Safe and Affordable Drinking Water Fund (Fund), administered by the SWRCB, to provide grants and loans to assist communities and individual domestic well owners that rely on contaminated drinking water, though the bill does not yet include a specific funding source; and 2) require the SWRCB to annually adopt an assessment of funding needed to

ensure all Californians have access to safe drinking water, adopt an implementation plan to guide expenditures from the Fund, and prepare a report of expenditures from the Fund.

Under SB 623, moneys from the Fund could be used to provide replacement water on a short-term basis; to develop and implement long-term solutions, including, capital costs and operations and maintenance costs; to identify and provide outreach to Californians without access to safe drinking water who are eligible to receive funding; and, to test drinking water quality of individual domestic wells serving low-income households. SB 623 also includes agriculture-related provisions intended to provide enforcement relief for nitrate exceedances in groundwater if specific conditions are met and a yet-to-be determined assessment is paid by the agricultural operator to the Fund.

In addition, the author intends to amend SB 623 in the near future to include a “ratepayer assessment” on retail water customers, also referred to as a retail water tax, public goods charge, or retail water use fee, as a significant funding source for the Fund. This new language would be directly contrary to EBMUD’s existing policy position opposing the imposition of retail water use fees.

Public Goods Charge

On May 26, 2015, EBMUD’s Board adopted a policy position opposing the imposition of state retail water use fees or surcharges on customer water bills on the basis of equity, affordability, and accountability. The policy position notes that retail water use fees added to customer bills would not be related to the cost of water service and would increase the payment amount, directly affecting the affordability for ratepayers. Imposing a retail water use fee would also effectively redirect ratepayer dollars to the state and displace critical investments in local infrastructure.

While the goal of SB 623 is laudable, the bill, as proposed to be amended, is contrary to EBMUD’s policy position and would establish the precedent of requiring a local water agency to impose a retail water use fee on its ratepayers in order to fund a state-level responsibility. Establishing the mechanism for such a fee would provide an opening for other unfunded “public goods” to be funded under the same mechanism, most notably affordability, which is not intended to be covered under SB 623. A public goods charge, or retail water use fee, has been formally discussed as a potential funding mechanism for the SWRCB’s implementation of a statewide low-income rate assistance program.

To put this in perspective, the SWRCB estimates about \$45 million is needed annually to assist public water systems with operations and maintenance for the access to safe drinking water. In order to pay for this, SB 623 will propose an average charge of about \$1 per month on retail water accounts. For EBMUD customers this would equate to on average a 2 percent rate increase, and as high as 3 percent for low water users. However, once established a public goods charge would likely be used for other purposes.

For example, the SWRCB estimates approximately \$600 million annually is needed to address low income rate assistance and has also proposed a public goods charge to fund low income rate assistance. This estimate is about 13 times greater than the access to safe drinking water estimate. A public goods charge to address the combined needs for access to safe drinking water and low income rate assistance would likely result in a charge of no less than \$13 per month, per bill on retail water accounts. This rough estimate does not take into account that the SWRCB estimates about 34 percent of retail water ratepayers would be eligible for assistance and therefore would not contribute to a public goods charge or any administrative charges, thereby shifting even more costs to other ratepayers. For EBMUD customers, the combined charge, as estimated, would equate to a rate increase on the average of 27 percent, and as high as 39 percent on lower water users. These estimates in no way represent a ceiling as a public goods charge has also been discussed to fund other items in addition to access to safe drinking water and low income rate assistance, such as stormwater management and watershed protection.

The imposition of a public goods charge, or retail water use fee, raises four primary policy concerns: 1) the cost would be borne by retail water ratepayers and impair the ability of local agencies, including EBMUD, to raise rates needed to fund critical infrastructure; 2) it places the burden of statewide issues properly managed at the state level on local agencies, requiring local agencies to collect what amounts to a tax, which local agencies are not equipped to do; 3) it places a significant administrative cost burden on local agencies in addition to the cost of the public goods charge; and, 4) local agencies are not equipped to assess eligibility based on incomes in reference to state mandated programs and criteria to determine which ratepayers would and would not be assessed the public goods charge.

Other policy concerns

In addition to the use of a public goods charge as a funding source, SB 623 also raises other policy questions as described below.

It is not clear what the funding need is for all of the items included in SB 623. While the SWRCB estimates that \$45 million is needed annually for public water system operations and maintenance needs associated with access to safe drinking water, SB 623 is also intended to fund capital costs, as well as testing and assistance for domestic wells and state small systems. To date, the state has indicated it does not have cost estimates for these additional items. In the absence of cost estimates, it is unclear how the state will determine the total amount of need that should be funded by this Fund. However, capital costs are already eligible for other funding sources, including bonds, such as Proposition 1, and the Safe Drinking Water Revolving Fund, while operations and maintenance costs cannot be covered by those sources. It is unclear how SB 623 would ensure other funding sources are exhausted prior to using the Fund to cover capital costs. Finally, while SB 623 would give funding preference to low income communities it would be preferable to limit the funding eligibility to only low income communities.

Conclusion

Though EBMUD agrees with the goal of SB 623, to provide assistance to communities that do not have access to safe drinking water, staff is recommending an “oppose unless amended” position on SB 623, as proposed to be amended. At a minimum, a funding source other than a public goods charge, such as the general fund, should be identified.

This approach is consistent with the policy position adopted by EBMUD’s Board opposing the imposition of state retail water use fees or surcharges on customer water bills, and EBMUD’s 2017 State Legislative Initiative to advance EBMUD’s interests in any efforts to impose a statewide surcharge or public goods charge on water and advocate for a balanced approach.

An official list of support and opposition to SB 623 as proposed to be amended is not available. The official list of support and opposition to the current version of the bill is shown below.

Support

Alliance of Child and Family Services	Council for a Strong America
American Heart Association	County of Tulare
American Rivers	Cultiva la Salud
American Stroke Association	Dolores Huerta Foundation
Arvin Community Services District	El Quinto Sol de America
Asian Pacific Environmental Network	Environmental Defense Fund
Asociacion de Gente Unida por el Agua	Esperanza Community Housing Corporation
Black Women for Wellness	Faith in the Valley
California Audubon	Friends Committee on Legislation in California
California Bicycle Coalition	Friends of Calwa
California Environmental Justice Alliance	Fresno Building Healthy Communities
California Food Policy Advocates	Latino Coalition for a Healthy California
California League of Conservation Voters	Leadership Counsel for Justice and Accountability
California Rural Legal Assistance Foundation	League of Women Voters
California Pan-Ethnic Health Network	Lutheran Office of Public Policy
California Water Service	Mission: Readiness
Catholic Charities, Diocese of Stockton	Pacific Institute
Central California Environmental Network	Pacific Water Quality Association
Center for Race Poverty and the Environment	Physicians for Social Responsibility Los Angeles
City of Arvin	Planning and Conservation League
City of Porterville	PolicyLink
Clean Water Action	Public Health Advocates
Comité Civico del Valle	Pueblo Unido CDC
Community Alliance for Agroecology	Self-Help Enterprises
Community Water Center	

Service Employees International Union (SEIU)
Strategic Actions for a Just Economy
Strategic Concepts in Organizing & Policy Education
Sunflower Alliance
RCAC

The Nature Conservancy
TransForm
Water Quality Association
Western Center on Law & Poverty
Western Growers Association
Wholly H2O

Opposition

Alameda County Water District
American Water Works Association, California-Nevada Section
Association of California Water Agencies
Bella Vista Water District
California Sportfishing Protection Alliance
California Water Impact Network
Calleguas Municipal Water District
City of Fairfield
City of Indio
City of Roseville
Cucamonga Valley Water District
Desert Water Agency
East Valley Water District
Eastern Municipal Water District
Elsinore Valley Municipal Water District
El Dorado Irrigation District
Foresthill Public Utility District
Humboldt Baykeeper
Humboldt Bay Municipal Water District
Indian Wells Valley Water District
Indio Water Authority
Inland Empire Waterkeeper
Kern County Water Agency

La Canada Irrigation District
Las Virgenes Municipal Water District
Mesa Water District
Monte Vista Water District
Monterey Coastkeeper
Pacific Coast Federation of Fishermen's Association
Padre Dam Municipal Water District
Placer County Water Agency
Regional Water Authority
Rincon del Diablo Municipal Water District
Rowland Water District
Russian Riverkeeper
San Gabriel County Water District
San Juan Water District
Santa Barbara Channelkeeper
Santa Margarita Water District
Southern California Water Committee
The Otter Project
Three Valleys Municipal Water District
Valley Center Municipal Water District
Vista Irrigation District
Western Municipal Water District
Yorba Linda Water District

FEDERAL LEGISLATION

**H.R. 23
(Valadao)**

**GAINING RESPONSIBILITY ON
WATER ACT OF 2017**

OPPOSE

H.R. 23 (Valadao), the Gaining Responsibility on Water Act of 2017, is the House Republicans most recent effort to amend the Central Valley Project Improvement Act (CVPIA) in order to provide increased water supply reliability for some Central Valley Project (CVP) contractors,

particularly agricultural contractors. H.R. 23 would accomplish this by bypassing established environmental protections and setting firm regulatory limits in statute, leaving the Department of the Interior little discretion in its management of the CVP. H.R. 23 seeks to regulate via statute by setting forth specific operating criteria for the CVP and setting baseline water deliveries for certain contractors that would be required to be met regardless of the water supplies available. H.R. 23 includes provisions of a number of topics of direct concern for EBMUD including the rollback of protections under the Endangered Species Act (ESA) and water quality standards, a reduction in environmental flows, expedited transfers, water rights/assurances, and fish.

Rollback of ESA protections and water quality standards

H.R. 23 would require the CVP and the State Water Project (SWP) to be operated pursuant to the water quality standards and operating criteria described in the 1994 Bay-Delta Accord. This would essentially rollback water quality standards requirements and ESA protections for operating the CVP and SWP to 1994 levels. H.R. 23 would allow any current requirements that are more stringent, including the smelt and salmon biological opinions, to be ignored. The bill includes language prohibiting the state from using its water rights regulatory authority to address the environmental impacts of the CVP and SWP operations. This raises the question of where the water will come from to meet existing and future standards and whether other water rights holders would be held responsible, in lieu of the CVP and SWP, to provide water to meet current and future standards in the Delta.

Reduction in environmental flows

H.R. 23 would reduce the 800,000 acre-feet of water dedicated annually to environmental flows by 25 percent in most years. Additionally, H.R. 23 would direct the Secretary of the Department of the Interior (Secretary) to develop and implement plans by 2018 for additional CVP yield to replace the 800,000 acre-feet of water dedicated annually to environmental flows. Should the Secretary fail to increase CVP yield by 800,000 acre feet by late 2018, all non-mandatory CVP environmental releases (the entire 800,000 acre feet) would be suspended until this requirement is met. This would constitute a potential redirection of responsibility to provide environmental flows from the CVP to others, such as the owners and/or beneficiaries of tributary water supply projects, to meet environmental objectives for the Delta.

Expedited transfers

H.R. 23 would direct the United States Bureau of Reclamation (USBR) to facilitate and expedite transfers of CVP water through accelerated approvals. Though expediting water transfers could be beneficial to EBMUD in some instances, the language included in H.R. 23 is too restrictive as it focuses on transfers of CVP water and would not facilitate other types of transfers. In addition, it is unclear how the approval process would be accelerated without bypassing National Environmental Policy Act review and reducing the quality of environmental review.

Water rights/assurances

H.R. 23 would require CVP operations to adhere to state water rights law governing water rights priorities. This is consistent with existing law and clarifies that water rights priorities would not

be affected. However, the proposed language offers no protections for water *supplies*, which are not the same as water rights. For example, in the instance of a redirection of responsibility to make up for the CVP's environmental flow obligations, other water rights holders, such as EBMUD, could be asked to provide supplies even though their underlying water rights would be unaffected.

H.R. 23 includes language similar to a provision included in a bill enacted last year, S. 612 (Cornyn), the Water Infrastructure Improvements for the Nation Act (WIIN Act), that would provide assurances of specified levels of CVP water deliveries for certain Sacramento River agricultural contractors in a manner that could adversely impact other CVP contractors. This would essentially guarantee deliveries to these CVP contractors and would reduce the flexibility of USBR to manage the CVP system and could result in reduced deliveries to other contractors in some years. The delivery guarantee language in H.R. 23 goes further than the WIIN Act in two respects. First, H.R. 23 would make the minimum deliveries mandatory whereas the WIIN Act requires reasonable efforts be made to provide the minimum deliveries. Second, H.R. 23 does not include language that was included in the WIIN Act to ensure the minimum deliveries could only be guaranteed if there were no adverse environmental impacts under the ESA. H.R. 23 would supersede the language in the WIIN Act by providing assurances of specified deliveries regardless of the environmental impact.

Fish

H.R. 23 would prohibit fishery agencies (United States Fish and Wildlife Service and National Marine Fisheries Service) from distinguishing between naturally spawned and hatchery spawned species in making listing decisions and other determinations under the ESA. This would likely result in less protection for anadromous fish and could curtail EBMUD's efforts to sustain and enhance the viability of naturally spawning salmonids in the lower Mokelumne River.

Other provisions

H.R. 23 also includes language that could cease implementation of the San Joaquin River Restoration Settlement Agreement and direct federal agencies to recognize that there is Congressional opposition to the State Water Resources Control Board's (SWRCB) proposals to require minimum unimpaired flows for the San Joaquin River watershed. In addition, H.R. 23 seeks to prevent federal agencies from extracting water rights from permittees in exchange for granting federal land use permits.

Overall, H.R. 23 is not consistent with the principle that federal measures to provide water supply reliability should preserve environmental protections. H.R. 23 would upend current ESA protections and water quality standards for the CVP and SWP, as well as for the Bay-Delta as a whole. The measure would also severely restrict the ability of the state to effectively manage its water resources, including exercising its power to regulate water rights, and directly conflicts with the state's obligation to work towards the co-equal goals of reliable water supplies and ecosystem restoration, established by the 2009 Delta Reform Act. Implementation of H.R. 23 could be expected to result in an irreversible decline in the health of the Delta ecosystem.

While H.R. 23 includes provisions to protect California water rights, including EBMUD's appropriative rights, the elimination of species protections could jeopardize years of work by EBMUD to protect and enhance salmonid populations on the Mokelumne River, effectively stranding millions of dollars in investment by EBMUD's ratepayers. In addition, the provisions of the bill could also impact EBMUD's CVP supplies, though it is difficult to fully ascertain the extent of any impact at this time.

Notwithstanding the many provisions of concern in H.R. 23, the measure is also premature. The WIIN Act, which was signed into law in late 2016, included language intended to help address drought and water supply reliability issues in California. Time should be provided for those provisions to be implemented and evaluated prior to seeking additional legislation on this topic.

Multiple measures substantially similar to H.R. 23 have been introduced in prior congressional sessions, though none have advanced out of Congress. Most recently, in 2014, Representative Valadao sponsored both H.R. 5781 and H.R. 3964. EBMUD did not take a position on either bill. In 2012, EBMUD's Board adopted an "oppose" position on another similar measure, H.R. 1837 (Nunes). H.R. 1837 failed to advance out of Congress.

ARC:MD:JW

AMENDED IN ASSEMBLY JULY 3, 2017
AMENDED IN ASSEMBLY JUNE 26, 2017
AMENDED IN SENATE APRIL 26, 2017
AMENDED IN SENATE MARCH 30, 2017

SENATE BILL

No. 623

**Introduced by Senator Monning
(Principal coauthors: Senators De León and Hertzberg)
(Coauthor: Senator Stone)**

February 17, 2017

An act to amend Section 116395 of, and to add Chapter 4.6 (commencing with Section 116765) to Part 12 of Division 104 of, the Health and Safety Code, and to amend Section 13050 of, and to add ~~and repeal~~ Article 4.5 (commencing with Section 13278) of Chapter 4 of Division 7 of, the Water Code, relating to water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Monning. Water quality: Safe and Affordable Drinking Water Fund.

(1) Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. Existing law establishes the Office of Sustainable Water Solutions within the State Water Resources Control Board with the purpose of promoting permanent and sustainable drinking water and wastewater treatment solutions to ensure the effective and efficient provision of safe, clean, affordable, and reliable drinking water and wastewater treatment services.

This bill would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are continuously appropriated to the office. The bill would require the board to administer the fund to assist communities and individual domestic well users to address contaminants in drinking water that exceed safe drinking water standards, as specified. The bill would authorize the board to provide for the deposit of federal contributions and voluntary contributions, gifts, grants, or bequests. The bill would require the board to expend moneys in the fund for grants, loans, contracts, or services to assist those communities and individual domestic well owners that rely on contaminated drinking water to have access to safe and affordable drinking water consistent with a fund implementation plan adopted annually by the board, as prescribed. The bill would require the board annually to prepare and make available a report of expenditures of the fund and to adopt annually, after a public hearing, an assessment of funding needed to ensure all Californians have access to safe drinking water. By creating a new continuously appropriated fund, this bill would make an appropriation.

The bill would state the intent of the Legislature to subsequently amend the bill to seek specific funding from agricultural operations to assist in providing emergency, interim, and long-term assistance to community water systems and individual domestic well users whose wells are located in agricultural areas.

(2) The act provides for the operation of public water systems and imposes on the state board various duties and responsibilities for the regulation and control of drinking water in the state. The act generally does not apply to state small water systems, except that the act requires the board to adopt regulations specifying minimum requirements for operation of a state small water system, which are authorized to be less stringent than the requirements for public water systems, requires the enforcement of these requirements, and authorizes the reasonable costs of the local health officer to be recovered. The act, within 3 years after September 19, 1985, required the State Department of Public Health to, among other things, conduct training workshops to assist health officers in evaluation of small public water systems, as defined, for organic chemical contamination, and in sampling and testing procedures and required the local health officer, in consultation with the department, to conduct an evaluation of all small public water systems under their jurisdictions to determine the potential for contamination of groundwater sources by organic chemicals and to develop a sampling plan for each

system within their jurisdiction. The act provided that these provisions were operative during any fiscal year only if the Legislature appropriated sufficient funds to pay for all state-mandated costs to be incurred by local agencies during that year due to these provisions.

This bill would require the state board, by January 1, 2019, to promulgate regulations to require state small water systems and individual domestic wells to test their water supply wells for contamination. The bill would require testing to be prioritized based on local water quality conditions and would require the state board to review these regulations at least every 5 years. The bill would exempt these provisions from the above-described inoperative provision.

(3) Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal state agencies with authority over matters relating to water quality. The act requires the state board to formulate and adopt state policies for water quality control and requires the regional boards to adopt regional water quality control plans in compliance with the state policies. Under the act, the state board and the regional boards prescribe waste discharge requirements for the discharge of waste that could affect the quality of the waters of the state. The act requires, upon the order of a regional board, a person who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, to clean up the waste or abate the effects of the waste, or in the case of threatened pollution or nuisance, to take other remedial action.

This bill would prohibit the state board or a regional ~~board~~ *board*, until January 1, 2028, from subjecting an agricultural operation, as defined, to specified enforcement for causing or contributing to an exceedance of a water quality objective for nitrate in groundwater or for causing or contributing to a condition of pollution or nuisance *for nitrates in groundwater* if that agricultural operation demonstrates that it has satisfied certain mitigation requirements, including, among other requirements, the timely payment of any applicable fee, assessment, or charge into the fund. *The bill would prohibit the state board or a regional board, beginning January 1, 2028, until January 1, 2033, from subjecting an agricultural operation to specified enforcement for creating or threatening to create a condition of pollution or nuisance for nitrate in groundwater if that agricultural operation demonstrates*

that it has satisfied the prescribed mitigation requirements. The bill would require the state board, by January 1, 2027, to conduct a public review of regulatory and basin plan amendment implementation programs to evaluate progress toward achieving water quality objectives with respect to nitrates in groundwater and assess compliance with adopted timelines, monitoring requirements, and implementation of best practicable treatment or control. ~~The bill would repeal these provisions on January 1, 2028.~~

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

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

1 SECTION 1. Section 116395 of the Health and Safety Code
2 is amended to read:
3 116395. (a) The Legislature finds and declares all of the
4 following:
5 (1) The large water system testing program has discovered
6 chemical contamination of the state's drinking water with
7 increasing frequency.
8 (2) A significant number of California residents rely on the
9 state's small water systems and individual domestic wells to
10 provide their water.
11 (3) The small systems and individual domestic wells, because
12 they tend to be located in outlying rural areas where pesticide use
13 is prevalent, and because they draw their water from shallow
14 aquifers, face a serious threat of contamination.
15 (4) Unchecked water sources that may be contaminated pose a
16 potentially serious threat to the health of the citizens of California,
17 particularly those living in outlying rural areas.
18 (5) It is in the interest of all Californians that a testing program
19 for small public water systems and individual domestic wells be
20 implemented and carried out as expeditiously as possible.
21 (6) Section 106.3 of the Water Code declares that every
22 Californian has the right to sufficient clean, safe, affordable, and
23 accessible water adequate for human consumption, cooking, and
24 sanitary purposes.
25 (7) To ensure that the right of every Californian to sufficient
26 clean, safe, affordable, and accessible water adequate for human
27 consumption, cooking, and sanitary purposes is met, it is in the

1 interest of the State of California to identify water quality threats
2 in the state’s drinking water supply, to the extent feasible, whether
3 those supplies serve a public water system, state small water
4 system, or an individual domestic well.

5 (b) (1) For purposes of this section, “small public water system”
6 means a system with 200 connections or less, and is one of the
7 following:

8 (A) A community water system that serves at least 15 service
9 connections used by yearlong residents or regularly serves at least
10 25 yearlong residents.

11 (B) A state small water system.

12 (C) A noncommunity water system such as a school, labor camp,
13 institution, or place of employment, as designated by the state
14 board.

15 (2) For the purposes of this section, “individual domestic well”
16 means a groundwater well used to supply water for the domestic
17 needs of an individual residence or systems of four or less service
18 connections.

19 (c) The state board shall conduct training workshops to assist
20 health officers in evaluation of small public water systems for
21 organic chemical contamination, and in sampling and testing
22 procedures. The state board shall, at a minimum, provide health
23 officers with guidelines for evaluating systems and instructions
24 for sampling.

25 (d) The state board shall develop a schedule for conduct of the
26 programs by the local health officers. The schedule shall establish
27 a program to address first those systems with the most serious
28 potential for contamination. The state board shall enter into
29 agreements with the local health agencies to conduct the necessary
30 work to be performed pursuant to the schedule. The department
31 shall begin the program no later than three months after September
32 19, 1985. All local health officers shall complete the evaluation,
33 sampling, testing, review of sampling results, and notification to
34 the public water systems within their jurisdiction in accordance
35 with the agreements entered into with the state board and within
36 the schedule established by the state board. All work required by
37 this subdivision shall be completed within three years after
38 September 19, 1985.

39 (e) By January 1, 2019, the state board shall promulgate
40 regulations to require state small water systems and individual

1 domestic wells to test their water supply wells for contamination.
2 The state board shall prioritize testing based on local water quality
3 conditions. The state board shall review these regulations at least
4 every five years.

5 (f) (1) Except as provided in paragraph (2), this section shall
6 be operative during any fiscal year only if the Legislature
7 appropriates sufficient funds to pay for all state-mandated costs
8 to be incurred by local agencies pursuant to this section during
9 that year.

10 (2) Subdivisions (a), (b), (e), and (f) shall not become
11 inoperative.

12 SEC. 2. Chapter 4.6 (commencing with Section 116765) is
13 added to Part 12 of Division 104 of the Health and Safety Code,
14 to read:

15
16 CHAPTER 4.6. SAFE AND AFFORDABLE DRINKING WATER
17

18 116765. For the purposes of this chapter:

19 (a) "Agricultural operations" has the same meaning as defined
20 in Section 13050 of the Water Code.

21 (b) "Board" means the State Water Resources Control Board.

22 (c) "Community water system" has the same meaning as defined
23 in Section 116275.

24 (d) "Disadvantaged community" has the same meaning as
25 defined in Section 116275.

26 (e) "Fund" means the Safe and Affordable Drinking Water Fund
27 established pursuant to Section 116766.

28 (f) "Nontransient noncommunity water system" has the same
29 meaning as defined in Section 116275.

30 (g) "Public water system" has the same meaning as defined in
31 Section 116275.

32 (h) "Replacement water" includes, but is not limited to, bottled
33 water, point-of-use, or point-of-entry treatment units.

34 (i) "Safe Drinking Water Plan" means the plan prepared pursuant
35 to Section 116355.

36 116766. The Safe and Affordable Drinking Water Fund is
37 hereby established in the State Treasury. Notwithstanding Section
38 13340 of the Government Code, all moneys in the fund are
39 continuously appropriated to the Office of Sustainable Water
40 Solutions within the board without regard to fiscal years, in

1 accordance with this chapter. Moneys in the fund at the close of
2 the fiscal year shall remain in the fund and shall not revert to the
3 General Fund.

4 116767. (a) The board shall administer the fund for the
5 purposes of this chapter to provide a stable source of funding to
6 assist communities and individual domestic well users to address
7 contaminants in drinking water that exceed safe drinking water
8 standards, the treatment of which would otherwise make the cost
9 of water service unaffordable. The board shall prioritize the use
10 of this funding to assist low-income communities and low-income
11 individual domestic well users. In addition, the board shall
12 prioritize the use of this funding for costs other than those related
13 to capital construction costs. An expenditure from the fund shall
14 be consistent with the annual fund implementation plan developed
15 pursuant to Section 116769. On and after January 1, 2020, the total
16 unencumbered amount in the fund shall not exceed the board's
17 total estimated need for moneys in the fund over a two-year period.

18 (b) In accordance with subdivision (a), the board shall expend
19 moneys in the fund for grants, loans, contracts, or services to assist
20 those communities and individual domestic well owners that rely
21 on contaminated drinking water to have access to safe and
22 affordable drinking water with any of the following:

23 (1) The provision of replacement water, as needed, to ensure
24 immediate protection of health and safety as a short-term solution.

25 (2) The development, implementation, and sustainability of
26 long-term solutions, including, but not limited to, planning,
27 construction, and operation and maintenance costs associated with
28 replacing, blending, or treating contaminated wells and
29 consolidating water systems.

30 (3) Identifying Californians without access to safe drinking
31 water who are eligible to receive assistance from the fund and
32 providing outreach to them.

33 (4) Testing the drinking water quality of individual domestic
34 wells serving low-income households.

35 (c) Eligible applicants for funding include public agencies,
36 nonprofit organizations, public utilities, federally recognized Indian
37 tribes, state Indian tribes listed on the Native American Heritage
38 Commission's California tribal consultation list, groundwater
39 sustainability agencies, and mutual water companies.

1 (d) The board may expend up to 5 percent of the annual
2 expenditures from the fund for reasonable costs associated with
3 administration of the fund.

4 (e) The board may undertake any of the following actions to
5 implement the fund:

6 (1) Provide for the deposit of any of the following available and
7 necessary moneys into the fund:

8 (A) Federal contributions.

9 (B) Voluntary contributions, gifts, grants, or bequests.

10 (2) Enter into agreements for contributions to the fund from the
11 federal government, local or state agencies, and private
12 corporations or nonprofit organizations.

13 (3) Provide for appropriate audit, accounting, and fiscal
14 management services, plans, and reports relative to the fund.

15 (4) Take additional incidental action as may be appropriate for
16 adequate administration and operation of the fund.

17 116768. It is the intent of the Legislature to subsequently amend
18 this section to seek specific funding from agricultural operations
19 to assist in providing emergency, interim, and long-term assistance
20 to community water systems and individual domestic well users
21 whose wells have been impacted by nitrate contamination and
22 whose wells are located in agricultural areas.

23 116769. Annually, the board shall do all of the following:

24 (a) Prepare and make available a report of expenditures from
25 the fund.

26 (b) Adopt, after a public hearing, an assessment of funding
27 needed to ensure all Californians have access to safe drinking
28 water. This annual assessment shall incorporate information
29 contained in the Safe Drinking Water Plan and include a list of
30 community water systems and nontransient noncommunity water
31 systems without access to safe drinking water, as well as
32 identification of small communities and rural populations not
33 served by public water systems that do not have access to safe
34 drinking water.

35 (c) (1) Adopt, after a public hearing, a fund implementation
36 plan with priorities and guidelines for expenditures of the fund.
37 The board shall work with a multistakeholder advisory group that
38 shall be open to participation by representatives of entities paying
39 into the fund, public water systems, technical assistance providers,

1 local agencies, affected persons, nongovernmental organizations,
2 and the public, to establish priorities for the plan.

3 (2) The fund implementation plan shall prioritize eligibility for
4 expenditures of the fund based on the following:

5 (A) A water system's current or projected water rates needed
6 to ensure safe drinking water exceed or will exceed 1.5 percent of
7 the median household income for that water system and the water
8 system qualifies as a disadvantaged community.

9 (B) The costs for providing potable water for an individual
10 domestic well exceed or will exceed 1.5 percent of the household's
11 income and the household's income is less than 80 percent of the
12 statewide household median income.

13 SEC. 3. Section 13050 of the Water Code is amended to read:

14 13050. As used in this division:

15 (a) "State board" means the State Water Resources Control
16 Board.

17 (b) "Regional board" means any California regional water
18 quality control board for a region as specified in Section 13200.

19 (c) "Person" includes any city, county, district, the state, and
20 the United States, to the extent authorized by federal law.

21 (d) "Waste" includes sewage and any and all other waste
22 substances, liquid, solid, gaseous, or radioactive, associated with
23 human habitation, or of human or animal origin, or from any
24 producing, manufacturing, or processing operation, including waste
25 placed within containers of whatever nature prior to, and for
26 purposes of, disposal.

27 (e) "Waters of the state" means any surface water or
28 groundwater, including saline waters, within the boundaries of the
29 state.

30 (f) "Beneficial uses" of the waters of the state that may be
31 protected against quality degradation include, but are not limited
32 to, domestic, municipal, agricultural and industrial supply; power
33 generation; recreation; aesthetic enjoyment; navigation; and
34 preservation and enhancement of fish, wildlife, and other aquatic
35 resources or preserves.

36 (g) "Quality of the water" refers to chemical, physical,
37 biological, bacteriological, radiological, and other properties and
38 characteristics of water which affect its use.

39 (h) "Water quality objectives" means the limits or levels of
40 water quality constituents or characteristics which are established

1 for the reasonable protection of beneficial uses of water or the
2 prevention of nuisance within a specific area.

3 (i) “Water quality control” means the regulation of any activity
4 or factor which may affect the quality of the waters of the state
5 and includes the prevention and correction of water pollution and
6 nuisance.

7 (j) “Water quality control plan” consists of a designation or
8 establishment for the waters within a specified area of all of the
9 following:

10 (1) Beneficial uses to be protected.

11 (2) Water quality objectives.

12 (3) A program of implementation needed for achieving water
13 quality objectives.

14 (k) “Contamination” means an impairment of the quality of the
15 waters of the state by waste to a degree which creates a hazard to
16 the public health through poisoning or through the spread of
17 disease. “Contamination” includes any equivalent effect resulting
18 from the disposal of waste, whether or not waters of the state are
19 affected.

20 (l) (1) “Pollution” means an alteration of the quality of the
21 waters of the state by waste to a degree which unreasonably affects
22 either of the following:

23 (A) The waters for beneficial uses.

24 (B) Facilities which serve these beneficial uses.

25 (2) “Pollution” may include “contamination.”

26 (m) “Nuisance” means anything which meets all of the following
27 requirements:

28 (1) Is injurious to health, or is indecent or offensive to the senses,
29 or an obstruction to the free use of property, so as to interfere with
30 the comfortable enjoyment of life or property.

31 (2) Affects at the same time an entire community or
32 neighborhood, or any considerable number of persons, although
33 the extent of the annoyance or damage inflicted upon individuals
34 may be unequal.

35 (3) Occurs during, or as a result of, the treatment or disposal of
36 wastes.

37 (n) “Recycled water” means water which, as a result of treatment
38 of waste, is suitable for a direct beneficial use or a controlled use
39 that would not otherwise occur and is therefor considered a
40 valuable resource.

1 (o) “Citizen or domiciliary” of the state includes a foreign
2 corporation having substantial business contacts in the state or
3 which is subject to service of process in this state.

4 (p) (1) “Hazardous substance” means either of the following:

5 (A) For discharge to surface waters, any substance determined
6 to be a hazardous substance pursuant to Section 311(b)(2) of the
7 Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

8 (B) For discharge to groundwater, any substance listed as a
9 hazardous waste or hazardous material pursuant to Section 25140
10 of the Health and Safety Code, without regard to whether the
11 substance is intended to be used, reused, or discarded, except that
12 “hazardous substance” does not include any substance excluded
13 from Section 311(b)(2) of the Federal Water Pollution Control Act
14 because it is within the scope of Section 311(a)(1) of that act.

15 (2) “Hazardous substance” does not include any of the
16 following:

17 (A) Nontoxic, nonflammable, and noncorrosive stormwater
18 runoff drained from underground vaults, chambers, or manholes
19 into gutters or storm sewers.

20 (B) Any pesticide which is applied for agricultural purposes or
21 is applied in accordance with a cooperative agreement authorized
22 by Section 116180 of the Health and Safety Code, and is not
23 discharged accidentally or for purposes of disposal, the application
24 of which is in compliance with all applicable state and federal laws
25 and regulations.

26 (C) Any discharge to surface water of a quantity less than a
27 reportable quantity as determined by regulations issued pursuant
28 to Section 311(b)(4) of the Federal Water Pollution Control Act.

29 (D) Any discharge to land which results, or probably will result,
30 in a discharge to groundwater if the amount of the discharge to
31 land is less than a reportable quantity, as determined by regulations
32 adopted pursuant to Section 13271, for substances listed as
33 hazardous pursuant to Section 25140 of the Health and Safety
34 Code. No discharge shall be deemed a discharge of a reportable
35 quantity until regulations set a reportable quantity for the substance
36 discharged.

37 (q) (1) “Mining waste” means all solid, semisolid, and liquid
38 waste materials from the extraction, beneficiation, and processing
39 of ores and minerals. Mining waste includes, but is not limited to,
40 soil, waste rock, and overburden, as defined in Section 2732 of

1 the Public Resources Code, and tailings, slag, and other processed
 2 waste materials, including cementitious materials that are managed
 3 at the cement manufacturing facility where the materials were
 4 generated.

5 (2) For the purposes of this subdivision, “cementitious material”
 6 means cement, cement kiln dust, clinker, and clinker dust.

7 (r) “Master recycling permit” means a permit issued to a supplier
 8 or a distributor, or both, of recycled water, that includes waste
 9 discharge requirements prescribed pursuant to Section 13263 and
 10 water recycling requirements prescribed pursuant to Section
 11 13523.1.

12 (s) (1) “Agricultural operation” means either of the following:

13 (A) A discharger that satisfies both of the following conditions:

14 (i) The discharger is an owner, operator, or both, of land that is
 15 irrigated to produce crops or pasture for commercial purposes or
 16 a nursery.

17 (ii) The discharger is enrolled or named in an irrigated lands
 18 regulatory program order adopted by the state board or a regional
 19 board pursuant to Section 13263 or 13269.

20 (B) A discharger that satisfies both of the following conditions:

21 (i) The discharger is an owner, operator, or both of a facility
 22 that is used for the raising or harvesting of livestock.

23 (ii) The discharger is enrolled or named in an order adopted by
 24 the state board or a regional board pursuant to Section 13263 or
 25 13269 that regulates the discharges of waste from a facility
 26 identified in clause (i) to protect ground and surface water.

27 (2) “Agricultural operation” does not include any of the
 28 following:

29 (A) ~~An off-farm~~ facility that processes crops or livestock.

30 (B) ~~An off-farm~~ facility that manufactures, synthesizes,
 31 stores, or processes fertilizer.

32 (C) Any portions of land or activities occurring on those portions
 33 of land that are not covered by an order adopted by the state board
 34 or a regional board ~~pursuant to Section 13263 or 13269~~: *identified*
 35 *in clause (ii) of subparagraph (A) or clause (ii) of subparagraph*
 36 *(B) of paragraph (1).*

37 SEC. 4. Article 4.5 (commencing with Section 13278) is added
 38 to Chapter 4 of Division 7 of the Water Code, to read:

1 Article 4.5. Discharges of Nitrate to Groundwater from
2 Agricultural Operations
3

4 13278. (a) For the purposes of this article, the Legislature finds
5 and declares all of the following:

6 (1) Implementation of currently known best management
7 practices for some crops can reduce but not always completely
8 prevent nitrogen in organic and synthetic fertilizers that transform
9 to nitrates from reaching groundwater at concentrations above the
10 water quality objectives established pursuant to this division.

11 (2) It is acknowledged that discharges of nitrate from agricultural
12 operations could reach groundwater and could cause or contribute
13 to exceedances of drinking water standards for nitrate, *and could*
14 cause conditions of pollution of or nuisance in those waters as
15 defined and applied ~~pursuant to~~ *in accordance with* this division,
16 or both.

17 (3) *Nitrate contamination of groundwater impacts drinking*
18 *water sources for hundreds of thousands of Californians and it is*
19 *necessary to protect current and future drinking water users from*
20 *the impacts of nitrate contamination.*

21 ~~(3)~~

22 (4) Despite ~~substantial~~ progress in controlling discharges of
23 nitrogen that lead to nitrate formation, some groundwater sources
24 of drinking water will continue to be adversely impacted by nitrates
25 and it is important to have in place a program for mitigating these
26 impacts.

27 ~~(4) The Safe and Affordable Drinking Water Fund is established~~
28 ~~pursuant to Section 116766 of the Health and Safety Code in~~
29 ~~consideration of and in furtherance of the human right to water~~
30 ~~that has previously been codified as an established policy of the~~
31 ~~state.~~

32 (5) The regional boards will continue to regulate discharges to
33 reduce nitrogen loading and protect beneficial uses of water and
34 groundwater basins; the state board, regional boards, and courts
35 will ensure compliance with those orders; and dischargers will pay
36 for mitigation of ~~past and ongoing~~ pollution by funding
37 replacement water for affected communities.

38 (b) ~~It is the intent of the~~ *The Legislature declares its intent in*
39 *establishing this article to do both of the following:*

1 (1) To subsequently amend this article to establish an
2 agricultural assessment to be paid by agricultural operations for a
3 period of ~~10~~ 15 years to provide funding, as a portion of the Safe
4 and Affordable Drinking Water Fund, to make available alternative
5 supplies of safe drinking water to persons affected by discharges
6 of nitrogen from agricultural operations that may occur in amounts
7 that may cause or contribute to an exceedance of a water quality
8 objective or cause conditions of pollution or nuisance.

9 (2) To limit ~~certain administrative~~ enforcement actions that a
10 regional board or the state board could otherwise initiate during
11 that ~~10-year~~ 15-year period against an agricultural operation paying
12 the ~~nitrate mitigation~~ agricultural assessment, while maintaining
13 the overall framework of this division to protect beneficial uses,
14 implement water quality objectives in waters of the state, and
15 regulate activities and factors that affect water quality to attain the
16 highest water quality that is reasonable.

17 13278.1. (a) An agricultural operation shall not be subject to
18 enforcement *undertaken or initiated* by the state board or a regional
19 board under Chapter 5 (commencing with Section 13330) for
20 causing or contributing to an exceedance of a water quality
21 objective for nitrate in groundwater or for causing or contributing
22 to a condition of pollution or nuisance *for nitrates in groundwater*
23 if an agricultural operation that discharges or threatens to discharge,
24 or has discharged or previously threatened to discharge, nitrate to
25 groundwater demonstrates that it has satisfied all of the following
26 mitigation requirements:

27 (1) The agricultural operation has timely paid any applicable
28 fee, assessment, or charge into the Safe and Affordable Drinking
29 Water Fund or an applicable agricultural assessment is providing
30 funding into the Safe and Affordable Drinking Water Fund. For
31 the purposes of this paragraph, “timely paid” means that an
32 agricultural operation has paid all applicable fees, assessments, or
33 charges, no later than 90 days after their respective due dates, since
34 the application of the fee, assessment, or charge to the agricultural
35 operation.

36 (2) Except as provided in subdivision (b), the agricultural
37 operation is in compliance with all applicable provisions prescribed
38 by a regional board or the state board in an order adopted pursuant
39 to Section 13263 or 13269, including, but not limited to, the
40 following:

1 (A) Requirements to implement best practicable treatment or
2 control.

3 (B) Best efforts, monitoring, and reporting requirements.

4 (C) Timelines.

5 (3) The agricultural operation is in compliance with an
6 applicable program of implementation for achieving groundwater
7 quality objectives for nitrate that is part of an applicable water
8 quality control plan adopted by the state board or a regional board
9 pursuant to Article 3 (commencing with Section 13240).

10 (b) (1) The mitigation requirement contained in paragraph (2)
11 of subdivision (a) does not include any generalized prohibition
12 *contained in an order adopted under Section 13263 or 13269* on
13 causing or contributing, or threatening to cause or contribute, to
14 an exceedance of a water quality objective for nitrate in
15 groundwater or a condition of pollution or nuisance for nitrate in
16 groundwater.

17 (2) (A) An agricultural operation ~~shall not be~~ *is not* in
18 compliance with the mitigation requirement in paragraph (2) of
19 subdivision (a) if the agricultural operation has been subject to an
20 enforcement action under Chapter 5 (commencing with Section
21 13330) within the preceding 12 months for any violation of an
22 order adopted under Section 13263 or 13269 authorizing discharges
23 from agricultural operations.

24 (B) Subparagraph (A) does not apply to an enforcement action
25 commenced after January 1, 2016, and before January 1, 2018,
26 inclusive, alleging that ~~discharges a discharge~~ from an agricultural
27 operation caused or contributed, or threatened to cause or
28 contribute, to an exceedance of a water quality objective for nitrate
29 in groundwater, conditions of pollution or nuisance for nitrate in
30 groundwater, or both.

31 (3) An agricultural operation does not qualify for the
32 enforcement exemption set forth in this subdivision if the operation
33 fails to continue to make applicable payments into the Safe and
34 Affordable Drinking Water Fund to the extent that the agricultural
35 operation maintains a continuance of farming operation.

36 (c) Both of the following apply to a discharge of nitrogen by an
37 agricultural operation that occurs when the discharger is in full
38 compliance with the mitigation requirements:

39 (1) The discharge ~~of nitrogen~~ shall not be admissible in a future
40 enforcement action against the agricultural operation by the state

1 board or a regional board pursuant to Chapter 5 (commencing with
2 Section 13300) to support a claim that the agricultural operation
3 is causing or contributing, or threatening to cause or contribute,
4 to an exceedance of a water quality objective for nitrate in
5 groundwater or a condition of pollution or nuisance for nitrate in
6 groundwater.

7 (2) The discharge of nitrogen shall not be considered by the
8 state board or a regional board to apportion responsibility and shall
9 not be used by any person to diminish responsibility in any
10 enforcement action initiated pursuant to Chapter 5 (commencing
11 with Section 13300) with respect to discharges of nitrogen,
12 regardless of source, that did not occur in compliance with the
13 mitigation requirements.

14 (d) Nothing in this section alters the state board's or a regional
15 board's authority to require or conduct investigations, to require
16 reports on or to establish other requirements for best practicable
17 treatment or control, or to require monitoring and reporting
18 requirements to protect water quality.

19 (e) This section shall not be deemed to change or alter a water
20 quality objective that is part of a water quality control plan adopted
21 by the state board or a regional board pursuant to Article 3
22 (commencing with Section 13240).

23 (f) *This section shall remain in effect only until January 1, 2028,*
24 *and as of that date is repealed.*

25 13278.2. (a) *An agricultural operation shall not be subject to*
26 *enforcement undertaken or initiated by the state board or a*
27 *regional board under Section 13304 for creating or threatening*
28 *to create a condition of pollution or nuisance for nitrates in*
29 *groundwater if an agricultural operation that discharges or*
30 *threatens to discharge, or has discharged or previously threatened*
31 *to discharge, nitrate to groundwater demonstrates that it has*
32 *satisfied all of the following mitigation requirements:*

33 (1) *The agricultural operation has timely paid any applicable*
34 *fee, assessment, or charge into the Safe and Affordable Drinking*
35 *Water Fund or an applicable agricultural assessment is providing*
36 *funding into the Safe and Affordable Drinking Water Fund. For*
37 *the purposes of this paragraph, "timely paid" means that an*
38 *agricultural operation has paid all applicable fees, assessments,*
39 *or charges, no later than 90 days after their respective due dates,*

1 *since the application of the fee, assessment, or charge to the*
2 *agricultural operation.*

3 *(2) Except as provided in subdivision (b), the agricultural*
4 *operation is in compliance with all applicable provisions*
5 *prescribed by a regional board or the state board in an order*
6 *adopted pursuant to Section 13263 or 13269, including, but not*
7 *limited to, the following:*

8 *(A) Requirements to implement best practicable treatment or*
9 *control.*

10 *(B) Best efforts, monitoring, and reporting requirements.*

11 *(C) Timelines.*

12 *(3) The agricultural operation is in compliance with an*
13 *applicable program of implementation for achieving groundwater*
14 *quality objectives for nitrate that is part of an applicable water*
15 *quality control plan adopted by the state board or a regional board*
16 *pursuant to Article 3 (commencing with Section 13240).*

17 *(b) (1) The mitigation requirement contained in paragraph (2)*
18 *of subdivision (a) does not include any generalized prohibition*
19 *contained in an order adopted under Section 13263 or 13269 on*
20 *causing or contributing, or threatening to cause or contribute, to*
21 *an exceedance of a water quality objective for nitrate in*
22 *groundwater or a condition of pollution or nuisance for nitrate in*
23 *groundwater.*

24 *(2) An agricultural operation is not in compliance with the*
25 *mitigation requirement in paragraph (2) of subdivision (a) if the*
26 *agricultural operation has been subject to an enforcement action*
27 *under Chapter 5 (commencing with Section 13330) within the*
28 *preceding 12 months for any violation of an order adopted under*
29 *Section 13263 or 13269 authorizing discharges from agricultural*
30 *operations.*

31 *(3) An agricultural operation does not qualify for the*
32 *enforcement exemption set forth in this subdivision if the operation*
33 *fails to continue to make applicable payments into the Safe and*
34 *Affordable Drinking Water Fund to the extent that the agricultural*
35 *operation maintains a continuance of farming operation.*

36 *(c) Both of the following apply to a discharge of nitrogen by an*
37 *agricultural operation that occurs when the discharger is in full*
38 *compliance with the mitigation requirements:*

39 *(1) The discharge shall not be admissible in a future enforcement*
40 *action against the agricultural operation by the state board or a*

1 regional board pursuant to Chapter 5 (commencing with Section
2 13300) to support a claim that the agricultural operation is causing
3 or contributing, or threatening to cause or contribute, to an
4 exceedance of a water quality objective for nitrate in groundwater
5 or a condition of pollution or nuisance for nitrate in groundwater.

6 (2) The discharge shall not be considered by the state board or
7 a regional board to apportion responsibility and shall not be used
8 by any person to diminish responsibility in any enforcement action
9 initiated pursuant to Chapter 5 (commencing with Section 13300)
10 with respect to discharges of nitrogen, regardless of source, that
11 did not occur in compliance with the mitigation requirements.

12 (d) Nothing in this section alters the state board's or a regional
13 board's authority to require or conduct investigations, to require
14 reports on or to establish other requirements for best practicable
15 treatment or control, or to require monitoring and reporting
16 requirements to protect water quality.

17 (e) This section shall not be deemed to change or alter a water
18 quality objective that is part of a water quality control plan adopted
19 by the state board or a regional board pursuant to Article 3
20 (commencing with Section 13240).

21 (f) (1) This section shall become operative on January 1, 2028.

22 (2) This section shall remain in effect only until January 1, 2033,
23 and as of that date is repealed, unless a later enacted statute that
24 is enacted before January 1, 2033, deletes or extends that date.

25 ~~13278.2.~~

26 13278.3. By January 1, 2027, the state board shall conduct a
27 public review of regulatory and basin plan amendment
28 implementation programs to evaluate progress toward achieving
29 water quality objectives with respect to nitrates in groundwater
30 and assess compliance with adopted timelines, monitoring
31 requirements, and implementation of best practicable treatment or
32 control.

33 ~~13278.3.~~

34 13278.4. Nothing in this article limits the liability of a
35 discharger under any other law, including, but not limited to, Part
36 3 (commencing with Section 3479) of Division 4 of the Civil Code.

1 ~~13278.4. This article shall remain in effect only until January~~
2 ~~1, 2028, and as of that date is repealed, unless a later enacted statute~~
3 ~~that is enacted before January 1, 2028, deletes or extends that date.~~

O

115TH CONGRESS
1ST SESSION

H. R. 23

AN ACT

To provide drought relief in the State of California, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Gaining Responsibility
3 on Water Act of 2017”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—CENTRAL VALLEY PROJECT WATER RELIABILITY

- Sec. 101. Amendment to purposes.
- Sec. 102. Amendment to definition.
- Sec. 103. Contracts.
- Sec. 104. Water transfers, improved water management, and conservation.
- Sec. 105. Fish, wildlife, and habitat restoration.
- Sec. 106. Restoration fund.
- Sec. 107. Additional authorities.
- Sec. 108. Bay-Delta Accord.
- Sec. 109. Natural and artificially spawned species.
- Sec. 110. Regulatory streamlining.
- Sec. 111. Additional emergency consultation.
- Sec. 112. Applicants.
- Sec. 113. San Joaquin River settlement.

TITLE II—CALFED STORAGE FEASIBILITY STUDIES

- Sec. 201. Studies.
- Sec. 202. Temperance Flat.
- Sec. 203. Water storage project construction.
- Sec. 204. Geophysical survey.
- Sec. 205. Headwater-Restoration Scoping Study.

TITLE III—WATER RIGHTS PROTECTIONS

- Sec. 301. Offset for State Water Project.
- Sec. 302. Area of origin protections.
- Sec. 303. No redirected adverse impacts.
- Sec. 304. Allocations for Sacramento Valley contractors.
- Sec. 305. Effect on existing obligations.

TITLE IV—MISCELLANEOUS

- Sec. 401. Water supply accounting.
- Sec. 402. Operations of the Trinity River Division.
- Sec. 403. Report on results of water usage.
- Sec. 404. Klamath project consultation applicants.
- Sec. 405. CA State Water Resources Control Board.
- Sec. 406. New melones reservoir.
- Sec. 407. Actions to benefit threatened and endangered species and other wild-
life.

Sec. 408. Non-federal program to protect native anadromous fish in Stanislaus river.

TITLE V—WATER SUPPLY PERMITTING ACT

Sec. 501. Short title.
 Sec. 502. Definitions.
 Sec. 503. Establishment of lead agency and cooperating agencies.
 Sec. 504. Bureau responsibilities.
 Sec. 505. Cooperating agency responsibilities.
 Sec. 506. Funding to process permits.

TITLE VI—BUREAU OF RECLAMATION PROJECT STREAMLINING

Sec. 601. Short title.
 Sec. 602. Definitions.
 Sec. 603. Acceleration of studies.
 Sec. 604. Expedited completion of reports.
 Sec. 605. Project acceleration.
 Sec. 606. Annual report to Congress.
 Sec. 607. Applicability of WIN Act.

TITLE VII—WATER RIGHTS PROTECTION

Sec. 701. Short title.
 Sec. 702. Definitions.
 Sec. 703. Treatment of water rights.
 Sec. 704. Policy development.
 Sec. 705. Effect.

1 **TITLE I—CENTRAL VALLEY** 2 **PROJECT WATER RELIABILITY**

3 **SEC. 101. AMENDMENT TO PURPOSES.**

4 Section 3402 of the Central Valley Project Improve-
 5 ment Act (106 Stat. 4706) is amended—

6 (1) in subsection (f), by striking the period at
 7 the end; and

8 (2) by adding at the end the following:

9 “(g) to ensure that water dedicated to fish and wild-
 10 life purposes by this part is replaced and provided to Cen-
 11 tral Valley Project water contractors by December 31,
 12 2018, at the lowest cost reasonably achievable; and

1 “(h) to facilitate and expedite water transfers in ac-
2 cordance with this Act.”.

3 **SEC. 102. AMENDMENT TO DEFINITION.**

4 Section 3403 of the Central Valley Project Improve-
5 ment Act (106 Stat. 4707) is amended—

6 (1) by amending subsection (a) to read as fol-
7 lows:

8 “(a) the term ‘anadromous fish’ means those native
9 stocks of salmon (including steelhead) and sturgeon that,
10 as of October 30, 1992, were present in the Sacramento
11 and San Joaquin Rivers and their tributaries and ascend
12 those rivers and their tributaries to reproduce after matur-
13 ing in San Francisco Bay or the Pacific Ocean;”;

14 (2) in subsection (l), by striking “and,”;

15 (3) in subsection (m), by striking the period
16 and inserting “; and”; and

17 (4) by adding at the end the following:

18 “(n) the term ‘reasonable flows’ means water flows
19 capable of being maintained taking into account com-
20 peting consumptive uses of water and economic, environ-
21 mental, and social factors.”.

22 **SEC. 103. CONTRACTS.**

23 Section 3404 of the Central Valley Project Improve-
24 ment Act (106 Stat. 4708) is amended—

1 (1) In subsection (a)—

2 (A) by inserting before “Except as pro-
3 vided herein” the following: “The Secretary
4 shall take all necessary actions to facilitate and
5 expedite transfers of Central Valley Project
6 water in accordance with this Act or any other
7 provision of Federal reclamation law and the
8 National Environmental Policy Act of 1969.”;

9 (B) in paragraph (1)(A), by striking “to
10 combination” and inserting “or combination”;

11 (C) in paragraph (2), by adding at the end
12 the following:

13 “(E) The contracting district from which
14 the water is coming, the agency, or the Sec-
15 retary shall determine if a written transfer pro-
16 posal is complete within 45 days after the date
17 of submission of such proposal. If such district
18 or agency or the Secretary determines that such
19 proposal is incomplete, such district or agency
20 or the Secretary shall state with specificity
21 what must be added to or revised in order for
22 such proposal to be complete.

23 “(F) Except as provided in this section,
24 the Secretary shall not impose mitigation or
25 other requirements on a proposed transfer, but

1 the contracting district from which the water is
2 coming or the agency shall retain all authority
3 under State law to approve or condition a pro-
4 posed transfer.”; and

5 (D) by adding at the end the following:

6 “(4) Notwithstanding any other provision of
7 Federal reclamation law—

8 “(A) the authority to make transfers or ex-
9 changes of, or banking or recharge arrange-
10 ments using, Central Valley Project water that
11 could have been conducted before October 30,
12 1992, is valid, and such transfers, exchanges,
13 or arrangements shall not be subject to, limited,
14 or conditioned by this title; and

15 “(B) this title shall not supersede or re-
16 voke the authority to transfer, exchange, bank,
17 or recharge Central Valley Project water that
18 existed prior to October 30, 1992.”.

19 (2) In subsection (b)—

20 (A) in the heading, by striking “METER-
21 ING” and inserting “MEASUREMENT”; and

22 (B) by inserting after the first sentence
23 the following: “The contracting district or agen-
24 cy, not including contracting districts serving
25 multiple agencies with separate governing

1 boards, shall ensure that all contractor-owned
2 water delivery systems within its boundaries
3 measure surface water at the district or agen-
4 cy’s facilities up to the point the surface water
5 is commingled with other water supplies.”.

6 (3) By striking subsection (d).

7 (4) By redesignating subsections (e) and (f) as
8 subsections (d) and (e), respectively.

9 (5) By amending subsection (e) (as redesign-
10 nated by paragraph (4))—

11 (A) by striking “as a result of the in-
12 creased repayment” and inserting “that exceed
13 the cost-of-service”;

14 (B) by inserting “the delivery of” after
15 “rates applicable to”; and

16 (C) by striking “, and all increased reve-
17 nues received by the Secretary as a result of the
18 increased water prices established under sub-
19 section 3405(d) of this section,”.

20 **SEC. 105. FISH, WILDLIFE, AND HABITAT RESTORATION.**

21 Section 3406 of the Central Valley Project Improve-
22 ment Act (106 Stat. 4714) is amended as follows:

23 (1) In subsection (b)—

24 (A) in paragraph (1)(B)—

1 (i) by striking “is authorized and di-
2 rected to” and inserting “may”;

3 (ii) by inserting “reasonable water”
4 after “to provide”;

5 (iii) by striking “anadromous fish, ex-
6 cept that such” and inserting “anad-
7 romous fish. Such”;

8 (iv) by striking “Instream flow” and
9 inserting “Reasonable instream flow”;

10 (v) by inserting “and the National
11 Marine Fisheries Service” after “United
12 States Fish and Wildlife Service”; and

13 (vi) by striking “California Depart-
14 ment of Fish and Game” and inserting
15 “United States Geological Survey”;

16 (B) in paragraph (2)—

17 (i) by striking “primary purpose” and
18 inserting “purposes”;

19 (ii) by striking “but not limited to”
20 before “additional obligations”; and

21 (iii) by adding after the period the fol-
22 lowing: “All Central Valley Project water
23 used for the purposes specified in this
24 paragraph shall be credited to the quantity
25 of Central Valley Project yield dedicated

1 and managed under this paragraph by de-
2 termining how the dedication and manage-
3 ment of such water would affect the deliv-
4 ery capability of the Central Valley Project
5 during the 1928 to 1934 drought period
6 after fishery, water quality, and other flow
7 and operational requirements imposed by
8 terms and conditions existing in licenses,
9 permits, and other agreements pertaining
10 to the Central Valley Project under appli-
11 cable State or Federal law existing on Oc-
12 tober 30, 1992, have been met. To the full-
13 est extent possible and in accordance with
14 section 3411, Central Valley Project water
15 dedicated and managed pursuant to this
16 paragraph shall be reused to fulfill the
17 Secretary's remaining contractual obliga-
18 tions to provide Central Valley Project
19 water for agricultural or municipal and in-
20 dustrial purposes.”; and

21 (C) by amending paragraph (2)(C) to read:

22 “(C) If by March 15th of any year the
23 quantity of Central Valley Project water fore-
24 casted to be made available to water service or
25 repayment contractors in the Delta Division of

1 the Central Valley Project is below 75 percent
2 of the total quantity of water to be made avail-
3 able under said contracts, the quantity of Cen-
4 tral Valley Project yield dedicated and managed
5 for that year under this paragraph shall be re-
6 duced by 25 percent.”.

7 (2) By adding at the end the following:

8 “(i) SATISFACTION OF PURPOSES.—
9 By pursuing the activities described in this
10 section, the Secretary shall be deemed to
11 have met the mitigation, protection, res-
12 toration, and enhancement purposes of this
13 title.”.

14 **SEC. 106. RESTORATION FUND.**

15 (a) IN GENERAL.—Section 3407(a) of the Central
16 Valley Project Improvement Act (106 Stat. 4726) is
17 amended as follows:

18 (1) By inserting “(1) IN GENERAL.—” before
19 “There is hereby”.

20 (2) By striking “Not less than 67 percent” and
21 all that follows through “Monies” and inserting
22 “Monies”.

23 (3) By adding at the end the following:

1 “(2) PROHIBITIONS.—The Secretary may not directly
2 or indirectly require a donation or other payment to the
3 Restoration Fund—

4 “(A) or environmental restoration or mitigation
5 fees not otherwise provided by law, as a condition
6 to—

7 “(i) providing for the storage or convey-
8 ance of non-Central Valley Project water pursu-
9 ant to Federal reclamation laws; or

10 “(ii) the delivery of water pursuant to sec-
11 tion 215 of the Reclamation Reform Act of
12 1982 (Public Law 97–293; 96 Stat. 1270); or

13 “(B) for any water that is delivered with the
14 sole intent of groundwater recharge.”.

15 (b) CERTAIN PAYMENTS.—Section 3407(c)(1) of the
16 Central Valley Project Improvement Act is amended—

17 (1) by striking “mitigation and restoration”;

18 (2) by striking “provided for or”; and

19 (3) by striking “of fish, wildlife” and all that
20 follows through the period and inserting “of carrying
21 out all activities described in this title.”.

22 (c) ADJUSTMENT AND ASSESSMENT OF MITIGATION
23 AND RESTORATION PAYMENTS.—Section 3407(d)(2) of
24 the Central Valley Project Improvement Act is amended
25 by inserting “, or after October 1, 2016, \$4 per megawatt-

1 hour for Central Valley Project power sold to power con-
2 tractors (October 2016 price levels)” after “\$12 per acre-
3 foot (October 1992 price levels) for municipal and indus-
4 trial water sold and delivered by the Central Valley
5 Project”.

6 (d) COMPLETION OF ACTIONS.—Section
7 3407(d)(2)(A) of the Central Valley Project Improvement
8 Act is amended by inserting “no later than December 31,
9 2020,” after “That upon the completion of the fish, wild-
10 life, and habitat mitigation and restoration actions man-
11 dated under section 3406 of this title,”.

12 (e) REPORT; ADVISORY BOARD.—Section 3407 of the
13 Central Valley Project Improvement Act (106 Stat. 4714)
14 is amended by adding at the end the following:

15 “(g) REPORT ON EXPENDITURE OF FUNDS.—At the
16 end of each fiscal year, the Secretary, in consultation with
17 the Restoration Fund Advisory Board, shall submit to
18 Congress a plan for the expenditure of all of the funds
19 deposited into the Restoration Fund during the preceding
20 fiscal year. Such plan shall contain a cost-effectiveness
21 analysis of each expenditure.

22 “(h) ADVISORY BOARD.—

23 “(1) ESTABLISHMENT.—There is hereby estab-
24 lished the Restoration Fund Advisory Board (herein-
25 after in this section referred to as the ‘Advisory

1 Board') composed of 12 members selected by the
2 Secretary, each for four-year terms, one of whom
3 shall be designated by the Secretary as Chairman.
4 The members shall be selected so as to represent the
5 various Central Valley Project stakeholders, four of
6 whom shall be from CVP agricultural users, three
7 from CVP municipal and industrial users, three
8 from CVP power contractors, and two at the discre-
9 tion of the Secretary. The Secretary and the Sec-
10 retary of Commerce may each designate a represent-
11 ative to act as an observer of the Advisory Board.

12 “(2) DUTIES.—The duties of the Advisory
13 Board are as follows:

14 “(A) To meet at least semiannually to de-
15 velop and make recommendations to the Sec-
16 retary regarding priorities and spending levels
17 on projects and programs carried out pursuant
18 to the Central Valley Project Improvement Act.

19 “(B) To ensure that any advice or rec-
20 ommendation made by the Advisory Board to
21 the Secretary reflect the independent judgment
22 of the Advisory Board.

23 “(C) Not later than December 31, 2018,
24 and annually thereafter, to transmit to the Sec-

1 retary and Congress recommendations required
2 under subparagraph (A).

3 “(D) Not later than December 31, 2018,
4 and biennially thereafter, to transmit to Con-
5 gress a report that details the progress made in
6 achieving the actions mandated under section
7 3406.

8 “(3) ADMINISTRATION.—With the consent of
9 the appropriate agency head, the Advisory Board
10 may use the facilities and services of any Federal
11 agency.”.

12 **SEC. 107. ADDITIONAL AUTHORITIES.**

13 (a) AUTHORITY FOR CERTAIN ACTIVITIES.—Section
14 3408(c) of the Central Valley Project Improvement Act
15 (106 Stat. 4728) is amended to read as follows:

16 “(c) CONTRACTS FOR ADDITIONAL STORAGE AND
17 DELIVERY OF WATER.—

18 “(1) IN GENERAL.—The Secretary is authorized
19 to enter into contracts pursuant to Federal reclama-
20 tion law and this title with any Federal agency, Cali-
21 fornia water user or water agency, State agency, or
22 private organization for the exchange, impoundment,
23 storage, carriage, and delivery of nonproject water
24 for domestic, municipal, industrial, fish and wildlife,
25 and any other beneficial purpose.

1 “(2) LIMITATION.—Nothing in this subsection
2 shall be deemed to supersede the provisions of sec-
3 tion 103 of Public Law 99–546 (100 Stat. 3051).

4 “(3) AUTHORITY FOR CERTAIN ACTIVITIES.—
5 The Secretary shall use the authority granted by
6 this subsection in connection with requests to ex-
7 change, impound, store, carry, or deliver nonproject
8 water using Central Valley Project facilities for any
9 beneficial purpose.

10 “(4) RATES.—The Secretary shall develop rates
11 not to exceed the amount required to recover the
12 reasonable costs incurred by the Secretary in con-
13 nection with a beneficial purpose under this sub-
14 section. Such rates shall be charged to a party using
15 Central Valley Project facilities for such purpose.
16 Such costs shall not include any donation or other
17 payment to the Restoration Fund.

18 “(5) CONSTRUCTION.—This subsection shall be
19 construed and implemented to facilitate and encour-
20 age the use of Central Valley Project facilities to ex-
21 change, impound, store, carry, or deliver nonproject
22 water for any beneficial purpose.”.

23 (b) REPORTING REQUIREMENTS.—Section 3408(f) of
24 the Central Valley Project Improvement Act (106 Stat.
25 4729) is amended—

1 (1) by striking “Interior and Insular Affairs
2 and the Committee on Merchant Marine and Fish-
3 eries” and inserting “Natural Resources”;

4 (2) in the second sentence, by inserting before
5 the period at the end the following: “, including
6 progress on the plan required by subsection (j)”;

7 (3) by adding at the end the following: “The fil-
8 ing and adequacy of such report shall be personally
9 certified to the committees referenced above by the
10 Regional Director of the Mid-Pacific Region of the
11 Bureau of Reclamation.”.

12 (c) PROJECT YIELD INCREASE.—Section 3408(j) of
13 the Central Valley Project Improvement Act (106 Stat.
14 4730) is amended as follows:

15 (1) By redesignating paragraphs (1) through
16 (7) as subparagraphs (A) through (G), respectively.

17 (2) By striking “In order to minimize adverse
18 effects, if any, upon” and inserting “(1) IN GEN-
19 ERAL.—In order to minimize adverse effects upon”.

20 (3) By striking “needs, the Secretary,” and all
21 that follows through “submit to the Congress, a”
22 and inserting “needs, the Secretary, on a priority
23 basis and not later than September 30, 2018, shall
24 submit to Congress a”.

1 (4) By striking “increase,” and all that follows
2 through “options:” and inserting “increase, as soon
3 as possible but not later than September 30, 2017
4 (except for the construction of new facilities which
5 shall not be limited by that deadline), the water of
6 the Central Valley Project by the amount dedicated
7 and managed for fish and wildlife purposes under
8 this title and otherwise required to meet the pur-
9 poses of the Central Valley Project including satis-
10 fying contractual obligations. The plan required by
11 this subsection shall include recommendations on ap-
12 propriate cost-sharing arrangements and authorizing
13 legislation or other measures needed to implement
14 the intent, purposes, and provisions of this sub-
15 section and a description of how the Secretary in-
16 tends to use the following options—”.

17 (5) In subparagraph (A), by inserting “and
18 construction of new water storage facilities” before
19 the semicolon.

20 (6) In subparagraph (F), by striking “and” at
21 the end.

22 (7) In subparagraph (G), by striking the period
23 and all that follows through the end of the sub-
24 section and inserting “; and”.

1 (8) By inserting after subparagraph (G) the fol-
2 lowing:

3 “(H) Water banking and recharge.”.

4 (9) By adding at the end the following:

5 “(2) IMPLEMENTATION OF PLAN.—The Sec-
6 retary shall implement the plan required by para-
7 graph (1) commencing on October 1, 2017. In order
8 to carry out this subsection, the Secretary shall co-
9 ordinate with the State of California in imple-
10 menting measures for the long-term resolution of
11 problems in the San Francisco Bay/Sacramento-San
12 Joaquin Delta Estuary.

13 “(3) FAILURE OF THE PLAN.—Notwithstanding
14 any other provision of Federal reclamation law, if by
15 September 30, 2018, the plan required by paragraph
16 (1) fails to increase the annual delivery capability of
17 the Central Valley Project by 800,000 acre-feet, im-
18 plementation of any non-mandatory action under
19 section 3406(b)(2) shall be suspended until the plan
20 achieves an increase in the annual delivery capability
21 of the Central Valley Project by 800,000 acre-feet.”.

22 (d) TECHNICAL CORRECTION.—Section 3408(h) of
23 the Central Valley Project Improvement Act (106 Stat.
24 4729) is amended—

1 (1) in paragraph (1), by striking “paragraph
2 (h)(2)” and inserting “paragraph (2)”; and

3 (2) in paragraph (2), by striking “paragraph
4 (h)(i)” and inserting “paragraph (1)”.

5 (e) WATER STORAGE PROJECT CONSTRUCTION.—

6 The Secretary, acting through the Commissioner of the
7 Bureau of Reclamation, may partner or enter into an
8 agreement on the water storage projects identified in sec-
9 tion 103(d)(1) of the Water Supply Reliability, and Envi-
10 ronmental Improvement Act (Public Law 108–361) (and
11 Acts supplemental and amendatory to the Act) with local
12 joint powers authorities formed pursuant to State law by
13 irrigation districts and other local water districts and local
14 governments within the applicable hydrologic region, to
15 advance these projects. No additional Federal funds are
16 authorized for the activities authorized in sections
17 103(d)(1)(A)(i), 103(d)(1)(A)(ii), and 103(d)(1)(A)(iii) of
18 Public Law 108–361. However, each water storage project
19 under sections 103(d)(1)(A)(i), 103(d)(1)(A)(ii), and
20 103(d)(1)(A)(iii) of Public Law 108–361 is authorized for
21 construction if non-Federal funds are used for financing
22 and constructing the project.

23 **SEC. 108. BAY-DELTA ACCORD.**

24 (a) CONGRESSIONAL DIRECTION REGARDING CEN-
25 TRAL VALLEY PROJECT AND CALIFORNIA STATE WATER

1 PROJECT OPERATIONS.—The Central Valley Project and
2 the State Water Project shall be operated pursuant to the
3 water quality standards and operational constraints de-
4 scribed in the “Principles for Agreement on the Bay-Delta
5 Standards Between the State of California and the Fed-
6 eral Government” dated December 15, 1994, and such op-
7 erations shall proceed without regard to the Endangered
8 Species Act of 1973 (16 U.S.C. 1531 et seq.) or any other
9 law pertaining to the operation of the Central Valley
10 Project and the California State Water Project. Imple-
11 mentation of this section shall be in strict conformance
12 with the “Principles for Agreement on the Bay-Delta
13 Standards Between the State of California and the Fed-
14 eral Government” dated December 15, 1994.

15 (b) APPLICATION OF LAWS TO OTHERS.—Neither a
16 Federal department nor the State of California, including
17 any agency or board of the State of California, shall im-
18 pose on any water right obtained pursuant to State law,
19 including a pre-1914 appropriative right, any condition
20 that restricts the exercise of that water right in order to
21 conserve, enhance, recover or otherwise protect any species
22 that is affected by operations of the Central Valley Project
23 or California State Water Project. Nor shall the State of
24 California, including any agency or board of the State of
25 California, restrict the exercise of any water right obtained

1 pursuant to State law, including a pre-1914 appropriative
2 right, in order to protect, enhance, or restore under the
3 Public Trust Doctrine any public trust value. Implementa-
4 tion of the “Principles for Agreement on the Bay-Delta
5 Standards Between the State of California and the Fed-
6 eral Government” dated December 15, 1994, shall be in
7 strict compliance with the water rights priority system and
8 statutory protections for areas of origin.

9 (c) COSTS.—No cost associated with the implementa-
10 tion of this section shall be imposed directly or indirectly
11 on any Central Valley Project contractor, or any other per-
12 son or entity, unless such costs are incurred on a voluntary
13 basis.

14 (d) NATIVE SPECIES PROTECTION.—California law is
15 preempted with respect to any restriction on the quantity
16 or size of nonnative fish taken or harvested that preys
17 upon one or more native fish species that occupy the Sac-
18 ramento and San Joaquin Rivers and their tributaries or
19 the Sacramento-San Joaquin Rivers Delta.

20 **SEC. 109. NATURAL AND ARTIFICIALLY SPAWNED SPECIES.**

21 After the date of the enactment of this title, and re-
22 gardless of the date of listing, the Secretaries of the Inte-
23 rior and Commerce shall not distinguish between natural-
24 spawned and hatchery-spawned or otherwise artificially
25 propagated strains of a species in making any determina-

1 tion under the Endangered Species Act of 1973 (16
2 U.S.C. 1531 et seq.) that relates to any anadromous fish
3 species present in the Sacramento and San Joaquin Rivers
4 or their tributaries and ascend those rivers and their trib-
5 utaries to reproduce after maturing in San Francisco Bay
6 or the Pacific Ocean.

7 **SEC. 110. REGULATORY STREAMLINING.**

8 (a) **APPLICABILITY OF CERTAIN LAWS.**—Filing of a
9 Notice of Determination or a Notice of Exemption for any
10 project, including the issuance of a permit under State
11 law, related to any project of the CVP or the delivery of
12 water therefrom in accordance with the California Envi-
13 ronmental Quality Act shall be deemed to meet the re-
14 quirements of section 102(2)(C) of the National Environ-
15 mental Protection Act of 1969 (42 U.S.C. 4332(2)(C)) for
16 that project or permit.

17 (b) **CONTINUATION OF PROJECT.**—The Bureau of
18 Reclamation shall not be required to cease or modify any
19 major Federal action or other activity related to any
20 project of the CVP or the delivery of water therefrom
21 pending completion of judicial review of any determination
22 made under the National Environmental Protection Act
23 of 1969 (42 U.S.C. 4332(2)(C)).

24 (c) **PROJECT DEFINED.**—For the purposes of this
25 section:

1 (1) CVP.—The term “CVP” means the Central
2 Valley Project.

3 (2) PROJECT.—The term “project”—

4 (A) means an activity that—

5 (i) is undertaken by a public agency,
6 funded by a public agency, or that requires
7 an issuance of a permit by a public agency;

8 (ii) has a potential to result in phys-
9 ical change to the environment; and

10 (iii) may be subject to several discre-
11 tionary approvals by governmental agen-
12 cies;

13 (B) may include construction activities,
14 clearing or grading of land, improvements to
15 existing structures, and activities or equipment
16 involving the issuance of a permit; or

17 (C) as defined under the California Envi-
18 ronmental Quality Act in section 21065 of the
19 California Public Resource Code.

20 **SEC. 111. ADDITIONAL EMERGENCY CONSULTATION.**

21 For adjustments to operating criteria other than
22 under section 108 or to take urgent actions to address
23 water supply shortages for the least amount of time or
24 volume of diversion necessary as determined by the Com-
25 missioner of Reclamation, no mitigation measures shall be

1 required during any year that the Sacramento Valley
2 index is 6.5 or lower, or at the request of the State of
3 California, and until two succeeding years following either
4 of those events have been completed where the final Sac-
5 ramento Valley Index is 7.8 or greater, and any mitigation
6 measures imposed must be based on quantitative data and
7 required only to the extent that such data demonstrates
8 actual harm to species.

9 **SEC. 112. APPLICANTS.**

10 In the event that the Bureau of Reclamation or an-
11 other Federal agency initiates or reinitiates consultation
12 with the U.S. Fish and Wildlife Service or the National
13 Marine Fisheries Service under section 7(a)(2) of the En-
14 dangered Species Act of 1973 (16 U.S.C. 1536(a)(2)),
15 with respect to construction or operation of the Central
16 Valley Project and State Water Project, or any part there-
17 of, the State Water Project contractors and the Central
18 Valley Project contractors will be accorded all the rights
19 and responsibilities extended to applicants in the consulta-
20 tion process.

21 **SEC. 113. SAN JOAQUIN RIVER SETTLEMENT.**

22 (a) PURPOSE AND FINDINGS.—

23 (1) PURPOSE AND FINDINGS.—Section 10002
24 of the San Joaquin River Restoration Settlement

1 Act (Public Law 111–11) is amended to read as fol-
2 lows:

3 **“SEC. 10002. PURPOSE AND FINDINGS.**

4 “(a) PURPOSE.—The purpose of this part is to au-
5 thorize implementation of the Settlement.

6 “(b) FINDINGS.—Congress finds that since the date
7 of the enactment of this Act, the following conditions now
8 persist with regard to implementation of the Settlement:

9 “(1) Millions of dollars of economic damages
10 have occurred due to seepage from rivers flows and
11 other impacts to third parties affected by the Settle-
12 ment and San Joaquin River Restoration Program
13 and such impacts will continue for the duration of
14 the Settlement and Restoration Program implemen-
15 tation.

16 “(2) Estimated costs of implementing the Set-
17 tlement have more than doubled from the initial esti-
18 mates for implementing the Settlement, from a high-
19 end estimate of \$800,000,000 to more than
20 \$1,700,000,000, due to unrealistic initial cost esti-
21 mates, additional, unanticipated cost increases re-
22 lated to damages to land from seepage and to infra-
23 structure from subsidence, and from increased con-
24 struction costs to complete channel improvements,
25 and other improvements not originally identified, but

1 anticipated in the Settlement as necessary to imple-
2 ment the Restoration Goal.

3 “(3) Achievement of the Settlement’s Water
4 Management Goal, to reduce or avoid water supply
5 impacts to Friant Division long-term contractors, in-
6 cluding the Friant-Kern Canal and Madera Canal
7 capacity restoration projects have not progressed
8 and are likely impossible given available and likely
9 future funding and regulatory constraints.

10 “(4) Implementation of the Settlement’s Res-
11 toration Goal has already fallen short of the sched-
12 ule agreed to by the Settling Parties and Congress,
13 which required the reintroduction of Spring-run and
14 Fall-run Chinook salmon in the river by December
15 31, 2012, and the majority of Paragraph 11 im-
16 provements construction to be complete by Decem-
17 ber 31, 2013, with the remainder of the paragraph
18 (11) improvements to be completed by December 31,
19 2016, neither of which deadlines have been met and
20 the Secretary has now made findings that such im-
21 provements will not be completed until 2030 at the
22 earliest and likely beyond that timeframe, which
23 schedule assumes full funding of the Restoration
24 Program, which has not occurred.

1 “(5) Catastrophic species declines in the Sac-
2 ramento-San Joaquin Delta and other changed con-
3 ditions have affected the Friant Division’s water
4 supply in ways unimagined during the time of the
5 Settlement’s signing, resulting in additional reduc-
6 tions in water supply for the Friant Division beyond
7 what was agreed to in the Settlement.

8 “(6) Recent scientific assessments of likely fu-
9 ture climate change suggest that no amount of addi-
10 tional flow in the San Joaquin River will sustain
11 Spring-run Chinook salmon, one of the target spe-
12 cies for maintaining a self-sustaining population
13 below Friant Dam.

14 “(7) In consideration of existing conditions, it
15 is not reasonable, prudent and feasible to implement
16 the Settlement as originally authorized.”.

17 (2) DEFINITIONS.—Section 10003 of the San
18 Joaquin River Restoration Settlement Act (Public
19 Law 111–11) is amended by adding at the end the
20 following:

21 “(4) The term ‘Exchange Contractors’ means
22 San Joaquin River Exchange Contractors Water Au-
23 thority, whose members are the Central California
24 Irrigation District, Columbia Canal Company, the

1 Firebaugh Canal Water District, and the San Luis
2 Canal Company.

3 “(5) The term ‘Governor’ means the Governor
4 of the State of California.

5 “(6) The term ‘Gravelly Ford’ means the Grav-
6 elly Ford gaging station in the San Joaquin River
7 located at approximately River Mile 230.

8 “(7) The term ‘Restoration Area’ means the
9 San Joaquin River between Friant Dam and the
10 Merced River confluence, and generally within 1,500
11 feet of the centerline of the river.

12 “(8) The term ‘Restoration Flow’ means the
13 hydrograph flows (as provided in paragraph 18 and
14 exhibit B of the Settlement), buffer flows of up to
15 10 percent of the applicable hydrograph flows, and
16 any additional water acquired by the Secretary of
17 the Interior from willing sellers to meet the Restora-
18 tion Goal of the Settlement.

19 “(9) The term ‘Restoration Fund’ means that
20 fund established by this part.

21 “(10) The term ‘Sack Dam’ means a low-head
22 earth and concrete structure with wooden flap gates
23 that diverts San Joaquin River flows into the Arroyo
24 Canal at approximately River Mile 182.1.

1 “(11) The term ‘Warm Water Fishery’ means
2 a water system that has an environment suitable for
3 species of fish other than salmon (including any sub-
4 species) and trout (including all subspecies).

5 “(12) The term ‘third party’ means the Ex-
6 change Contractors or any member thereof, current
7 or former members of the San Joaquin Tributaries
8 Authority, and current or former members of the
9 San Luis and Delta Mendota Water Authority.”;
10 and

11 (3) IMPLEMENTATION OF SETTLEMENT.—Sec-
12 tion 10004 of the San Joaquin River Restoration
13 Settlement Act (Public Law 111–11) is amended—

14 (A) in subsection (f), by striking “pursu-
15 ant to the Settlement and section 10011” and
16 inserting “or other species for any reason”;

17 (B) in subsection (g), by inserting “or the
18 implementation of the Settlement and the re-
19 introduction of California Central Valley Spring
20 Run Chinook salmon or any other species,”
21 after “nothing in this part”;

22 (C) in subsection (h)—

23 (i) in the header by striking “IN-
24 TERIM”;

25 (ii) in paragraph (1)—

1 (I) by striking “Interim Flows”
2 and inserting “Flows” each place it
3 appears;

4 (II) in subparagraph (C)(ii), by
5 inserting “which shall be imple-
6 mented” after “significant”; and

7 (III) in subparagraph (E), by
8 striking “as a result of the Interim
9 Flows” and inserting “or State laws
10 as a result of Flows.”; and

11 (iii) by striking paragraphs (2), (3),
12 and (4) and inserting the following:

13 “(2) CONDITIONS FOR RELEASE.—The Sec-
14 retary is authorized to release Flows—

15 “(A) if all improvements and mitigation
16 measures are completed or implemented, includ-
17 ing all actions necessary to mitigate impacts on
18 landowners, water agencies, and water users;
19 and

20 “(B) if such Flows will not exceed existing
21 downstream channel capacities.

22 “(3) SEEPAGE IMPACTS.—(A) The Secretary, in
23 implementing this Act, shall not cause material ad-
24 verse impacts to third parties. The Secretary shall
25 reduce Flows to the extent necessary to address any

1 material adverse impacts to third parties from
2 groundwater seepage or levee instability caused by
3 such flows identified based on the monitoring pro-
4 gram of the Secretary. Notwithstanding the fore-
5 going, the Secretary shall not directly or indirectly
6 cause groundwater to rise above 10 feet below
7 ground surface and shall provide at least 10 feet
8 below ground surface as a minimum threshold ele-
9 vation for groundwater beneath any fields where per-
10 manent or other deep rooted crops are grown, and
11 at least 6 feet below ground surface as a minimum
12 threshold elevation for groundwater beneath any
13 fields where annual or shallow rooted crops are
14 grown. These minimum thresholds shall be adjusted
15 yearly based upon information provided by individual
16 landowners regarding the minimum threshold that
17 they will need in order to grow their crop(s) that
18 year. If during the course of the year the landowner
19 informs the Secretary that detrimental seepage is
20 being experienced or is reasonably likely to occur de-
21 spite the adherence to the minimum threshold, the
22 Secretary shall reduce Restoration Flows to a vol-
23 ume sufficient to reduce seepage impacts by reduc-
24 ing the occurrence of groundwater to a non-dam-
25 aging level below ground surface.

1 “(B) If Flow reduction alone is not sufficient to
2 mitigate for seepage impacts the Secretary shall
3 mitigate by real estate transaction or installation of
4 physical measures, whichever option is requested by
5 the landowner.

6 “(C) Any water that seeps onto private prop-
7 erty shall thereupon become the property of that
8 landowner if the landowner takes control of the
9 water including by re-diverting it to the San Joaquin
10 River. If seepage water is returned to the San Joa-
11 quin River it shall meet applicable water quality re-
12 quirements.

13 “(4) TEMPORARY FISH BARRIER PROGRAM.—
14 Using funds otherwise available from the San Joa-
15 quin River Restoration Fund if necessary, the Sec-
16 retary is authorized to make improvements to the
17 Hills Ferry Barrier or any replacement thereof in
18 order to prevent upstream migration of any pro-
19 tected species to the restoration area. The Secretary
20 is further authorized to work with the California De-
21 partment of Fish and Wildlife for the improvement
22 or replacement of the Hills Ferry Barrier in order
23 to prevent the upstream migration of any protected
24 species. If third parties south of the confluence with
25 the Merced River are required to install their screens

1 or fish bypass facilities in order to comply with the
2 Endangered Species Act of 1973, the Secretary shall
3 bear the costs of such screens or facilities, except to
4 the extent that such costs are already or are further
5 willingly borne by the State of California or by the
6 third parties. Expenditures by Reclamation are non-
7 reimbursable. Any protected species recovered at the
8 Hills Ferry Barrier or in the Restoration Area or
9 any river or false pathways thereto that is to be relo-
10 cated outside of the Restoration Area shall only be
11 relocated to an area where there is an established
12 self-sustaining population of that same genotype or
13 phenotype.”; and

14 (D) by amending subsection (j) to read as
15 follows:

16 “(j) SAN JOAQUIN RIVER EXCHANGE CONTRACT AND
17 RELATED.—Subject to section 10006(b), nothing in this
18 part shall modify or amend the rights and obligations
19 under the Purchase Contract between Miller and Lux and
20 the United States including without exclusion of others,
21 any right to enforce the power contracts identified in the
22 Purchase Contract, the Second Amended Exchange Con-
23 tract between the United States, Department of the Inte-
24 rior Bureau of Reclamation and Central California Irriga-
25 tion District, San Luis Canal Company, Firebaugh Canal

1 Water District, and Columbia Canal Company. Prior to
2 releasing any restoration flow, the Secretary shall deter-
3 mine that such release will not affect its contractual obli-
4 gations to the Exchange Contractors.”.

5 (4) ACQUISITION OF PROPERTY.—Section
6 10005 of the San Joaquin River Restoration Settle-
7 ment Act (Public Law 111–11) is amended by strik-
8 ing subsections (b) and (c) and inserting the fol-
9 lowing:

10 “(b) ACQUISITION OF PROPERTY.—The Secretary is
11 authorized to acquire property solely through purchase
12 from willing sellers any property, interests in property, or
13 options to acquire real property needed to implement the
14 Settlement authorized by this part. The Secretary shall
15 not acquire property through the exercise of eminent do-
16 main unless the owner of said property does not object
17 to an eminent domain action.

18 “(c) DISPOSAL OF PROPERTY.—Any property or in-
19 terests therein acquired by the Secretary and for which
20 the Secretary determines that the property or interest
21 therein is no longer needed to be held by the United States
22 for the furtherance of the Settlement, shall be first offered
23 for repurchase to the prior owner of the property from
24 whom the United States acquired the property and at the
25 same price for which the United States acquired the prop-

1 erty unless it is demonstrated that the property has de-
2 creased in value in which case the Secretary shall sell the
3 property back to the prior owner at the decreased price.
4 If the prior owner does not want the property, the Sec-
5 retary shall sell the property on the open market.”.

6 (5) COMPLIANCE WITH APPLICABLE LAW.—Sec-
7 tion 10006 of the San Joaquin River Restoration
8 Settlement Act (Public Law 111–11) is amended—

9 (A) in subsection (a)—

10 (i) in paragraph (1), by striking “as
11 necessary” and inserting “as necessary, as
12 provided for in this part and in a manner
13 that does not conflict with the intent of
14 Congress as expressed in this title which
15 intent shall be afforded the greatest def-
16 erence and any difference or ambiguity
17 shall be resolved in favor of said intent”
18 before the period at the end; and

19 (ii) in paragraph (2), by adding at the
20 end the following: “Any statutory exemp-
21 tions from conducting environmental re-
22 view or consultation are not applicable.”;

23 (B) in subsection (b)—

1 (i) by striking “Nothing” and insert-
2 ing “Except as provided in subsection (e)
3 below, nothing”; and

4 (ii) by striking “State law.” and in-
5 sserting “State law, except as otherwise
6 provided for herein or would conflict with
7 achieving the purposes or intent of this
8 title.”; and

9 (C) by adding at the end the following:

10 “(e) IN GENERAL.—Sections 5930 through 5948 of
11 the California Fish and Game Code and all applicable
12 Federal laws, including this part, as amended by the Gain-
13 ing Responsibility on Water Act of 2017, and the Stipula-
14 tion of Settlement (Natural Resources Defense Council,
15 et al. v. Kirk Rodgers, et al., Eastern District of Cali-
16 fornia, No. Civ. S–88–1658—LKK/GGH), shall be satis-
17 fied by implementation of the Settlement as provided in
18 section 10014(b) or the plan provided in section 10014(a)
19 of the Gaining Responsibility on Water Act of 2017.

20 “(f) COMPLIANCE WITH EXISTING FRIANT DIVISION
21 CONTRACTS.—Congress hereby finds and declares that
22 compliance with the provisions of this Act by Friant Divi-
23 sion Contractors shall fulfill all requirements for compli-
24 ance with this part, contained in contracts between the
25 Secretary and Friant Division Contractors.”.

1 (6) NO PRIVATE RIGHT OF ACTION.—Section
2 10008(a) of the San Joaquin River Restoration Set-
3 tlement Act (Public Law 111–11) is amended by
4 striking “the Settlement” and inserting “the Settle-
5 ment or a third party”.

6 (7) SETTLEMENT FUND.—Section 10009 of the
7 San Joaquin River Restoration Settlement Act (Pub-
8 lic Law 111–11) is amended—

9 (A) in subsection (a), by amending para-
10 graph (3) to read as follows:

11 “(3) LIMITATION.—Except as provided in the
12 Settlement, to the extent that costs incurred solely
13 to implement this Settlement would not otherwise
14 have been incurred by any entity or public or local
15 agency or subdivision of the State of California, such
16 costs shall not be borne by any such entity, agency,
17 or subdivision of the State of California, unless such
18 costs are incurred on a voluntary basis. Any appro-
19 priations by Congress to implement this part shall
20 be on the basis of line item authorizations and ap-
21 propriations and shall not be part of the pro-
22 grammatic funding for the Secretary or the Bureau
23 of Reclamation.”; and

24 (B) by striking subsection (f) and inserting
25 the following:

1 “(f) REACH 4B.—No Restoration Flows released
2 shall be routed through section 4B of the San Joaquin
3 River. The Secretary shall seek to make use of modified
4 and/or existing conveyance facilities such as flood control
5 channels in order to provide conveyance for the restoration
6 flows. Congress finds that such use of multi-use facilities
7 is more economical and cost-effective than seeking to re-
8 store certain sections of the San Joaquin River. The Sec-
9 retary shall provide non-reimbursable funding for the in-
10 cremental increase in maintenance costs for use of the
11 flood control channels.

12 “(g) NO IMPACT ON WATER SUPPLIES.—Re-intro-
13 duction or migration of species to the San Joaquin River
14 upstream of the confluence with the Merced River made
15 possible by or aided by the existence of restoration flows
16 or any improvements to the river made hereunder shall
17 not result in water supply reductions, additional storage
18 releases, or bypass flows on unwilling third parties due
19 to such re-introduction.

20 “(h) NO TRANSFERENCE OF LIABILITY.—Congress
21 finds that the Federal interest in the restoration of the
22 San Joaquin River upstream of the confluence with the
23 Merced River has been satisfied with regard to the devel-
24 opment of the Friant Division, Delta Mendota canal, the
25 continued performance of and compliance with the terms

1 of agreements of the United States to purchase water
2 rights and for exchange of water, its Agreements with the
3 entities that comprise the Exchange Contractors to deliver
4 their water rights in the San Joaquin River pursuant to
5 the terms of the agreements. The enactment of the San
6 Joaquin River Restoration Settlement Act, together with
7 findings in this legislation including the Settling Parties
8 and agencies of the State of California tried to implement
9 the Restoration Program for ten years and the Bureau
10 of Reclamation has stated it will take at least another 15
11 years to implement assuming full funding is provided, even
12 though that full funding has never been provided since the
13 Settlement was executed or the Restoration Act enacted,
14 and that absent implementation of that funding, there is
15 no possibility of establishing a viable self-sustaining
16 salmonid population and the restoration of the upper San
17 Joaquin River has proven infeasible on terms originally
18 conceived by the parties to the Settlement and Congress
19 in the Restoration Act. Therefore, notwithstanding that
20 the United States and water users and agencies within the
21 Friant Division are released of any existing or future obli-
22 gations with regard to the Restoration Program, or any
23 similar program, no responsibility for achieving the goals
24 of the Restoration Program, including the provision of
25 flows and the re-introduction of salmon, or other fish spe-

1 cies to the San Joaquin River, shall be imposed on the
2 United States, upon the Exchange Contractors or any of
3 its members nor shall the rights to delivery of water re-
4 served to the Exchange Contractors by any agency of the
5 United States or the State of California be abridged or
6 impaired.

7 “(i) ABSENCE OF AGREEMENT.—In the absence of
8 an agreement with Friant Division long-term contractors,
9 in the event the State of California, acting through the
10 State Water Resources Control Board or otherwise, or any
11 other party requires the flow of the San Joaquin River
12 below Friant Dam to exceed the amounts stated in Exhibit
13 B of the Settlement, then the authorization to implement
14 the Settlement as provided in this Act shall terminate and
15 the Secretary of the Interior shall cease any action to im-
16 plement this part and the Stipulation of Settlement (Nat-
17 ural Resources Defense Council, et al. v. Kirk Rodgers,
18 et al., Eastern District of California, No. Civ-S–88–1658
19 LLK/GGH); provided, further, the Secretary shall also
20 cease to collect or expend any funds from the San Joaquin
21 River Restoration Fund.”.

22 (b) REVIEW AND DETERMINATION.—San Joaquin
23 River Restoration Settlement Act (Public Law 111–11 et
24 seq.) is amended by adding at the end the following:

1 **“SEC. 10012. REVIEW AND DETERMINATION.**

2 “(a) DETERMINATION REQUIRED.—The Governor
3 and the Secretary, shall determine, in consideration of the
4 overall public interest of both the State of California and
5 the Nation, if it is reasonable, prudent, and feasible to
6 implement the Settlement as provided in section 10014(b)
7 and shall submit a joint report to Congress not later than
8 1 year after the date of the enactment of this Act, stating
9 their findings and recommended action, including—

10 “(1) financial considerations;

11 “(2) available scientific evidence;

12 “(3) water temperature in the lower reaches of
13 the upper San Joaquin River; and

14 “(4) alternative uses for the funds required to
15 implement the Settlement.

16 “(b) ABSENCE OF TIMELY DETERMINATION.—If the
17 Governor and the Secretary, do not provide a joint rec-
18 ommendation within the time specified in subsection (a),
19 then it shall be deemed that implementing the Settlement
20 consistent with section 10014(b) is not reasonable, pru-
21 dent, and feasible, and the Secretary shall proceed to im-
22 plement the Settlement consistent with section 10014(a).

23 **“SEC. 10013. INTERIM OPERATIONS.**

24 “Beginning on the date of the enactment of the Gain-
25 ing Responsibility on Water Act of 2017 and continuing
26 until a determination and final plan has been developed

1 and approved by the Secretary and Governor as provided
2 under section 10014(b), and if applicable, the warm water
3 fishery plan developed under section 10014(a), the Sec-
4 retary shall only take the following actions to implement
5 the Settlement according to the this Act:

6 “(1) Implementation of the Restoration Goal
7 and the Water Management Goal of the Settlement
8 only to the extent consistent with section 10014(b).

9 “(2) No Restoration Flow releases shall be per-
10 mitted on the San Joaquin River downstream of
11 Sack Dam to the confluence with the Merced River.

12 “(3) No salmonids shall be placed into or al-
13 lowed to migrate to the Restoration Area. If any
14 salmonids are caught at the Hills Ferry Barrier,
15 they shall be salvaged to the extent feasible and re-
16 turned to an area where there is a viable sustainable
17 salmonid population of substantially the same geno-
18 type or phenotype.

19 “(4) Implementation of a plan to recirculate,
20 recapture, reuse, exchange and transfer Restoration
21 Flows for the purpose of reducing or avoiding im-
22 pacts to water deliveries to all Friant Division long-
23 term contractors caused by the Restoration Flows ,
24 to the greatest extent feasible.

1 **“SEC. 10014. ALTERNATE LONG-TERM ACTIONS.**

2 “(a) GRAVELLY FORD—WARM WATER FISHERY.—

3 “(1) If it is determined under section 10012(a)
4 that the Settlement should not be implemented as
5 provided in subsection (b), then not later than 1
6 year after such determination, the Secretary and the
7 Governor shall develop and approve a reasonable,
8 prudent, and feasible plan for maintaining a warm
9 water fishery on the San Joaquin River below Friant
10 Dam, but upstream of Gravelly Ford, consistent
11 with the following:

12 “(A) No water shall be released into the
13 San Joaquin River for fishery purposes down-
14 stream of Gravelly Ford.

15 “(B) Existing and future contributions to
16 the Restoration Fund shall be expended for the
17 purposes of—

18 “(i) warm water fishery improvements
19 within the San Joaquin River channel up-
20 stream of Gravelly Ford; and

21 “(ii) water and fishery improvements
22 in the San Joaquin River channel down-
23 stream of the confluence with the Merced
24 River and other areas for benefit of fall
25 run salmon.

1 “(C) The Secretary shall establish a fund
2 to be jointly administered by the Friant Water
3 Authority, Exchange Contractors, San Joaquin
4 Tributaries Authority, and San Luis Delta
5 Mendota Water Authority to fund restoration
6 actions along the San Joaquin River and its
7 tributaries that achieve water quality objectives
8 for the protection of fish and wildlife. The Sec-
9 retary shall transfer the following into the fund:

10 “(i) All funds in the San Joaquin
11 River Restoration Fund authorized by this
12 part.

13 “(ii) All future payments by Friant
14 Division long-term contractors pursuant to
15 section 3406(c)(1) of the Reclamation
16 Projects, Authorization and Adjustment
17 Act of 1992 (Public Law 102–575; 106
18 Stat. 4721) as provided in the Settlement.

19 “(D) In the absence of an agreement with
20 Friant Division long-term contractors, in the
21 event the State of California, acting through
22 the State Water Resources Control Board or
23 otherwise, or any other party requires the flow
24 of the San Joaquin River to continue below

1 Gravelly Ford for fish and wildlife purposes
2 then—

3 “(i) all funding specified for transfer
4 under this subsection shall cease, and any
5 funds remaining in the San Joaquin River
6 Basin Restoration Fund shall be trans-
7 ferred to the Friant Water Authority for
8 implementing conveyance improvements on
9 the Friant Kern Canal and Madera Canal
10 to mitigate for subsidence impacts since
11 their original construction; and

12 “(ii) the authorization to implement
13 the Settlement as provided in this part, as
14 amended by the Gaining Responsibility on
15 Water Act of 2017, shall terminate and
16 the Secretary shall cease any action to im-
17 plement this part and the Stipulation of
18 Settlement (Natural Resources Defense
19 Council, et al. v. Kirk Rodgers, et al.,
20 Eastern District of California, No. Civ-S-
21 88-1658 LLK/GGH); provided, further,
22 the Secretary shall also cease to collect or
23 expend any funds from the San Joaquin
24 River Restoration Fund.

1 “(b) CONTINUED IMPLEMENTATION.—If, in the deci-
2 sion required by section 10012(a), it is determined that
3 the Settlement should continue to be implemented as pro-
4 vided in section 10014(b), then the following terms are
5 required for Continued Implementation of Settlement and
6 no funds shall be expended to implement the Settlement
7 other than as provided for herein:

8 “(1) IMPROVEMENTS.—The improvements de-
9 scribed in paragraph (11) of the Settlement and any
10 additional improvements identified in the Frame-
11 work for Implementation published in 2015 and any
12 successors thereto shall be completed before any
13 Restoration Flows are released to the San Joaquin
14 River.

15 “(2) PRIORITY PROJECTS.—The improvements
16 shall be constructed in the following order:

17 “(A) Mendota Pool bypass and fish screen.

18 “(B) Arroyo Canal fish screen and Sack
19 Dam fish passage facilities.

20 “(C) Seepage mitigation actions to allow
21 Restoration Flows of up to 4500 CFS such that
22 there will be no involuntarily incurred damage
23 to private property and no damage to levees.

24 “(3) OTHER IMPROVEMENTS.—The remainder
25 of the Improvements shall be constructed in an

1 order deemed appropriate by the Secretary after the
2 foregoing projects are completed.

3 “(4) CONSTRUCTION ASSISTANCE.—If agreed to
4 by the Exchange Contractors or any of its members,
5 the Secretary shall enter into an agreement with the
6 Exchange Contractors or any of its members to as-
7 sume construction responsibility from initial design
8 through completion of such improvements as the Ex-
9 change Contractors or any of its members may agree
10 to, provided that the Secretary shall retain financial
11 responsibility for such improvements and shall reim-
12 burse the Exchange Contractors or any of its mem-
13 bers for costs incurred by them and their contrac-
14 tors, if any, expended in the construction of the im-
15 provements. The Secretary shall enter into a con-
16 struction agreement with the Exchange Contractors
17 or its members, as applicable, and subject to their
18 approval, consistent with the terms of this title.

19 “(5) TECHNICAL ADVISORY COMMITTEE AND
20 RESTORATION ADMINISTRATOR.—The Secretary
21 shall add to the Technical Advisory Committee
22 (TAC), established pursuant to the Settlement, one
23 representative from the Exchange Contractors and
24 one representative from the San Luis & Delta-
25 Mendota Water Authority. Any decisions and/or rec-

1 ommendations made by the Restoration Adminis-
2 trator shall be first discussed with the TAC and
3 made on the basis of consensus to maximum extent
4 possible. Any recommendations made by the Res-
5 toration Administrator are advisory only, shall be in
6 writing, shall include references to the science relied
7 on and specify the benefits to fish in the river, and
8 include the level of consensus reached by the TAC.
9 The Secretary's final decision on any action, includ-
10 ing flows, can deviate from the Restoration Adminis-
11 trator's recommendation provided that the Sec-
12 retary's final decision is based upon sound and ob-
13 jective science, and is otherwise consistent with this
14 title.

15 “(6) RESTORATION FLOWS.—The appropriate
16 level of Restoration Flows under any circumstance
17 shall be no greater than that set forth in the
18 hydrographs attached as exhibit B to the Settle-
19 ment, and shall be no greater than the real-time
20 fishery needs required to meet the Restoration Goal.
21 The Secretary shall make the final decision as to the
22 appropriate level of Restoration Flows and other ac-
23 tions regarding implementation of the Restoration
24 Program. The appropriate level of Restoration Flows
25 shall at a minimum not exceed channel capacity,

1 cause seepage damage, or be inconsistent with any
2 other requirements in this section. The Secretary's
3 decisions and those of the Secretary of Commerce
4 shall be fully supported by the best commercial and
5 scientific information available, shall be made in an
6 open and transparent manner, and shall be based on
7 objective information capable of replication.

8 “(7) FISH REINTRODUCTION.—No fishery shall
9 be introduced or placed for any reason in to the San
10 Joaquin River upstream of the Merced River, until
11 Reclamation has released Restoration Flows down
12 the San Joaquin River in each hydrologic year type:
13 wet, above normal, below normal, dry, and critically
14 dry and determined that the improvements are fully
15 functional and that seepage impacts have been fully
16 mitigated. At least 180 days before the introduction
17 of spring run Chinook salmon the Bureau of Rec-
18 lamation shall submit a report to Congress that pro-
19 vides a critical examination of the impact of Res-
20 toration Flows on seepage and the improvements,
21 and the likelihood of success in restoring a salmon
22 fishery that is viable, sustainable and capable of voli-
23 tional passage.

24 “(8) PROTECTED SPECIES.—Any protected spe-
25 cies migrating into the Restoration Area shall be

1 deemed to be a nonessential experimental popu-
2 lation. Congress finds that due to human-caused
3 physical changes to the pathways of the San Joaquin
4 River upstream of the confluence of the Merced
5 River the San Joaquin River is deemed a distinct
6 and separate geographic area and no agency shall
7 take any action pursuant to any authority or re-
8 quirement of the Endangered Species Act of 1973
9 (16 U.S.C. 1531 et seq.) or any other Federal or
10 State species protection law that will have an ad-
11 verse impact on landowners or water agencies within
12 the Restoration Area unless such impacts are in-
13 curred on a voluntary basis.

14 “(9) SUBSIDENCE.—Prior to implementing any
15 other actions, the Secretary shall work with local
16 water districts and landowners to ensure the actions
17 include appropriate solutions to past and likely fu-
18 ture subsidence. Without resolution to the subsid-
19 ence issue, the improvements described in the Settle-
20 ment and the San Joaquin River and/or the flood
21 control system will continue to be irreparability dam-
22 aged. Any costs incurred by the Secretary, including
23 but not limited to acquisition of property from will-
24 ing sellers shall be non-reimbursable.

1 “(10) FULL FUNDING.—Prior to commencing
2 construction of any Improvement, the Secretary
3 shall approve a funding plan that demonstrates that
4 the United States has obtained all authorizations for
5 appropriations combined with other authorized and
6 reasonably foreseeable funding sources necessary for
7 the orderly completion of all improvements described
8 in paragraph (11) of the Settlement and any addi-
9 tional improvements identified in the Framework for
10 Implementation published in 2015, including any
11 amendments thereto.

12 “(11) MITIGATION OF IMPACTS.—Prior to the
13 implementation of decisions or agreements to con-
14 struct, improve, operate, or maintain Improvements,
15 or facilities that the Secretary determines are needed
16 to implement the Settlement, the Secretary shall—

17 “(A) identify the impacts associated with
18 such actions;

19 “(B) identify the actions that the Sec-
20 retary must implement to mitigate any impacts
21 on water users and landowners in the Restora-
22 tion Area; and

23 “(C) shall implement all of the mitigation
24 actions so as to eliminate or reduce to an im-

1 material effect any adverse impacts on water
2 users and landowners.”.

3 **TITLE II—CALFED STORAGE**
4 **FEASIBILITY STUDIES**

5 **SEC. 201. STUDIES.**

6 The Secretary of the Interior, through the Commis-
7 sioner of Reclamation, shall—

8 (1) complete the feasibility studies described in
9 clauses (i)(I) and (ii)(II) of section 103(d)(1)(A) of
10 Public Law 108–361 (118 Stat. 1684) and submit
11 such studies to the appropriate committees of the
12 House of Representatives and the Senate not later
13 than November 30, 2018;

14 (2) complete the feasibility study described in
15 clause (i)(II) of section 103(d)(1)(A) of Public Law
16 108–361 and submit such study to the appropriate
17 committees of the House of Representatives and the
18 Senate not later than November 30, 2018;

19 (3) complete a publicly available draft of the
20 feasibility study described in clause (ii)(I) of section
21 103(d)(1)(A) of Public Law 108–361 and submit
22 such study to the appropriate committees of the
23 House of Representatives and the Senate not later
24 than November 30, 2018;

1 (4) complete the feasibility study described in
2 clause (ii)(I) of section 103(d)(1)(A) of Public Law
3 108–361 and submit such study to the appropriate
4 committees of the House of Representatives and the
5 Senate not later than November 30, 2019;

6 (5) complete the feasibility study described in
7 section 103(f)(1)(A) of Public Law 108–361 (118
8 Stat. 1694) and submit such study to the appro-
9 priate committees of the House of Representatives
10 and the Senate not later than December 31, 2019;

11 (6) in conducting any feasibility study under
12 this Act, the reclamation laws, the Central Valley
13 Project Improvement Act (title XXXIV of Public
14 Law 102–575; 106 Stat. 4706), the Fish and Wild-
15 life Coordination Act (16 U.S.C. 661 et seq.), the
16 Endangered Species Act of 1973 (16 U.S.C. 1531 et
17 seq.), and other applicable law, for the purposes of
18 determining feasibility the Secretary shall document,
19 delineate, and publish costs directly relating to the
20 engineering and construction of a water storage
21 project separately from the costs resulting from reg-
22 ulatory compliance or the construction of auxiliary
23 facilities necessary to achieve regulatory compliance;
24 and

1 (7) communicate, coordinate and cooperate with
2 public water agencies that contract with the United
3 States for Central Valley Project water and that are
4 expected to participate in the cost pools that will be
5 created for the projects proposed in the feasibility
6 studies under this section.

7 **SEC. 202. TEMPERANCE FLAT.**

8 (a) DEFINITIONS.—For the purposes of this section:

9 (1) PROJECT.—The term “Project” means the
10 Temperance Flat Reservoir Project on the Upper
11 San Joaquin River.

12 (2) RMP.—The term “RMP” means the docu-
13 ment titled “Bakersfield Field Office, Record of De-
14 cision and Approved Resource Management Plan”,
15 dated December 2014.

16 (3) SECRETARY.—The term “Secretary” means
17 the Secretary of the Interior.

18 (b) APPLICABILITY OF RMP.—The RMP and find-
19 ings related thereto shall have no effect on or applicability
20 to the Secretary’s determination of feasibility of, or on any
21 findings or environmental review documents related to—

22 (1) the Project; or

23 (2) actions taken by the Secretary pursuant to
24 section 103(d)(1)(A)(ii)(II) of the Bay-Delta Au-
25 thorization Act (title I of Public Law 108–361).

1 (c) DUTIES OF SECRETARY UPON DETERMINATION
2 OF FEASIBILITY.—If the Secretary finds the Project to
3 be feasible, the Secretary shall manage the land rec-
4 ommended in the RMP for designation under the Wild and
5 Scenic Rivers Act (16 U.S.C. 1271 et seq.) in a manner
6 that does not impede any environmental reviews,
7 preconstruction, construction, or other activities of the
8 Project, regardless of whether or not the Secretary sub-
9 mits any official recommendation to Congress under the
10 Wild and Scenic Rivers Act.

11 (d) RESERVED WATER RIGHTS.—Effective Decem-
12 ber 22, 2017, there shall be no Federal reserved water
13 rights to any segment of the San Joaquin River related
14 to the Project as a result of any designation made under
15 the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.).

16 **SEC. 203. WATER STORAGE PROJECT CONSTRUCTION.**

17 The Secretary of the Interior, acting through the
18 Commissioner of the Bureau of Reclamation, may partner
19 or enter into an agreement on the water storage projects
20 identified in section 103(d)(1) of the Water Supply Reli-
21 ability and Environmental Improvement Act (Public Law
22 108–361) (and Acts supplemental and amendatory to the
23 Act) with local joint powers authorities formed pursuant
24 to State law by irrigation districts and other local water

1 districts and local governments within the applicable hydrologic region, to advance those projects.

3 **SEC. 204. GEOPHYSICAL SURVEY.**

4 The Bureau of Reclamation, in cooperation with the
5 United States Geological Survey, the State of California,
6 and local and State water agencies, may conduct detailed
7 geophysical characterization activities of subsurface aquifer systems and groundwater vulnerability in California,
8 which has experienced a critical, multi-year drought that
9 resulted in severe groundwater overdraft in some areas,
10 followed by less than optimal recharge from the heavy
11 rainstorms and flooding during the 2016–2017 winter season. This geophysical survey should include data pertaining to the following:

15 (1) Subsurface system framework: occurrence
16 and geometry of aquifer and non-aquifer zones.

17 (2) Aquifer storage and transmission characteristics.

18 (3) Areas of greatest recharge potential.

20 **SEC. 205. HEADWATER-RESTORATION SCOPING STUDY.**

21 The Bureau of Reclamation may partner with academia, specifically the University of California, and State
22 and local water agencies, to develop a study to enhance
23 mountain runoff to Central Valley Project reservoirs from
24 headwater restoration with the following aims:

1 (1) Estimate forest biomass density and annual
2 evapotranspiration (ET) across the Shasta Lake wa-
3 tershed for the past decade using satellite and other
4 available spatial data.

5 (2) Identify areas on public and private land
6 that have high biomass densities and ET, and assess
7 potential changes in ET that would ensue from for-
8 est restoration.

9 (3) Assess role of subsurface storage in pro-
10 viding drought resilience of forests, based on long-
11 term historical estimates of precipitation, drought
12 severity and stream discharge.

13 (4) Assess role of snowpack in annual water
14 balance across the watersheds.

15 **TITLE III—WATER RIGHTS** 16 **PROTECTIONS**

17 **SEC. 301. OFFSET FOR STATE WATER PROJECT.**

18 (a) IMPLEMENTATION IMPACTS.—The Secretary of
19 the Interior shall confer with the California Department
20 of Fish and Wildlife in connection with the implementa-
21 tion of this title on potential impacts to any consistency
22 determination for operations of the State Water Project
23 issued pursuant to California Fish and Game Code section
24 2080.1.

1 (b) ADDITIONAL YIELD.—If, as a result of the appli-
2 cation of this title, the California Department of Fish and
3 Wildlife—

4 (1) revokes the consistency determinations pur-
5 suant to California Fish and Game Code section
6 2080.1 that are applicable to the State Water
7 Project;

8 (2) amends or issues one or more new consist-
9 ency determinations pursuant to California Fish and
10 Game Code section 2080.1 in a manner that directly
11 or indirectly results in reduced water supply to the
12 State Water Project as compared with the water
13 supply available under the smelt biological opinion
14 and the salmonid biological opinion; or

15 (3) requires take authorization under California
16 Fish and Game Code section 2081 for operation of
17 the State Water Project in a manner that directly or
18 indirectly results in reduced water supply to the
19 State Water Project as compared with the water
20 supply available under the smelt biological opinion
21 and the salmonid biological opinion, and as a con-
22 sequence of the Department’s action, Central Valley
23 Project yield is greater than it would have been ab-
24 sent the Department’s actions, then that additional
25 yield shall be made available to the State Water

1 Project for delivery to State Water Project contrac-
2 tors to offset losses resulting from the Department's
3 action.

4 (c) NOTIFICATION RELATED TO ENVIRONMENTAL
5 PROTECTIONS.—The Secretary of the Interior shall imme-
6 diately notify the Director of the California Department
7 of Fish and Wildlife in writing if the Secretary of the Inte-
8 rior determines that implementation of the smelt biological
9 opinion and the salmonid biological opinion consistent with
10 this title reduces environmental protections for any species
11 covered by the opinions.

12 **SEC. 302. AREA OF ORIGIN PROTECTIONS.**

13 (a) IN GENERAL.—The Secretary of the Interior is
14 directed, in the operation of the Central Valley Project,
15 to adhere to California's water rights laws governing water
16 rights priorities and to honor water rights senior to those
17 held by the United States for operation of the Central Val-
18 ley Project, regardless of the source of priority, including
19 any appropriative water rights initiated prior to December
20 19, 1914, as well as water rights and other priorities per-
21 fected or to be perfected pursuant to California Water
22 Code Part 2 of Division 2. Article 1.7 (commencing with
23 section 1215 of chapter 1 of part 2 of division 2, sections
24 10505, 10505.5, 11128, 11460, 11461, 11462, and
25 11463, and sections 12200 through 12220, inclusive).

1 (b) DIVERSIONS.—Any action undertaken by the Sec-
2 retary of the Interior and the Secretary of Commerce pur-
3 suant to both this title and section 7 of the Endangered
4 Species Act of 1973 (16 U.S.C. 1531 et seq.) that requires
5 that diversions from the Sacramento River or the San Joa-
6 quin River watersheds upstream of the Delta be bypassed
7 shall not be undertaken in a manner that alters the water
8 rights priorities established by California law.

9 **SEC. 303. NO REDIRECTED ADVERSE IMPACTS.**

10 (a) IN GENERAL.—The Secretary of the Interior shall
11 ensure that, except as otherwise provided for in a water
12 service or repayment contract, actions taken in compliance
13 with legal obligations imposed pursuant to or as a result
14 of this title, including such actions under section 7 of the
15 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
16 and other applicable Federal and State laws, shall not di-
17 rectly or indirectly—

18 (1) result in the involuntary reduction of water
19 supply or fiscal impacts to individuals or districts
20 who receive water from either the State Water
21 Project or the United States under water rights set-
22 tlement contracts, exchange contracts, water service
23 contracts, repayment contracts, or water supply con-
24 tracts; or

1 (2) cause redirected adverse water supply or fis-
2 cal impacts to those within the Sacramento River
3 watershed, the San Joaquin River watershed or the
4 State Water Project service area.

5 (b) COSTS.—To the extent that costs are incurred
6 solely pursuant to or as a result of this title and would
7 not otherwise have been incurred by any entity or public
8 or local agency or subdivision of the State of California,
9 such costs shall not be borne by any such entity, agency,
10 or subdivision of the State of California, unless such costs
11 are incurred on a voluntary basis.

12 (c) RIGHTS AND OBLIGATIONS NOT MODIFIED OR
13 AMENDED.—Nothing in this title shall modify or amend
14 the rights and obligations of the parties to any existing—

15 (1) water service, repayment, settlement, pur-
16 chase, or exchange contract with the United States,
17 including the obligation to satisfy exchange contracts
18 and settlement contracts prior to the allocation of
19 any other Central Valley Project water; or

20 (2) State Water Project water supply or settle-
21 ment contract with the State.

22 **SEC. 304. ALLOCATIONS FOR SACRAMENTO VALLEY CON-**
23 **TRACTORS.**

24 (a) ALLOCATIONS.—

1 (1) IN GENERAL.—Subject to paragraph (2)
2 and subsection (b), the Secretary of the Interior is
3 directed, in the operation of the Central Valley
4 Project, to allocate water provided for irrigation pur-
5 poses to existing Central Valley Project agricultural
6 water service contractors within the Sacramento
7 River Watershed in compliance with the following:

8 (A) Not less than 100 percent of their con-
9 tract quantities in a “Wet” year.

10 (B) Not less than 100 percent of their con-
11 tract quantities in an “Above Normal” year.

12 (C) Not less than 100 percent of their con-
13 tract quantities in a “Below Normal” year that
14 is preceded by an “Above Normal” or a “Wet”
15 year.

16 (D) Not less than 50 percent of their con-
17 tract quantities in a “Dry” year that is pre-
18 ceded by a “Below Normal”, an “Above Nor-
19 mal”, or a “Wet” year.

20 (E) In all other years not identified herein,
21 the allocation percentage for existing Central
22 Valley Project agricultural water service con-
23 tractors within the Sacramento River Water-
24 shed shall not be less than twice the allocation
25 percentage to south-of-Delta Central Valley

1 Project agricultural water service contractors,
2 up to 100 percent; provided, that nothing here-
3 in shall preclude an allocation to existing Cen-
4 tral Valley Project agricultural water service
5 contractors within the Sacramento River Water-
6 shed that is greater than twice the allocation
7 percentage to south-of-Delta Central Valley
8 Project agricultural water service contractors.

9 (2) CONDITIONS.—The Secretary’s actions
10 under paragraph (1) shall be subject to—

11 (A) the priority of individuals or entities
12 with Sacramento River water rights, including
13 those with Sacramento River Settlement Con-
14 tracts, that have priority to the diversion and
15 use of Sacramento River water over water
16 rights held by the United States for operations
17 of the Central Valley Project;

18 (B) the United States obligation to make
19 a substitute supply of water available to the
20 San Joaquin River Exchange Contractors; and

21 (C) the Secretary’s obligation to make
22 water available to managed wetlands pursuant
23 to section 3406(d) of the Central Valley Project
24 Improvement Act (Public Law 102–575).

1 (b) PROTECTION OF MUNICIPAL AND INDUSTRIAL
2 SUPPLIES.—Nothing in subsection (a) shall be deemed
3 to—

4 (1) modify any provision of a water service con-
5 tract that addresses municipal and industrial water
6 shortage policies of the Secretary;

7 (2) affect or limit the authority of the Secretary
8 to adopt or modify municipal and industrial water
9 shortage policies;

10 (3) affect or limit the authority of the Secretary
11 to implement municipal and industrial water short-
12 age policies; or

13 (4) affect allocations to Central Valley Project
14 municipal and industrial contractors pursuant to
15 such policies.

16 Neither subsection (a) nor the Secretary's implementation
17 of subsection (a) shall constrain, govern, or affect, di-
18 rectly, the operations of the Central Valley Project's
19 American River Division or any deliveries from that Divi-
20 sion, its units or facilities.

21 (c) NO EFFECT ON ALLOCATIONS.—This section
22 shall not—

23 (1) affect the allocation of water to Friant Divi-
24 sion contractors; or

1 (2) result in the involuntary reduction in con-
2 tract water allocations to individuals or entities with
3 contracts to receive water from the Friant Division.

4 (d) PROGRAM FOR WATER RESCHEDULING.—The
5 Secretary of the Interior shall develop and implement a
6 program, not later than 1 year after the date of the enact-
7 ment of this Act, to provide the opportunity for individuals
8 or districts that receive Central Valley Project Water
9 under water service or repayment contracts or water
10 rights settlement contracts within the American River,
11 Sacramento River, Shasta and Trinity River Divisions to
12 reschedule water, provided for under their Central Valley
13 Project water service, repayment or settlement contracts,
14 within the same year or from one year to the next.

15 (e) DEFINITION.—In this section, the year type terms
16 used in subsection (a) have the meaning given those year
17 types in the Sacramento Valley Water Year Type (40–30–
18 30) Index.

19 **SEC. 305. EFFECT ON EXISTING OBLIGATIONS.**

20 Nothing in this title preempts or modifies any exist-
21 ing obligation of the United States under Federal reclama-
22 tion law to operate the Central Valley Project in con-
23 formity with State law, including established water rights
24 priorities.

1 **TITLE IV—MISCELLANEOUS**

2 **SEC. 401. WATER SUPPLY ACCOUNTING.**

3 (a) IN GENERAL.—All Central Valley Project water,
4 except Central Valley Project water released pursuant to
5 U.S. Department of the Interior Record of Decision, Trin-
6 ity River Mainstem Fishery Restoration Final Environ-
7 mental Impact Statement/Environmental Impact Report
8 dated December 2000 used to implement an action under-
9 taken for a fishery beneficial purpose that was not im-
10 posed by terms and conditions existing in licenses, per-
11 mits, and other agreements pertaining to the Central Val-
12 ley Project under applicable State or Federal law existing
13 on October 30, 1992, shall be credited to the quantity of
14 Central Valley Project yield dedicated and managed under
15 this section; provided, that nothing herein shall affect the
16 Secretary of the Interior’s duty to comply with any other-
17 wise lawful requirement imposed on operations of the Cen-
18 tral Valley Project under any provision of Federal or State
19 law.

20 (b) RECLAMATION POLICIES AND ALLOCATIONS.—
21 Reclamation policies and allocations shall not be based
22 upon any premise or assumption that Central Valley
23 Project contract supplies are supplemental or secondary
24 to any other contractor source of supply.

1 **SEC. 402. OPERATIONS OF THE TRINITY RIVER DIVISION.**

2 The Secretary of the Interior, in the operation of the
3 Trinity River Division of the Central Valley Project, shall
4 not make releases from Lewiston Dam in excess of the
5 volume for each water-year type required by the U.S. De-
6 partment of the Interior Record of Decision, Trinity River
7 Mainstem Fishery Restoration Final Environmental Im-
8 pact Statement/Environmental Impact Report dated De-
9 cember 2000.

10 (1) A maximum of 369,000 acre-feet in a
11 “Critically Dry” year.

12 (2) A maximum of 453,000 acre-feet in a
13 “Dry” year.

14 (3) A maximum of 647,000 acre-feet in a “Nor-
15 mal” year.

16 (4) A maximum of 701,000 acre-feet in a
17 “Wet” year.

18 (5) A maximum of 815,000 acre-feet in an
19 “Extremely Wet” year.

20 **SEC. 403. REPORT ON RESULTS OF WATER USAGE.**

21 The Secretary of the Interior, in consultation with the
22 Secretary of Commerce and the Secretary of Natural Re-
23 sources of the State of California, shall publish an annual
24 report detailing instream flow releases from the Central
25 Valley Project and California State Water Project, their

1 explicit purpose and authority, and all measured environ-
2 mental benefit as a result of the releases.

3 **SEC. 404. KLAMATH PROJECT CONSULTATION APPLICANTS.**

4 If the Bureau of Reclamation initiates or reinitiates
5 consultation with the U.S. Fish and Wildlife Service or
6 the National Marine Fisheries Service under section
7 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C.
8 1536(a)(2)), with respect to construction or operation of
9 the Klamath Project (or any part thereof), Klamath
10 Project contractors shall be accorded all the rights and
11 responsibilities extended to applicants in the consultation
12 process. Upon request of the Klamath Project contractors,
13 they may be represented through an association or organi-
14 zation.

15 **SEC. 405. CA STATE WATER RESOURCES CONTROL BOARD.**

16 (a) IN GENERAL.—In carrying out this Act, the Sec-
17 retaries shall—

18 (1) recognize Congressional opposition to the
19 violation of private property rights by the California
20 State Water Resources Control Board in their pro-
21 posal to require a minimum percentage of
22 unimpaired flows in the main tributaries of the San
23 Joaquin River; and

1 **TITLE V—WATER SUPPLY**
2 **PERMITTING ACT**

3 **SEC. 501. SHORT TITLE.**

4 This title may be cited as the “Water Supply Permit-
5 ting Coordination Act”.

6 **SEC. 502. DEFINITIONS.**

7 In this title:

8 (1) **SECRETARY.**—The term “Secretary” means
9 the Secretary of the Interior.

10 (2) **BUREAU.**—The term “Bureau” means the
11 Bureau of Reclamation.

12 (3) **QUALIFYING PROJECTS.**—The term “quali-
13 fying projects”—

14 (A) means new surface water storage
15 projects in the States covered under the Act of
16 June 17, 1902 (32 Stat. 388, chapter 1093),
17 and Acts supplemental to and amendatory of
18 that Act (43 U.S.C. 371 et seq.) constructed on
19 lands administered by the Department of the
20 Interior or the Department of Agriculture, ex-
21 clusive of any easement, right-of-way, lease, or
22 any private holding, unless the project applicant
23 elects not to participate in the process author-
24 ized by this Act; and

1 (B) includes State-led storage projects (as
2 defined in section 4007(a)(2) of the WIIN Act)
3 for new surface water storage projects in the
4 States covered under the Act of June 17, 1902
5 (32 Stat. 388, chapter 1093), and Acts supple-
6 mental to and amendatory of that Act (43
7 U.S.C. 371 et seq.) constructed on lands ad-
8 ministered by the Department of the Interior or
9 the Department of Agriculture, exclusive of any
10 easement, right-of-way, lease, or any private
11 holding, unless the project applicant elects not
12 to participate in the process authorized by this
13 Act.

14 (4) COOPERATING AGENCIES.—The term “co-
15 operating agency” means a Federal agency with ju-
16 risdiction over a review, analysis, opinion, statement,
17 permit, license, or other approval or decision re-
18 quired for a qualifying project under applicable Fed-
19 eral laws and regulations, or a State agency subject
20 to section 503(c).

21 **SEC. 503. ESTABLISHMENT OF LEAD AGENCY AND COOPER-**
22 **ATING AGENCIES.**

23 (a) ESTABLISHMENT OF LEAD AGENCY.—The Bu-
24 reau of Reclamation is established as the lead agency for
25 purposes of coordinating all reviews, analyses, opinions,

1 statements, permits, licenses, or other approvals or deci-
2 sions required under Federal law to construct qualifying
3 projects.

4 (b) IDENTIFICATION AND ESTABLISHMENT OF CO-
5 OPERATING AGENCIES.—The Commissioner of the Bureau
6 shall—

7 (1) identify, as early as practicable upon receipt
8 of an application for a qualifying project, any Fed-
9 eral agency that may have jurisdiction over a review,
10 analysis, opinion, statement, permit, license, ap-
11 proval, or decision required for a qualifying project
12 under applicable Federal laws and regulations; and

13 (2) notify any such agency, within a reasonable
14 timeframe, that the agency has been designated as
15 a cooperating agency in regards to the qualifying
16 project unless that agency responds to the Bureau in
17 writing, within a timeframe set forth by the Bureau,
18 notifying the Bureau that the agency—

19 (A) has no jurisdiction or authority with
20 respect to the qualifying project;

21 (B) has no expertise or information rel-
22 evant to the qualifying project or any review,
23 analysis, opinion, statement, permit, license, or
24 other approval or decision associated therewith;

25 or

1 (C) does not intend to submit comments
2 on the qualifying project or conduct any review
3 of such a project or make any decision with re-
4 spect to such project in a manner other than in
5 cooperation with the Bureau.

6 (c) STATE AUTHORITY.—A State in which a quali-
7 fying project is being considered may choose, consistent
8 with State law—

9 (1) to participate as a cooperating agency; and

10 (2) to make subject to the processes of this title
11 all State agencies that—

12 (A) have jurisdiction over the qualifying
13 project;

14 (B) are required to conduct or issue a re-
15 view, analysis, or opinion for the qualifying
16 project; or

17 (C) are required to make a determination
18 on issuing a permit, license, or approval for the
19 qualifying project.

20 **SEC. 504. BUREAU RESPONSIBILITIES.**

21 (a) IN GENERAL.—The principal responsibilities of
22 the Bureau under this title are to—

23 (1) serve as the point of contact for applicants,
24 State agencies, Indian tribes, and others regarding
25 proposed qualifying projects;

1 (2) coordinate preparation of unified environ-
2 mental documentation that will serve as the basis for
3 all Federal decisions necessary to authorize the use
4 of Federal lands for qualifying projects; and

5 (3) coordinate all Federal agency reviews nec-
6 essary for project development and construction of
7 qualifying projects.

8 (b) COORDINATION PROCESS.—The Bureau shall
9 have the following coordination responsibilities:

10 (1) PRE-APPLICATION COORDINATION.—Notify
11 cooperating agencies of proposed qualifying projects
12 not later than 30 days after receipt of a proposal
13 and facilitate a preapplication meeting for prospec-
14 tive applicants, relevant Federal and State agencies,
15 and Indian tribes to—

16 (A) explain applicable processes, data re-
17 quirements, and applicant submissions nec-
18 essary to complete the required Federal agency
19 reviews within the timeframe established; and

20 (B) establish the schedule for the quali-
21 fying project.

22 (2) CONSULTATION WITH COOPERATING AGEN-
23 CIES.—Consult with the cooperating agencies
24 throughout the Federal agency review process, iden-

1 tify and obtain relevant data in a timely manner,
2 and set necessary deadlines for cooperating agencies.

3 (3) SCHEDULE.—Work with the qualifying
4 project applicant and cooperating agencies to estab-
5 lish a project schedule. In establishing the schedule,
6 the Bureau shall consider, among other factors—

7 (A) the responsibilities of cooperating
8 agencies under applicable laws and regulations;

9 (B) the resources available to the cooper-
10 ating agencies and the non-Federal qualifying
11 project sponsor, as applicable;

12 (C) the overall size and complexity of the
13 qualifying project;

14 (D) the overall schedule for and cost of the
15 qualifying project; and

16 (E) the sensitivity of the natural and his-
17 toric resources that may be affected by the
18 qualifying project.

19 (4) ENVIRONMENTAL COMPLIANCE.—Prepare a
20 unified environmental review document for each
21 qualifying project application, incorporating a single
22 environmental record on which all cooperating agen-
23 cies with authority to issue approvals for a given
24 qualifying project shall base project approval deci-
25 sions. Help ensure that cooperating agencies make

1 necessary decisions, within their respective authori-
2 ties, regarding Federal approvals in accordance with
3 the following timelines:

4 (A) Not later than one year after accept-
5 ance of a completed project application when an
6 environmental assessment and finding of no sig-
7 nificant impact is determined to be the appro-
8 priate level of review under the National Envi-
9 ronmental Policy Act of 1969 (42 U.S.C. 4321
10 et seq.).

11 (B) Not later than one year and 30 days
12 after the close of the public comment period for
13 a draft environmental impact statement under
14 the National Environmental Policy Act of 1969
15 (42 U.S.C. 4321 et seq.), when an environ-
16 mental impact statement is required under the
17 same.

18 (5) CONSOLIDATED ADMINISTRATIVE
19 RECORD.—Maintain a consolidated administrative
20 record of the information assembled and used by the
21 cooperating agencies as the basis for agency deci-
22 sions.

23 (6) PROJECT DATA RECORDS.—To the extent
24 practicable and consistent with Federal law, ensure
25 that all project data is submitted and maintained in

1 generally accessible electronic format, compile, and
2 where authorized under existing law, make available
3 such project data to cooperating agencies, the quali-
4 fying project applicant, and to the public.

5 (7) PROJECT MANAGER.—Appoint a project
6 manager for each qualifying project. The project
7 manager shall have authority to oversee the project
8 and to facilitate the issuance of the relevant final
9 authorizing documents, and shall be responsible for
10 ensuring fulfillment of all Bureau responsibilities set
11 forth in this section and all cooperating agency re-
12 sponsibilities under section 505.

13 **SEC. 505. COOPERATING AGENCY RESPONSIBILITIES.**

14 (a) ADHERENCE TO BUREAU SCHEDULE.—Upon no-
15 tification of an application for a qualifying project, all co-
16 operating agencies shall submit to the Bureau a timeframe
17 under which the cooperating agency reasonably considers
18 it will be able to complete its authorizing responsibilities.
19 The Bureau shall use the timeframe submitted under this
20 subsection to establish the project schedule under section
21 504, and the cooperating agencies shall adhere to the
22 project schedule established by the Bureau.

23 (b) ENVIRONMENTAL RECORD.—Cooperating agen-
24 cies shall submit to the Bureau all environmental review
25 material produced or compiled in the course of carrying

1 out activities required under Federal law consistent with
2 the project schedule established by the Bureau.

3 (c) DATA SUBMISSION.—To the extent practicable
4 and consistent with Federal law, the cooperating agencies
5 shall submit all relevant project data to the Bureau in a
6 generally accessible electronic format subject to the project
7 schedule set forth by the Bureau.

8 **SEC. 506. FUNDING TO PROCESS PERMITS.**

9 (a) IN GENERAL.—The Secretary, after public notice
10 in accordance with subchapter II of chapter 5, and chapter
11 7, of title 5, United States Code (commonly known as the
12 “Administrative Procedure Act”), may accept and expend
13 funds contributed by a non-Federal public entity to expe-
14 dite the evaluation of a permit of that entity related to
15 a qualifying project.

16 (b) EFFECT ON PERMITTING.—

17 (1) IN GENERAL.—In carrying out this section,
18 the Secretary shall ensure that the use of funds ac-
19 cepted under subsection (a) will not impact impartial
20 decisionmaking with respect to permits, either sub-
21 stantively or procedurally.

22 (2) EVALUATION OF PERMITS.—In carrying out
23 this section, the Secretary shall ensure that the eval-
24 uation of permits carried out using funds accepted
25 under this section shall—

1 (A) be reviewed by the Regional Director
2 of the Bureau, or the Regional Director's des-
3 ignee, of the region in which the qualifying
4 project or activity is located; and

5 (B) use the same procedures for decisions
6 that would otherwise be required for the evalua-
7 tion of permits for similar projects or activities
8 not carried out using funds authorized under
9 this section.

10 (3) IMPARTIAL DECISIONMAKING.—In carrying
11 out this section, the Secretary and the cooperating
12 agencies receiving funds under this section for quali-
13 fying projects shall ensure that the use of the funds
14 accepted under this section for such projects shall
15 not—

16 (A) impact impartial decisionmaking with
17 respect to the issuance of permits, either sub-
18 stantively or procedurally; or

19 (B) diminish, modify, or otherwise affect
20 the statutory or regulatory authorities of such
21 agencies.

22 (c) LIMITATION ON USE OF FUNDS.—None of the
23 funds accepted under this section shall be used to carry
24 out a review of the evaluation of permits required under
25 subsection (a)(2)(A).

1 (d) PUBLIC AVAILABILITY.—The Secretary shall en-
2 sure that all final permit decisions carried out using funds
3 authorized under this section are made available to the
4 public, including on the Internet.

5 **TITLE VI—BUREAU OF REC-**
6 **LAMATION PROJECT STREAM-**
7 **LINING**

8 **SEC. 601. SHORT TITLE.**

9 This title may be cited as the “Bureau of Reclama-
10 tion Project Streamlining Act”.

11 **SEC. 602. DEFINITIONS.**

12 In this title:

13 (1) ENVIRONMENTAL IMPACT STATEMENT.—

14 The term “environmental impact statement” means
15 the detailed statement of environmental impacts of
16 a project required to be prepared pursuant to the
17 National Environmental Policy Act of 1969 (42
18 U.S.C. 4321 et seq.).

19 (2) ENVIRONMENTAL REVIEW PROCESS.—

20 (A) IN GENERAL.—The term “environ-
21 mental review process” means the process of
22 preparing an environmental impact statement,
23 environmental assessment, categorical exclusion,
24 or other document under the National Environ-

1 mental Policy Act of 1969 (42 U.S.C. 4321 et
2 seq.) for a project study.

3 (B) INCLUSIONS.—The term “environ-
4 mental review process” includes the process for
5 and completion of any environmental permit,
6 approval, review, or study required for a project
7 study under any Federal law other than the
8 National Environmental Policy Act of 1969 (42
9 U.S.C. 4321 et seq.).

10 (3) FEDERAL JURISDICTIONAL AGENCY.—The
11 term “Federal jurisdictional agency” means a Fed-
12 eral agency with jurisdiction delegated by law, regu-
13 lation, order, or otherwise over a review, analysis,
14 opinion, statement, permit, license, or other approval
15 or decision required for a project study under appli-
16 cable Federal laws (including regulations).

17 (4) FEDERAL LEAD AGENCY.—The term “Fed-
18 eral lead agency” means the Bureau of Reclamation.

19 (5) PROJECT.—The term “project” means a
20 surface water project, a project under the purview of
21 title XVI of Public Law 102–575, or a rural water
22 supply project investigated under Public Law 109–
23 451 to be carried out, funded or operated in whole
24 or in part by the Secretary pursuant to the Act of
25 June 17, 1902 (32 Stat. 388, chapter 1093), and

1 Acts supplemental to and amendatory of that Act
2 (43 U.S.C. 371 et seq.).

3 (6) PROJECT SPONSOR.—The term “project
4 sponsor” means a State, regional, or local authority
5 or instrumentality or other qualifying entity, such as
6 a water conservation district, irrigation district,
7 water conservancy district, joint powers authority,
8 mutual water company, canal company, rural water
9 district or association, or any other entity that has
10 the capacity to contract with the United States
11 under Federal reclamation law.

12 (7) PROJECT STUDY.—The term “project
13 study” means a feasibility study for a project carried
14 out pursuant to the Act of June 17, 1902 (32 Stat.
15 388, chapter 1093), and Acts supplemental to and
16 amendatory of that Act (43 U.S.C. 371 et seq.).

17 (8) SECRETARY.—The term “Secretary” means
18 the Secretary of the Interior.

19 (9) SURFACE WATER STORAGE.—The term
20 “surface water storage” means any surface water
21 reservoir or impoundment that would be owned,
22 funded or operated in whole or in part by the Bu-
23 reau of Reclamation or that would be integrated into
24 a larger system owned, operated or administered in
25 whole or in part by the Bureau of Reclamation.

1 **SEC. 603. ACCELERATION OF STUDIES.**

2 (a) IN GENERAL.—To the extent practicable, a
3 project study initiated by the Secretary, after the date of
4 enactment of this Act, under the Reclamation Act of 1902
5 (32 Stat. 388), and all Acts amendatory thereof or supple-
6 mentary thereto, shall—

7 (1) result in the completion of a final feasibility
8 report not later than 3 years after the date of initi-
9 ation;

10 (2) have a maximum Federal cost of
11 \$3,000,000; and

12 (3) ensure that personnel from the local project
13 area, region, and headquarters levels of the Bureau
14 of Reclamation concurrently conduct the review re-
15 quired under this section.

16 (b) EXTENSION.—If the Secretary determines that a
17 project study described in subsection (a) will not be con-
18 ducted in accordance with subsection (a), the Secretary,
19 not later than 30 days after the date of making the deter-
20 mination, shall—

21 (1) prepare an updated project study schedule
22 and cost estimate;

23 (2) notify the non-Federal project cost-sharing
24 partner that the project study has been delayed; and

25 (3) provide written notice to the Committee on
26 Natural Resources of the House of Representatives

1 and the Committee on Energy and Natural Re-
2 sources of the Senate as to the reasons the require-
3 ments of subsection (a) are not attainable.

4 (c) EXCEPTION.—

5 (1) IN GENERAL.—Notwithstanding the re-
6 quirements of subsection (a), the Secretary may ex-
7 tend the timeline of a project study by a period not
8 to exceed 3 years, if the Secretary determines that
9 the project study is too complex to comply with the
10 requirements of subsection (a).

11 (2) FACTORS.—In making a determination that
12 a study is too complex to comply with the require-
13 ments of subsection (a), the Secretary shall con-
14 sider—

15 (A) the type, size, location, scope, and
16 overall cost of the project;

17 (B) whether the project will use any inno-
18 vative design or construction techniques;

19 (C) whether the project will require signifi-
20 cant action by other Federal, State, or local
21 agencies;

22 (D) whether there is significant public dis-
23 pute as to the nature or effects of the project;
24 and

1 (E) whether there is significant public dis-
2 pute as to the economic or environmental costs
3 or benefits of the project.

4 (3) NOTIFICATION.—Each time the Secretary
5 makes a determination under this subsection, the
6 Secretary shall provide written notice to the Com-
7 mittee on Natural Resources of the House of Rep-
8 resentatives and the Committee on Energy and Nat-
9 ural Resources of the Senate as to the results of
10 that determination, including an identification of the
11 specific one or more factors used in making the de-
12 termination that the project is complex.

13 (4) LIMITATION.—The Secretary shall not ex-
14 tend the timeline for a project study for a period of
15 more than 7 years, and any project study that is not
16 completed before that date shall no longer be au-
17 thorized.

18 (d) REVIEWS.—Not later than 90 days after the date
19 of the initiation of a project study described in subsection
20 (a), the Secretary shall—

21 (1) take all steps necessary to initiate the proc-
22 ess for completing federally mandated reviews that
23 the Secretary is required to complete as part of the
24 study, including the environmental review process
25 under section 805;

1 (2) convene a meeting of all Federal, tribal, and
2 State agencies identified under section 605(d) that
3 may—

4 (A) have jurisdiction over the project;

5 (B) be required by law to conduct or issue
6 a review, analysis, opinion, or statement for the
7 project study; or

8 (C) be required to make a determination
9 on issuing a permit, license, or other approval
10 or decision for the project study; and

11 (3) take all steps necessary to provide informa-
12 tion that will enable required reviews and analyses
13 related to the project to be conducted by other agen-
14 cies in a thorough and timely manner.

15 (e) INTERIM REPORT.—Not later than 18 months
16 after the date of enactment of this Act, the Secretary shall
17 submit to the Committee on Natural Resources of the
18 House of Representatives and the Committee on Energy
19 and Natural Resources of the Senate and make publicly
20 available a report that describes—

21 (1) the status of the implementation of the
22 planning process under this section, including the
23 number of participating projects;

24 (2) a review of project delivery schedules, in-
25 cluding a description of any delays on those studies

1 initiated prior to the date of the enactment of this
2 Act; and

3 (3) any recommendations for additional author-
4 ity necessary to support efforts to expedite the
5 project.

6 (f) FINAL REPORT.—Not later than 4 years after the
7 date of enactment of this Act, the Secretary shall submit
8 to the Committee on Natural Resources of the House of
9 Representatives and the Committee on Energy and Nat-
10 ural Resources of the Senate and make publicly available
11 a report that describes—

12 (1) the status of the implementation of this sec-
13 tion, including a description of each project study
14 subject to the requirements of this section;

15 (2) the amount of time taken to complete each
16 project study; and

17 (3) any recommendations for additional author-
18 ity necessary to support efforts to expedite the
19 project study process, including an analysis of
20 whether the limitation established by subsection
21 (a)(2) needs to be adjusted to address the impacts
22 of inflation.

23 **SEC. 604. EXPEDITED COMPLETION OF REPORTS.**

24 The Secretary shall—

1 (1) expedite the completion of any ongoing
2 project study initiated before the date of enactment
3 of this Act; and

4 (2) if the Secretary determines that the project
5 is justified in a completed report, proceed directly to
6 preconstruction planning, engineering, and design of
7 the project in accordance with the Reclamation Act
8 of 1902 (32 Stat. 388), and all Acts amendatory
9 thereof or supplementary thereto.

10 **SEC. 605. PROJECT ACCELERATION.**

11 (a) APPLICABILITY.—

12 (1) IN GENERAL.—This section shall apply to—

13 (A) each project study that is initiated
14 after the date of enactment of this Act and for
15 which an environmental impact statement is
16 prepared under the National Environmental
17 Policy Act of 1969 (42 U.S.C. 4321 et seq.);

18 (B) the extent determined appropriate by
19 the Secretary, to other project studies initiated
20 before the date of enactment of this Act and for
21 which an environmental review process docu-
22 ment is prepared under the National Environ-
23 mental Policy Act of 1969 (42 U.S.C. 4321 et
24 seq.); and

1 (C) any project study for the development
2 of a nonfederally owned and operated surface
3 water storage project for which the Secretary
4 determines there is a demonstrable Federal in-
5 terest and the project—

6 (i) is located in a river basin where
7 other Bureau of Reclamation water
8 projects are located;

9 (ii) will create additional water sup-
10 plies that support Bureau of Reclamation
11 water projects; or

12 (iii) will become integrated into the
13 operation of Bureau of Reclamation water
14 projects.

15 (2) FLEXIBILITY.—Any authority granted
16 under this section may be exercised, and any re-
17 quirement established under this section may be sat-
18 isfied, for the conduct of an environmental review
19 process for a project study, a class of project stud-
20 ies, or a program of project studies.

21 (3) LIST OF PROJECT STUDIES.—

22 (A) IN GENERAL.—The Secretary shall an-
23 nually prepare, and make publicly available, a
24 list of all project studies that the Secretary has
25 determined—

1 (i) meets the standards described in
2 paragraph (1); and

3 (ii) does not have adequate funding to
4 make substantial progress toward the com-
5 pletion of the project study.

6 (B) INCLUSIONS.—The Secretary shall in-
7 clude for each project study on the list under
8 subparagraph (A) a description of the estimated
9 amounts necessary to make substantial progress
10 on the project study.

11 (b) PROJECT REVIEW PROCESS.—

12 (1) IN GENERAL.—The Secretary shall develop
13 and implement a coordinated environmental review
14 process for the development of project studies.

15 (2) COORDINATED REVIEW.—The coordinated
16 environmental review process described in paragraph
17 (1) shall require that any review, analysis, opinion,
18 statement, permit, license, or other approval or deci-
19 sion issued or made by a Federal, State, or local
20 governmental agency or an Indian tribe for a project
21 study described in subsection (b) be conducted, to
22 the maximum extent practicable, concurrently with
23 any other applicable governmental agency or Indian
24 tribe.

1 (3) TIMING.—The coordinated environmental
2 review process under this subsection shall be com-
3 pleted not later than the date on which the Sec-
4 retary, in consultation and concurrence with the
5 agencies identified under section 705(d), establishes
6 with respect to the project study.

7 (c) LEAD AGENCIES.—

8 (1) JOINT LEAD AGENCIES.—

9 (A) IN GENERAL.—Subject to the require-
10 ments of the National Environmental Policy
11 Act of 1969 (42 U.S.C. 4321 et seq.) and the
12 requirements of section 1506.8 of title 40, Code
13 of Federal Regulations (or successor regula-
14 tions), including the concurrence of the pro-
15 posed joint lead agency, a project sponsor may
16 serve as the joint lead agency.

17 (B) PROJECT SPONSOR AS JOINT LEAD
18 AGENCY.—A project sponsor that is a State or
19 local governmental entity may—

20 (i) with the concurrence of the Sec-
21 retary, serve as a joint lead agency with
22 the Federal lead agency for purposes of
23 preparing any environmental document
24 under the National Environmental Policy
25 Act of 1969 (42 U.S.C. 4321 et seq.); and

1 (ii) prepare any environmental review
2 process document under the National En-
3 vironmental Policy Act of 1969 (42 U.S.C.
4 4321 et seq.) required in support of any
5 action or approval by the Secretary if—

6 (I) the Secretary provides guid-
7 ance in the preparation process and
8 independently evaluates that docu-
9 ment;

10 (II) the project sponsor complies
11 with all requirements applicable to the
12 Secretary under—

13 (aa) the National Environ-
14 mental Policy Act of 1969 (42
15 U.S.C. 4321 et seq.);

16 (bb) any regulation imple-
17 menting that Act; and

18 (cc) any other applicable
19 Federal law; and

20 (III) the Secretary approves and
21 adopts the document before the Sec-
22 retary takes any subsequent action or
23 makes any approval based on that
24 document, regardless of whether the

1 action or approval of the Secretary re-
2 sults in Federal funding.

3 (2) DUTIES.—The Secretary shall ensure
4 that—

5 (A) the project sponsor complies with all
6 design and mitigation commitments made joint-
7 ly by the Secretary and the project sponsor in
8 any environmental document prepared by the
9 project sponsor in accordance with this sub-
10 section; and

11 (B) any environmental document prepared
12 by the project sponsor is appropriately supple-
13 mented to address any changes to the project
14 the Secretary determines are necessary.

15 (3) ADOPTION AND USE OF DOCUMENTS.—Any
16 environmental document prepared in accordance
17 with this subsection shall be adopted and used by
18 any Federal agency making any determination re-
19 lated to the project study to the same extent that
20 the Federal agency could adopt or use a document
21 prepared by another Federal agency under—

22 (A) the National Environmental Policy Act
23 of 1969 (42 U.S.C. 4321 et seq.); and

1 (B) parts 1500 through 1508 of title 40,
2 Code of Federal Regulations (or successor regu-
3 lations).

4 (4) ROLES AND RESPONSIBILITY OF LEAD
5 AGENCY.—With respect to the environmental review
6 process for any project study, the Federal lead agen-
7 cy shall have authority and responsibility—

8 (A) to take such actions as are necessary
9 and proper and within the authority of the Fed-
10 eral lead agency to facilitate the expeditious
11 resolution of the environmental review process
12 for the project study; and

13 (B) to prepare or ensure that any required
14 environmental impact statement or other envi-
15 ronmental review document for a project study
16 required to be completed under the National
17 Environmental Policy Act of 1969 (42 U.S.C.
18 4321 et seq.) is completed in accordance with
19 this section and applicable Federal law.

20 (d) PARTICIPATING AND COOPERATING AGENCIES.—

21 (1) IDENTIFICATION OF JURISDICTIONAL AGEN-
22 CIES.—With respect to carrying out the environ-
23 mental review process for a project study, the Sec-
24 retary shall identify, as early as practicable in the
25 environmental review process, all Federal, State, and

1 local government agencies and Indian tribes that
2 may—

3 (A) have jurisdiction over the project;

4 (B) be required by law to conduct or issue
5 a review, analysis, opinion, or statement for the
6 project study; or

7 (C) be required to make a determination
8 on issuing a permit, license, or other approval
9 or decision for the project study.

10 (2) STATE AUTHORITY.—If the environmental
11 review process is being implemented by the Sec-
12 retary for a project study within the boundaries of
13 a State, the State, consistent with State law, may
14 choose to participate in the process and to make
15 subject to the process all State agencies that—

16 (A) have jurisdiction over the project;

17 (B) are required to conduct or issue a re-
18 view, analysis, opinion, or statement for the
19 project study; or

20 (C) are required to make a determination
21 on issuing a permit, license, or other approval
22 or decision for the project study.

23 (3) INVITATION.—

24 (A) IN GENERAL.—The Federal lead agen-
25 cy shall invite, as early as practicable in the en-

1 vironmental review process, any agency identi-
2 fied under paragraph (1) to become a partici-
3 pating or cooperating agency, as applicable, in
4 the environmental review process for the project
5 study.

6 (B) DEADLINE.—An invitation to partici-
7 pate issued under subparagraph (A) shall set a
8 deadline by which a response to the invitation
9 shall be submitted, which may be extended by
10 the Federal lead agency for good cause.

11 (4) PROCEDURES.—Section 1501.6 of title 40,
12 Code of Federal Regulations (as in effect on the
13 date of enactment of the Bureau of Reclamation
14 Project Streamlining Act), shall govern the identi-
15 fication and the participation of a cooperat-
16 ing agency.

17 (5) FEDERAL COOPERATING AGENCIES.—Any
18 Federal agency that is invited by the Federal lead
19 agency to participate in the environmental review
20 process for a project study shall be designated as a
21 cooperating agency by the Federal lead agency un-
22 less the invited agency informs the Federal lead
23 agency, in writing, by the deadline specified in the
24 invitation that the invited agency—

1 (A)(i) has no jurisdiction or authority with
2 respect to the project;

3 (ii) has no expertise or information rel-
4 evant to the project; or

5 (iii) does not have adequate funds to par-
6 ticipate in the project; and

7 (B) does not intend to submit comments
8 on the project.

9 (6) ADMINISTRATION.—A participating or co-
10 operating agency shall comply with this section and
11 any schedule established under this section.

12 (7) EFFECT OF DESIGNATION.—Designation as
13 a participating or cooperating agency under this
14 subsection shall not imply that the participating or
15 cooperating agency—

16 (A) supports a proposed project; or

17 (B) has any jurisdiction over, or special ex-
18 pertise with respect to evaluation of, the
19 project.

20 (8) CONCURRENT REVIEWS.—Each partici-
21 pating or cooperating agency shall—

22 (A) carry out the obligations of that agen-
23 cy under other applicable law concurrently and
24 in conjunction with the required environmental
25 review process, unless doing so would prevent

1 the participating or cooperating agency from
2 conducting needed analysis or otherwise car-
3 rying out those obligations; and

4 (B) formulate and implement administra-
5 tive, policy, and procedural mechanisms to en-
6 able the agency to ensure completion of the en-
7 vironmental review process in a timely, coordi-
8 nated, and environmentally responsible manner.

9 (e) NON-FEDERAL PROJECTS INTEGRATED INTO
10 RECLAMATION SYSTEMS.—The Federal lead agency shall
11 serve in that capacity for the entirety of all non-Federal
12 projects that will be integrated into a larger system owned,
13 operated or administered in whole or in part by the Bu-
14 reau of Reclamation.

15 (f) NON-FEDERAL PROJECT.—If the Secretary deter-
16 mines that a project can be expedited by a non-Federal
17 sponsor and that there is a demonstrable Federal interest
18 in expediting that project, the Secretary shall take such
19 actions as are necessary to advance such a project as a
20 non-Federal project, including, but not limited to, entering
21 into agreements with the non-Federal sponsor of such
22 project to support the planning, design and permitting of
23 such project as a non-Federal project.

24 (g) PROGRAMMATIC COMPLIANCE.—

1 (1) IN GENERAL.—The Secretary shall issue
2 guidance regarding the use of programmatic ap-
3 proaches to carry out the environmental review proc-
4 ess that—

5 (A) eliminates repetitive discussions of the
6 same issues;

7 (B) focuses on the actual issues ripe for
8 analyses at each level of review;

9 (C) establishes a formal process for coordi-
10 nating with participating and cooperating agen-
11 cies, including the creation of a list of all data
12 that are needed to carry out an environmental
13 review process; and

14 (D) complies with—

15 (i) the National Environmental Policy
16 Act of 1969 (42 U.S.C. 4321 et seq.); and

17 (ii) all other applicable laws.

18 (2) REQUIREMENTS.—In carrying out para-
19 graph (1), the Secretary shall—

20 (A) as the first step in drafting guidance
21 under that paragraph, consult with relevant
22 Federal, State, and local governmental agen-
23 cies, Indian tribes, and the public on the appro-
24 priate use and scope of the programmatic ap-
25 proaches;

1 (B) emphasize the importance of collabora-
2 tion among relevant Federal, State, and local
3 governmental agencies, and Indian tribes in un-
4 dertaking programmatic reviews, especially with
5 respect to including reviews with a broad geo-
6 graphical scope;

7 (C) ensure that the programmatic re-
8 views—

9 (i) promote transparency, including of
10 the analyses and data used in the environ-
11 mental review process, the treatment of
12 any deferred issues raised by Federal,
13 State, and local governmental agencies, In-
14 dian tribes, or the public, and the temporal
15 and special scales to be used to analyze
16 those issues;

17 (ii) use accurate and timely informa-
18 tion in the environmental review process,
19 including—

20 (I) criteria for determining the
21 general duration of the usefulness of
22 the review; and

23 (II) the timeline for updating any
24 out-of-date review;

25 (iii) describe—

1 (I) the relationship between pro-
2 grammatic analysis and future tiered
3 analysis; and

4 (II) the role of the public in the
5 creation of future tiered analysis; and

6 (iv) are available to other relevant
7 Federal, State, and local governmental
8 agencies, Indian tribes, and the public;

9 (D) allow not fewer than 60 days of public
10 notice and comment on any proposed guidance;
11 and

12 (E) address any comments received under
13 subparagraph (D).

14 (h) COORDINATED REVIEWS.—

15 (1) COORDINATION PLAN.—

16 (A) ESTABLISHMENT.—The Federal lead
17 agency shall, after consultation with and with
18 the concurrence of each participating and co-
19 operating agency and the project sponsor or
20 joint lead agency, as applicable, establish a plan
21 for coordinating public and agency participation
22 in, and comment on, the environmental review
23 process for a project study or a category of
24 project studies.

25 (B) SCHEDULE.—

1 (i) IN GENERAL.—As soon as prac-
2 ticable but not later than 45 days after the
3 close of the public comment period on a
4 draft environmental impact statement, the
5 Federal lead agency, after consultation
6 with and the concurrence of each partici-
7 pating and cooperating agency and the
8 project sponsor or joint lead agency, as ap-
9 plicable, shall establish, as part of the co-
10 ordination plan established in subpara-
11 graph (A), a schedule for completion of the
12 environmental review process for the
13 project study.

14 (ii) FACTORS FOR CONSIDERATION.—
15 In establishing a schedule, the Secretary
16 shall consider factors such as—

17 (I) the responsibilities of partici-
18 pating and cooperating agencies under
19 applicable laws;

20 (II) the resources available to the
21 project sponsor, joint lead agency, and
22 other relevant Federal and State
23 agencies, as applicable;

24 (III) the overall size and com-
25 plexity of the project;

1 (IV) the overall schedule for and
2 cost of the project; and

3 (V) the sensitivity of the natural
4 and historical resources that could be
5 affected by the project.

6 (iii) MODIFICATIONS.—The Secretary
7 may—

8 (I) lengthen a schedule estab-
9 lished under clause (i) for good cause;
10 and

11 (II) shorten a schedule only with
12 concurrence of the affected partici-
13 pating and cooperating agencies and
14 the project sponsor or joint lead agen-
15 cy, as applicable.

16 (iv) DISSEMINATION.—A copy of a
17 schedule established under clause (i) shall
18 be—

19 (I) provided to each participating
20 and cooperating agency and the
21 project sponsor or joint lead agency,
22 as applicable; and

23 (II) made available to the public.

24 (2) COMMENT DEADLINES.—The Federal lead
25 agency shall establish the following deadlines for

1 comment during the environmental review process
2 for a project study:

3 (A) DRAFT ENVIRONMENTAL IMPACT
4 STATEMENTS.—For comments by Federal and
5 State agencies and the public on a draft envi-
6 ronmental impact statement, a period of not
7 more than 60 days after publication in the Fed-
8 eral Register of notice of the date of public
9 availability of the draft environmental impact
10 statement, unless—

11 (i) a different deadline is established
12 by agreement of the Federal lead agency,
13 the project sponsor or joint lead agency, as
14 applicable, and all participating and co-
15 operating agencies; or

16 (ii) the deadline is extended by the
17 Federal lead agency for good cause.

18 (B) OTHER ENVIRONMENTAL REVIEW
19 PROCESSES.—For all other comment periods es-
20 tablished by the Federal lead agency for agency
21 or public comments in the environmental review
22 process, a period of not more than 30 days
23 after the date on which the materials on which
24 comment is requested are made available, un-
25 less—

1 (i) a different deadline is established
2 by agreement of the Federal lead agency,
3 the project sponsor, or joint lead agency,
4 as applicable, and all participating and co-
5 operating agencies; or

6 (ii) the deadline is extended by the
7 Federal lead agency for good cause.

8 (3) DEADLINES FOR DECISIONS UNDER OTHER
9 LAWS.—In any case in which a decision under any
10 Federal law relating to a project study, including the
11 issuance or denial of a permit or license, is required
12 to be made by the date described in subsection
13 (i)(5)(B), the Secretary shall submit to the Com-
14 mittee on Natural Resources of the House of Rep-
15 resentatives and the Committee on Energy and Nat-
16 ural Resources of the Senate—

17 (A) as soon as practicable after the 180-
18 day period described in subsection (i)(5)(B), an
19 initial notice of the failure of the Federal agen-
20 cy to make the decision; and

21 (B) every 60 days thereafter until such
22 date as all decisions of the Federal agency re-
23 lating to the project study have been made by
24 the Federal agency, an additional notice that
25 describes the number of decisions of the Fed-

1 eral agency that remain outstanding as of the
2 date of the additional notice.

3 (4) INVOLVEMENT OF THE PUBLIC.—Nothing
4 in this subsection reduces any time period provided
5 for public comment in the environmental review
6 process under applicable Federal law (including reg-
7 ulations).

8 (5) TRANSPARENCY REPORTING.—

9 (A) REPORTING REQUIREMENTS.—Not
10 later than 1 year after the date of enactment of
11 this Act, the Secretary shall establish and main-
12 tain an electronic database and, in coordination
13 with other Federal and State agencies, issue re-
14 porting requirements to make publicly available
15 the status and progress with respect to compli-
16 ance with applicable requirements of the Na-
17 tional Environmental Policy Act of 1969 (42
18 U.S.C. 4321 et seq.) and any other Federal,
19 State, or local approval or action required for a
20 project study for which this section is applica-
21 ble.

22 (B) PROJECT STUDY TRANSPARENCY.—
23 Consistent with the requirements established
24 under subparagraph (A), the Secretary shall
25 make publicly available the status and progress

1 of any Federal, State, or local decision, action,
2 or approval required under applicable laws for
3 each project study for which this section is ap-
4 plicable.

5 (i) ISSUE IDENTIFICATION AND RESOLUTION.—

6 (1) COOPERATION.—The Federal lead agency,
7 the cooperating agencies, and any participating
8 agencies shall work cooperatively in accordance with
9 this section to identify and resolve issues that could
10 delay completion of the environmental review process
11 or result in the denial of any approval required for
12 the project study under applicable laws.

13 (2) FEDERAL LEAD AGENCY RESPONSIBIL-
14 ITIES.—

15 (A) IN GENERAL.—The Federal lead agen-
16 cy shall make information available to the co-
17 operating agencies and participating agencies as
18 early as practicable in the environmental review
19 process regarding the environmental and socio-
20 economic resources located within the project
21 area and the general locations of the alter-
22 natives under consideration.

23 (B) DATA SOURCES.—The information
24 under subparagraph (A) may be based on exist-

1 ing data sources, including geographic informa-
2 tion systems mapping.

3 (3) COOPERATING AND PARTICIPATING AGENCY
4 RESPONSIBILITIES.—Based on information received
5 from the Federal lead agency, cooperating and par-
6 ticipating agencies shall identify, as early as prac-
7 ticable, any issues of concern regarding the potential
8 environmental or socioeconomic impacts of the
9 project, including any issues that could substantially
10 delay or prevent an agency from granting a permit
11 or other approval that is needed for the project
12 study.

13 (4) ACCELERATED ISSUE RESOLUTION AND
14 ELEVATION.—

15 (A) IN GENERAL.—On the request of a
16 participating or cooperating agency or project
17 sponsor, the Secretary shall convene an issue
18 resolution meeting with the relevant partici-
19 pating and cooperating agencies and the project
20 sponsor or joint lead agency, as applicable, to
21 resolve issues that may—

22 (i) delay completion of the environ-
23 mental review process; or

1 (ii) result in denial of any approval re-
2 quired for the project study under applica-
3 ble laws.

4 (B) MEETING DATE.—A meeting requested
5 under this paragraph shall be held not later
6 than 21 days after the date on which the Sec-
7 retary receives the request for the meeting, un-
8 less the Secretary determines that there is good
9 cause to extend that deadline.

10 (C) NOTIFICATION.—On receipt of a re-
11 quest for a meeting under this paragraph, the
12 Secretary shall notify all relevant participating
13 and cooperating agencies of the request, includ-
14 ing the issue to be resolved and the date for the
15 meeting.

16 (D) ELEVATION OF ISSUE RESOLUTION.—
17 If a resolution cannot be achieved within the
18 30-day period beginning on the date of a meet-
19 ing under this paragraph and a determination
20 is made by the Secretary that all information
21 necessary to resolve the issue has been ob-
22 tained, the Secretary shall forward the dispute
23 to the heads of the relevant agencies for resolu-
24 tion.

1 (E) CONVENTION BY SECRETARY.—The
2 Secretary may convene an issue resolution
3 meeting under this paragraph at any time, at
4 the discretion of the Secretary, regardless of
5 whether a meeting is requested under subpara-
6 graph (A).

7 (5) FINANCIAL PENALTY PROVISIONS.—

8 (A) IN GENERAL.—A Federal jurisdictional
9 agency shall complete any required approval or
10 decision for the environmental review process
11 on an expeditious basis using the shortest exist-
12 ing applicable process.

13 (B) FAILURE TO DECIDE.—

14 (i) IN GENERAL.—

15 (I) TRANSFER OF FUNDS.—If a
16 Federal jurisdictional agency fails to
17 render a decision required under any
18 Federal law relating to a project study
19 that requires the preparation of an
20 environmental impact statement or
21 environmental assessment, including
22 the issuance or denial of a permit, li-
23 cense, statement, opinion, or other ap-
24 proval by the date described in clause
25 (ii), the amount of funds made avail-

1 able to support the office of the head
2 of the Federal jurisdictional agency
3 shall be reduced by an amount of
4 funding equal to the amount specified
5 in item (aa) or (bb) of subclause (II),
6 and those funds shall be made avail-
7 able to the division of the Federal ju-
8 risdictional agency charged with ren-
9 dering the decision by not later than
10 1 day after the applicable date under
11 clause (ii), and once each week there-
12 after until a final decision is rendered,
13 subject to subparagraph (C).

14 (II) AMOUNT TO BE TRANS-
15 FERRED.—The amount referred to in
16 subclause (I) is—

17 (aa) \$20,000 for any project
18 study requiring the preparation
19 of an environmental assessment
20 or environmental impact state-
21 ment; or

22 (bb) \$10,000 for any project
23 study requiring any type of re-
24 view under the National Environ-
25 mental Policy Act of 1969 (42

1 U.S.C. 4321 et seq.) other than
2 an environmental assessment or
3 environmental impact statement.

4 (ii) DESCRIPTION OF DATE.—The
5 date referred to in clause (i) is the later
6 of—

7 (I) the date that is 180 days
8 after the date on which an application
9 for the permit, license, or approval is
10 complete; and

11 (II) the date that is 180 days
12 after the date on which the Federal
13 lead agency issues a decision on the
14 project under the National Environ-
15 mental Policy Act of 1969 (42 U.S.C.
16 4321 et seq.).

17 (C) LIMITATIONS.—

18 (i) IN GENERAL.—No transfer of
19 funds under subparagraph (B) relating to
20 an individual project study shall exceed, in
21 any fiscal year, an amount equal to 1 per-
22 cent of the funds made available for the
23 applicable agency office.

24 (ii) FAILURE TO DECIDE.—The total
25 amount transferred in a fiscal year as a re-

1 sult of a failure by an agency to make a
2 decision by an applicable deadline shall not
3 exceed an amount equal to 5 percent of the
4 funds made available for the applicable
5 agency office for that fiscal year.

6 (iii) AGGREGATE.—Notwithstanding
7 any other provision of law, for each fiscal
8 year, the aggregate amount of financial
9 penalties assessed against each applicable
10 agency office under this title and any other
11 Federal law as a result of a failure of the
12 agency to make a decision by an applicable
13 deadline for environmental review, includ-
14 ing the total amount transferred under this
15 paragraph, shall not exceed an amount
16 equal to 9.5 percent of the funds made
17 available for the agency office for that fis-
18 cal year.

19 (D) NOTIFICATION OF TRANSFERS.—Not
20 later than 10 days after the last date in a fiscal
21 year on which funds of the Federal jurisdic-
22 tional agency may be transferred under sub-
23 paragraph (B)(5) with respect to an individual
24 decision, the agency shall submit to the appro-
25 priate committees of the House of Representa-

1 tives and the Senate written notification that
2 includes a description of—

3 (i) the decision;

4 (ii) the project study involved;

5 (iii) the amount of each transfer
6 under subparagraph (B) in that fiscal year
7 relating to the decision;

8 (iv) the total amount of all transfers
9 under subparagraph (B) in that fiscal year
10 relating to the decision; and

11 (v) the total amount of all transfers of
12 the agency under subparagraph (B) in that
13 fiscal year.

14 (E) NO FAULT OF AGENCY.—

15 (i) IN GENERAL.—A transfer of funds
16 under this paragraph shall not be made if
17 the applicable agency described in subpara-
18 graph (A) notifies, with a supporting ex-
19 planation, the Federal lead agency, cooper-
20 ating agencies, and project sponsor, as ap-
21 plicable, that—

22 (I) the agency has not received
23 necessary information or approvals
24 from another entity in a manner that
25 affects the ability of the agency to

1 meet any requirements under Federal,
2 State, or local law;

3 (II) significant new information,
4 including from public comments, or
5 circumstances, including a major
6 modification to an aspect of the
7 project, requires additional analysis
8 for the agency to make a decision on
9 the project application; or

10 (III) the agency lacks the finan-
11 cial resources to complete the review
12 under the scheduled timeframe, in-
13 cluding a description of the number of
14 full-time employees required to com-
15 plete the review, the amount of fund-
16 ing required to complete the review,
17 and a justification as to why not
18 enough funding is available to com-
19 plete the review by the deadline.

20 (ii) LACK OF FINANCIAL RE-
21 SOURCES.—If the agency provides notice
22 under clause (i)(III), the Inspector General
23 of the agency shall—

24 (I) conduct a financial audit to
25 review the notice; and

1 (II) not later than 90 days after
2 the date on which the review described
3 in subclause (I) is completed, submit
4 to the Committee on Natural Re-
5 sources of the House of Representa-
6 tives and the Committee on Energy
7 and Natural Resources of the Senate
8 the results of the audit conducted
9 under subclause (I).

10 (F) LIMITATION.—The Federal agency
11 from which funds are transferred pursuant to
12 this paragraph shall not reprogram funds to the
13 office of the head of the agency, or equivalent
14 office, to reimburse that office for the loss of
15 the funds.

16 (G) EFFECT OF PARAGRAPH.—Nothing in
17 this paragraph affects or limits the application
18 of, or obligation to comply with, any Federal,
19 State, local, or tribal law.

20 (j) MEMORANDUM OF AGREEMENTS FOR EARLY CO-
21 ORDINATION.—

22 (1) SENSE OF CONGRESS.—It is the sense of
23 Congress that—

24 (A) the Secretary and other Federal agen-
25 cies with relevant jurisdiction in the environ-

1 mental review process should cooperate with
2 each other, State and local agencies, and Indian
3 tribes on environmental review and Bureau of
4 Reclamation project delivery activities at the
5 earliest practicable time to avoid delays and du-
6 plication of effort later in the process, prevent
7 potential conflicts, and ensure that planning
8 and project development decisions reflect envi-
9 ronmental values; and

10 (B) the cooperation referred to in subpara-
11 graph (A) should include the development of
12 policies and the designation of staff that advise
13 planning agencies and project sponsors of stud-
14 ies or other information foreseeably required for
15 later Federal action and early consultation with
16 appropriate State and local agencies and Indian
17 tribes.

18 (2) TECHNICAL ASSISTANCE.—If requested at
19 any time by a State or project sponsor, the Sec-
20 retary and other Federal agencies with relevant ju-
21 risdiction in the environmental review process, shall,
22 to the maximum extent practicable and appropriate,
23 as determined by the agencies, provide technical as-
24 sistance to the State or project sponsor in carrying
25 out early coordination activities.

1 (3) MEMORANDUM OF AGENCY AGREEMENT.—

2 If requested at any time by a State or project spon-
3 sor, the Federal lead agency, in consultation with
4 other Federal agencies with relevant jurisdiction in
5 the environmental review process, may establish
6 memoranda of agreement with the project sponsor,
7 Indian tribes, State and local governments, and
8 other appropriate entities to carry out the early co-
9 ordination activities, including providing technical
10 assistance in identifying potential impacts and miti-
11 gation issues in an integrated fashion.

12 (k) LIMITATIONS.—Nothing in this section preempts
13 or interferes with—

14 (1) any obligation to comply with the provisions
15 of any Federal law, including—

16 (A) the National Environmental Policy Act
17 of 1969 (42 U.S.C. 4321 et seq.); and

18 (B) any other Federal environmental law;

19 (2) the reviewability of any final Federal agency
20 action in a court of the United States or in the court
21 of any State;

22 (3) any requirement for seeking, considering, or
23 responding to public comment; or

24 (4) any power, jurisdiction, responsibility, duty,
25 or authority that a Federal, State, or local govern-

1 mental agency, Indian tribe, or project sponsor has
2 with respect to carrying out a project or any other
3 provision of law applicable to projects.

4 (l) TIMING OF CLAIMS.—

5 (1) TIMING.—

6 (A) IN GENERAL.—Notwithstanding any
7 other provision of law, a claim arising under
8 Federal law seeking judicial review of a permit,
9 license, or other approval issued by a Federal
10 agency for a project study shall be barred un-
11 less the claim is filed not later than 3 years
12 after publication of a notice in the Federal Reg-
13 ister announcing that the permit, license, or
14 other approval is final pursuant to the law
15 under which the agency action is taken, unless
16 a shorter time is specified in the Federal law
17 that allows judicial review.

18 (B) APPLICABILITY.—Nothing in this sub-
19 section creates a right to judicial review or
20 places any limit on filing a claim that a person
21 has violated the terms of a permit, license, or
22 other approval.

23 (2) NEW INFORMATION.—

24 (A) IN GENERAL.—The Secretary shall
25 consider new information received after the

1 close of a comment period if the information
2 satisfies the requirements for a supplemental
3 environmental impact statement under title 40,
4 Code of Federal Regulations (including suc-
5 cessor regulations).

6 (B) SEPARATE ACTION.—The preparation
7 of a supplemental environmental impact state-
8 ment or other environmental document, if re-
9 quired under this section, shall be considered a
10 separate final agency action and the deadline
11 for filing a claim for judicial review of the ac-
12 tion shall be 3 years after the date of publica-
13 tion of a notice in the Federal Register an-
14 nouncing the action relating to such supple-
15 mental environmental impact statement or
16 other environmental document.

17 (m) CATEGORICAL EXCLUSIONS.—

18 (1) IN GENERAL.—Not later than 180 days
19 after the date of enactment of this Act, the Sec-
20 retary shall—

21 (A) survey the use by the Bureau of Rec-
22 lamation of categorical exclusions in projects
23 since 2005;

24 (B) publish a review of the survey that in-
25 cludes a description of—

1 (i) the types of actions that were cat-
2 egorically excluded or could be the basis
3 for developing a new categorical exclusion;
4 and

5 (ii) any requests previously received
6 by the Secretary for new categorical exclu-
7 sions; and

8 (C) solicit requests from other Federal
9 agencies and project sponsors for new categor-
10 ical exclusions.

11 (2) NEW CATEGORICAL EXCLUSIONS.—Not
12 later than 1 year after the date of enactment of this
13 Act, if the Secretary has identified a category of ac-
14 tivities that merit establishing a categorical exclusion
15 that did not exist on the day before the date of en-
16 actment this Act based on the review under para-
17 graph (1), the Secretary shall publish a notice of
18 proposed rulemaking to propose that new categorical
19 exclusion, to the extent that the categorical exclusion
20 meets the criteria for a categorical exclusion under
21 section 1508.4 of title 40, Code of Federal Regula-
22 tions (or successor regulation).

23 (n) REVIEW OF PROJECT ACCELERATION RE-
24 FORMS.—

1 (1) IN GENERAL.—The Comptroller General of
2 the United States shall—

3 (A) assess the reforms carried out under
4 this section; and

5 (B) not later than 5 years and not later
6 than 10 years after the date of enactment of
7 this Act, submit to the Committee on Natural
8 Resources of the House of Representatives and
9 the Committee on Energy and Natural Re-
10 sources of the Senate a report that describes
11 the results of the assessment.

12 (2) CONTENTS.—The reports under paragraph
13 (1) shall include an evaluation of impacts of the re-
14 forms carried out under this section on—

15 (A) project delivery;

16 (B) compliance with environmental laws;

17 and

18 (C) the environmental impact of projects.

19 (o) PERFORMANCE MEASUREMENT.—The Secretary
20 shall establish a program to measure and report on
21 progress made toward improving and expediting the plan-
22 ning and environmental review process.

23 (p) CATEGORICAL EXCLUSIONS IN EMERGENCIES.—
24 For the repair, reconstruction, or rehabilitation of a Bu-
25 reau of Reclamation surface water storage project that is

1 in operation or under construction when damaged by an
2 event or incident that results in a declaration by the Presi-
3 dent of a major disaster or emergency pursuant to the
4 Robert T. Stafford Disaster Relief and Emergency Assist-
5 ance Act (42 U.S.C. 5121 et seq.), the Secretary shall
6 treat such repair, reconstruction, or rehabilitation activity
7 as a class of action categorically excluded from the re-
8 quirements relating to environmental assessments or envi-
9 ronmental impact statements under section 1508.4 of title
10 40, Code of Federal Regulations (or successor regula-
11 tions), if the repair or reconstruction activity is—

12 (1) in the same location with the same capacity,
13 dimensions, and design as the original Bureau of
14 Reclamation surface water storage project as before
15 the declaration described in this section; and

16 (2) commenced within a 2-year period begin-
17 ning on the date of a declaration described in this
18 subsection.

19 **SEC. 606. ANNUAL REPORT TO CONGRESS.**

20 (a) IN GENERAL.—Not later than February 1 of each
21 year, the Secretary shall develop and submit to the Com-
22 mittee on Natural Resources of the House of Representa-
23 tives and the Committee on Energy and Natural Re-
24 sources of the Senate an annual report, to be entitled “Re-

1 port to Congress on Future Water Project Development”,
2 that identifies the following:

3 (1) PROJECT REPORTS.—Each project report
4 that meets the criteria established in subsection
5 (c)(1)(A).

6 (2) PROPOSED PROJECT STUDIES.—Any pro-
7 posed project study submitted to the Secretary by a
8 non-Federal interest pursuant to subsection (b) that
9 meets the criteria established in subsection
10 (c)(1)(A).

11 (3) PROPOSED MODIFICATIONS.—Any proposed
12 modification to an authorized water project or
13 project study that meets the criteria established in
14 subsection (c)(1)(A) that—

15 (A) is submitted to the Secretary by a non-
16 Federal interest pursuant to subsection (b); or

17 (B) is identified by the Secretary for au-
18 thorization.

19 (4) EXPEDITED COMPLETION OF REPORT AND
20 DETERMINATIONS.—Any project study that was ex-
21 pedited and any Secretarial determinations under
22 section 804.

23 (b) REQUESTS FOR PROPOSALS.—

24 (1) PUBLICATION.—Not later than May 1 of
25 each year, the Secretary shall publish in the Federal

1 Register a notice requesting proposals from non-
2 Federal interests for proposed project studies and
3 proposed modifications to authorized projects and
4 project studies to be included in the annual report.

5 (2) DEADLINE FOR REQUESTS.—The Secretary
6 shall include in each notice required by this sub-
7 section a requirement that non-Federal interests
8 submit to the Secretary any proposals described in
9 paragraph (1) by not later than 120 days after the
10 date of publication of the notice in the Federal Reg-
11 ister in order for the proposals to be considered for
12 inclusion in the annual report.

13 (3) NOTIFICATION.—On the date of publication
14 of each notice required by this subsection, the Sec-
15 retary shall—

16 (A) make the notice publicly available, in-
17 cluding on the Internet; and

18 (B) provide written notification of the pub-
19 lication to the Committee on Natural Resources
20 of the House of Representatives and the Com-
21 mittee on Energy and Natural Resources of the
22 Senate.

23 (c) CONTENTS.—

24 (1) PROJECT REPORTS, PROPOSED PROJECT
25 STUDIES, AND PROPOSED MODIFICATIONS.—

1 (A) CRITERIA FOR INCLUSION IN RE-
2 PORT.—The Secretary shall include in the an-
3 nual report only those project reports, proposed
4 project studies, and proposed modifications to
5 authorized projects and project studies that—

6 (i) are related to the missions and au-
7 thorities of the Bureau of Reclamation;

8 (ii) require specific congressional au-
9 thorization, including by an Act of Con-
10 gress;

11 (iii) have not been congressionally au-
12 thorized;

13 (iv) have not been included in any
14 previous annual report; and

15 (v) if authorized, could be carried out
16 by the Bureau of Reclamation.

17 (B) DESCRIPTION OF BENEFITS.—

18 (i) DESCRIPTION.—The Secretary
19 shall describe in the annual report, to the
20 extent applicable and practicable, for each
21 proposed project study and proposed modi-
22 fication to an authorized water resources
23 development project or project study in-
24 cluded in the annual report, the benefits,

1 as described in clause (ii), of each such
2 study or proposed modification.

3 (ii) BENEFITS.—The benefits (or ex-
4 pected benefits, in the case of a proposed
5 project study) described in this clause are
6 benefits to—

7 (I) the protection of human life
8 and property;

9 (II) improvement to domestic ir-
10 rrigated water and power supplies;

11 (III) the national economy;

12 (IV) the environment; or

13 (V) the national security inter-
14 ests of the United States.

15 (C) IDENTIFICATION OF OTHER FAC-
16 TORS.—The Secretary shall identify in the an-
17 nual report, to the extent practicable—

18 (i) for each proposed project study in-
19 cluded in the annual report, the non-Fed-
20 eral interest that submitted the proposed
21 project study pursuant to subsection (b);
22 and

23 (ii) for each proposed project study
24 and proposed modification to a project or
25 project study included in the annual re-

1 port, whether the non-Federal interest has
2 demonstrated—

3 (I) that local support exists for
4 the proposed project study or pro-
5 posed modification to an authorized
6 project or project study (including the
7 surface water storage development
8 project that is the subject of the pro-
9 posed feasibility study or the proposed
10 modification to an authorized project
11 study); and

12 (II) the financial ability to pro-
13 vide the required non-Federal cost
14 share.

15 (2) TRANSPARENCY.—The Secretary shall in-
16 clude in the annual report, for each project report,
17 proposed project study, and proposed modification to
18 a project or project study included under paragraph
19 (1)(A)—

20 (A) the name of the associated non-Fed-
21 eral interest, including the name of any non-
22 Federal interest that has contributed, or is ex-
23 pected to contribute, a non-Federal share of the
24 cost of—

25 (i) the project report;

- 1 (ii) the proposed project study;
- 2 (iii) the authorized project study for
3 which the modification is proposed; or
- 4 (iv) construction of—
- 5 (I) the project that is the subject
6 of—
- 7 (aa) the water report;
- 8 (bb) the proposed project
9 study; or
- 10 (cc) the authorized project
11 study for which a modification is
12 proposed; or
- 13 (II) the proposed modification to
14 a project;
- 15 (B) a letter or statement of support for the
16 water report, proposed project study, or pro-
17 posed modification to a project or project study
18 from each associated non-Federal interest;
- 19 (C) the purpose of the feasibility report,
20 proposed feasibility study, or proposed modi-
21 fication to a project or project study;
- 22 (D) an estimate, to the extent practicable,
23 of the Federal, non-Federal, and total costs
24 of—

- 1 (i) the proposed modification to an
2 authorized project study; and
- 3 (ii) construction of—
- 4 (I) the project that is the subject
5 of—
- 6 (aa) the project report; or
- 7 (bb) the authorized project
8 study for which a modification is
9 proposed, with respect to the
10 change in costs resulting from
11 such modification; or
- 12 (II) the proposed modification to
13 an authorized project; and
- 14 (E) an estimate, to the extent practicable,
15 of the monetary and nonmonetary benefits of—
- 16 (i) the project that is the subject of—
- 17 (I) the project report; or
- 18 (II) the authorized project study
19 for which a modification is proposed,
20 with respect to the benefits of such
21 modification; or
- 22 (ii) the proposed modification to an
23 authorized project.
- 24 (3) CERTIFICATION.—The Secretary shall in-
25 clude in the annual report a certification stating

1 that each feasibility report, proposed feasibility
2 study, and proposed modification to a project or
3 project study included in the annual report meets
4 the criteria established in paragraph (1)(A).

5 (4) APPENDIX.—The Secretary shall include in
6 the annual report an appendix listing the proposals
7 submitted under subsection (b) that were not in-
8 cluded in the annual report under paragraph (1)(A)
9 and a description of why the Secretary determined
10 that those proposals did not meet the criteria for in-
11 clusion under such paragraph.

12 (d) SPECIAL RULE FOR INITIAL ANNUAL REPORT.—

13 Notwithstanding any other deadlines required by this sec-
14 tion, the Secretary shall—

15 (1) not later than 60 days after the date of en-
16 actment of this Act, publish in the Federal Register
17 a notice required by subsection (b)(1); and

18 (2) include in such notice a requirement that
19 non-Federal interests submit to the Secretary any
20 proposals described in subsection (b)(1) by not later
21 than 120 days after the date of publication of such
22 notice in the Federal Register in order for such pro-
23 posals to be considered for inclusion in the first an-
24 nual report developed by the Secretary under this
25 section.

1 (e) PUBLICATION.—Upon submission of an annual
 2 report to Congress, the Secretary shall make the annual
 3 report publicly available, including through publication on
 4 the Internet.

5 (f) DEFINITION.—In this section, the term “project
 6 report” means a final feasibility report developed under
 7 the Reclamation Act of 1902 (32 Stat. 388), and all Acts
 8 amendatory thereof or supplementary thereto.

9 **SEC. 607. APPLICABILITY OF WIIN ACT.**

10 Sections 4007 and 4009 of the WIIN Act (Public
 11 Law 114–322) shall not apply to any project (as defined
 12 in section 602 of this Act).

13 **TITLE VII—WATER RIGHTS**
 14 **PROTECTION**

15 **SEC. 701. SHORT TITLE.**

16 This title may be cited as the “Water Rights Protec-
 17 tion Act of 2017”.

18 **SEC. 702. DEFINITIONS.**

19 In this title:

20 (1) SECRETARY.—The term “Secretary”
 21 means, as applicable—

22 (A) the Secretary of Agriculture; or

23 (B) the Secretary of the Interior.

24 (2) WATER RIGHT.—The term “water right”
 25 means any surface, groundwater, or storage use

1 filed, permitted, certificated, confirmed, decreed, ad-
2 judicated, or otherwise recognized by a judicial pro-
3 ceeding or by the State in which the user acquires
4 possession of the water or puts it to beneficial use.

5 **SEC. 703. TREATMENT OF WATER RIGHTS.**

6 The Secretary shall not—

7 (1) condition the issuance, renewal, amendment,
8 or extension of any permit, approval, license, lease,
9 allotment, easement, right-of-way, or other land use
10 or occupancy agreement on the transfer of any water
11 right (including joint and sole ownership) directly or
12 indirectly to the United States, or on any impair-
13 ment of title or interest, in whole or in part, granted
14 or otherwise recognized under State law, by Federal
15 or State adjudication, decree, or other judgment, or
16 pursuant to any interstate water compact; or

17 (2) require any water user to apply for or ac-
18 quire a water right in the name of the United States
19 under State law as a condition of the issuance, re-
20 newal, amendment, or extension of any permit, ap-
21 proval, license, lease, allotment, easement, right-of-
22 way, or other land use or occupancy agreement.

23 **SEC. 704. POLICY DEVELOPMENT.**

24 In developing any rule, policy, directive, management
25 plan, or similar Federal action relating to the issuance,

1 renewal, amendment, or extension of any permit, approval,
2 license, lease, allotment, easement, right-of-way, or other
3 land use or occupancy agreement, the Secretary—

4 (1) shall—

5 (A) recognize the longstanding authority of
6 the States relating to evaluating, protecting, al-
7 locating, regulating, permitting, and adjudi-
8 cating water use; and

9 (B) coordinate with the States to ensure
10 that any rule, policy, directive, management
11 plan, or similar Federal action is consistent
12 with, and imposes no greater restriction or reg-
13 ulatory requirement, than applicable State
14 water law; and

15 (2) shall not—

16 (A) adversely affect—

17 (i) the authority of a State in—

18 (I) permitting the beneficial use
19 of water; or

20 (II) adjudicating water rights;

21 (ii) any definition established by a
22 State with respect to the term “beneficial
23 use”, “priority of water rights”, or “terms
24 of use”; or

1 (iii) any other right or obligation of a
2 State established under State law; or
3 (B) assert any connection between surface
4 and groundwater that is inconsistent with such
5 a connection recognized by State water laws.

6 **SEC. 705. EFFECT.**

7 (a) **EXISTING AUTHORITY.**—Nothing in this title lim-
8 its or expands any existing legally recognized authority of
9 the Secretary to issue, grant, or condition any permit, ap-
10 proval, license, lease, allotment, easement, right-of-way, or
11 other land use or occupancy agreement on Federal land
12 that is subject to the jurisdiction of the Secretary.

13 (b) **RECLAMATION CONTRACTS.**—Nothing in this title
14 in any way interferes with any existing or future Bureau
15 of Reclamation contract entered into pursuant to Federal
16 reclamation law (the Act of June 17, 1902 (32 Stat. 388,
17 chapter 1093), and Acts supplemental to and amendatory
18 of that Act).

19 (c) **ENDANGERED SPECIES ACT.**—Nothing in this
20 title affects the implementation of the Endangered Species
21 Act of 1973 (16 U.S.C. 1531 et seq.).

22 (d) **FEDERAL RESERVED WATER RIGHTS.**—Nothing
23 in this title limits or expands any existing reserved water
24 rights of the Federal Government on land administered
25 by the Secretary.

1 (e) FEDERAL POWER ACT.—Nothing in this title lim-
2 its or expands authorities pursuant to sections 4(e), 10(j),
3 or 18 of the Federal Power Act (16 U.S.C. 797(e), 803(j),
4 811).

5 (f) INDIAN WATER RIGHTS.—Nothing in this title
6 shall have any effect on tribal water rights or their adju-
7 dication, or the protection, settlement, or enforcement
8 and/or administration of such rights by either Indian
9 tribes or the United States as trustee for Indian tribes.

10 (g) FEDERALLY HELD STATE WATER RIGHTS.—
11 Nothing in this title limits the ability of the Secretary,
12 through applicable State procedures, to acquire, use, en-
13 force, or protect a State water right owned by the United
14 States.

Passed the House of Representatives July 12, 2017.

Attest:

Clerk.

115TH CONGRESS
1ST SESSION

H. R. 23

AN ACT

To provide drought relief in the State of California,
and for other purposes.

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: July 20, 2017

MEMO TO: Board of Directors

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

FROM: Richard G. Sykes, Director of Water and Natural Resources *RSykes*

SUBJECT: Chevron Recycled Water Contract Negotiations Update

Staff from the District and the Chevron Richmond Refinery have been meeting since last year to negotiate a new contract for recycled water supply from the North Richmond Water Reclamation Facility to the refinery for cooling tower make-up water. EBMUD and Chevron hope to complete negotiations before the interim agreement for recycled water service expires at the end of this year. The Board was last updated on these negotiations at the May 9, 2017 Board meeting.

District and Chevron staff are primarily focused on the cost provisions of the new agreement. A meeting was held on June 22, 2017 to review the cost summary provided by Chevron regarding use of recycled water at three of the refinery's cooling towers. Chevron presented summarized information on their historical incremental costs of recycled water use vs. potable water use in three of their four cooling towers. This information indicated that pricing recycled water at 46 to 60 percent of the potable water rate would compensate for their incremental cost to use this supply compared to use of potable water. Chevron indicated that collecting this cost data is difficult as costs are not accounted for in the refinery in a manner which easily allows for these types of costs comparisons. The District requested current information on the fourth cooling tower which still uses potable water since this might be helpful to understand differential costs. Chevron was not able to provide this information and also indicated that every cooling tower is slightly different thus making comparisons problematic. While it is clear that Chevron is incurring additional costs for use of recycled water, the magnitude of those costs cannot be precisely estimated. District staff believes that other factors such as optimization of cooling tower materials and maintenance practices and improved recycled water quality in the future could reduce the refinery's incremental cost so that the standard rate of non-potable water at 78 percent of the price of potable water would be appropriate in the long term.

At a meeting with Chevron on July 17, 2017, the District presented two cost proposals. The first cost proposal is for a 5-year term and would set the price of recycled water at 65 percent of the price of potable water for that term. This rate is based on continued District approach with Chevron to offset their additional costs for recycled water use. It offsets all costs that are clearly attributable to recycled water such as the need to use more water and chemicals, and capital recovery costs for necessary infrastructure. However, it does not fully offset maintenance and facility shutdown costs that are related to very conservative inspection practices that the District believes may not be fully necessary. The second proposal would move them to the standard non-potable water rate but would also provide them that same rate for any potable water delivered

Chevron Recycled Water Contract Negotiations Update

July 20, 2017

Page 2

through the North Richmond Facility unless prevented from doing so by specific unusual circumstances (acts of God, etc.). This proposal has a 10-year term. Potable water use is required when the North Richmond Plant is out of service for maintenance or when the West County Wastewater Treatment Plant cannot produce water of sufficient quality for recycling. Additionally, the West County Plant flows are not fully sufficient to meet all recycled water demand in the summer so potable water supplements recycled water in these months.

The next negotiation meeting with Chevron is scheduled for July 28, 2017. A brief update on these negotiations will be provided to the Board on July 25, 2017.

RGS:LHH:dec

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EAST BAY MUNICIPAL UTILITY DISTRICT

20.

DATE: July 20, 2017

MEMO TO: Board of Directors

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

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

SUBJECT: Conducting a Pilot to Provide Board Meeting Audio Recordings Online

INTRODUCTION

As part of EBMUD's ongoing commitment to transparency and increased public participation in the District's business, staff will conduct a 12-month pilot program in fall 2017 to provide audio recordings of regular Board meetings on the District's website.

DISCUSSION

The District currently publishes Board, Committee, Workshop and special meeting notices, agendas, staff reports, minutes, action summaries and presentations on the District's website at www.ebmud.com. Since January 2017, pages containing this information have received a cumulative average of 3,360 hits per month. Staff is evaluating options to provide audio recordings of regular Board meetings on the website.

In 2014, staff began exploring providing audio recordings online. Some issues identified included outdated audio equipment in the Board Room that would hamper the District's ability to consistently capture complete recordings of adequate quality to provide online. Since then, staff has updated system components and is ready to pilot providing these recordings online. These recordings may be a useful addition to the information already provided.

NEXT STEPS

During the proposed 12-month pilot, regular Board meeting proceedings will be recorded. Staff will index the audio files and make them available on the District's website by the Friday after the Tuesday Board meeting. At the end of the pilot, staff will evaluate the technology used, costs, staff resource needs, and customer interest in and usage of the audio recordings and report back to the Board.

Prior to the pilot kickoff, the Board will receive instructions on how to properly use the equipment in the Board Room to ensure the system consistently captures complete, quality recordings for indexing and posting.

ARC:RSC

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: July 20, 2017

MEMO TO: Board of Directors

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

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

SUBJECT: Special Finance/Administration Committee Minutes – July 11, 2017

Chair William B. Patterson called to order the Special Finance/Administration Committee meeting in the Training Resource Center at 8:33 a.m. Directors John A. Coleman and Frank Mellon were present at roll call. Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Manager of Customer and Community Services Sherri A. Hong, Special Assistant to the General Manager Alison A. Kastama, and Secretary of the District Rischa S. Cole.

Public Comment. None.

Continuation of Water Theft Penalty Ordinance and Guarantee Deposits Discussion.

Manager of Customer and Community Services Sherri A. Hong announced that today's discussion was a continuation of the information presented during the June 27, 2017 Finance/Administration Committee. She reviewed the District regulations and procedures in place that address water theft, water theft penalties, and a range of options and related costs for revising the Water Theft Penalty Ordinance. She noted that under all proposed options, the District retains the right to collect required charges associated with tampering to obtain/restore service. The District also retains the rights based on District regulations, the Penal Code and the Civil Code to bring legal actions to enjoin water theft, recover damages, refer matters to law enforcement, and to protect the District under appropriate circumstances including egregious violations.

Next, she provided an overview of the modifications made to how the District calculates and administers guarantee deposits. An average of more than 5,000 accounts per year is eligible for deposits where service has been disconnected one or more times, or where the customer had a previous bankruptcy or write-off. Deposits average \$350 - \$450 depending on the customer's average bi-monthly bill. A preliminary staff review indicates that at least 20 percent of the deposits paid are applied to the final bill upon closure of an account and 15 percent are applied towards unpaid debt prior to write-off. The remaining deposits are refunded to the customer usually after one year of satisfactory pay history is maintained.

Addressing the Committee were the following: Representatives from Service Workers Project for Affordable Utilities and Water (SWPAUW) Amanda Nervig, Stanley Brown, Mat-T Scott, Peter Kurtz, Queen Khalifah Shakur and Alameda Interfaith Climate Action Network representative Albert Kueffner. The speakers demanded that the District place a moratorium on water shut-offs for low-income customers, rescind the Water Theft Penalty Ordinance, discontinue charging guarantee deposits, and consider charging customers for water based on income.

The Committee discussed the information presented and requested the following from staff:

- Provide an information memo detailing a roadmap for the Customer Assistance Program (CAP), addressing water theft, and other efforts to assist low-income customers.
- Provide an information memo on the authority needed to reduce the basis for guarantee deposits from 4 months to 2 months, to retroactively apply CAP for eligible customers, the authority needed to extend payment installments to 24 months, and the legal requirements to include the City of Oakland sewer service charge on the EBMUD bill.
- Bring the range of options for revising the Water Theft Penalty Ordinance to the Board for consideration and include an additional option “D” as detailed below.

Theft Type	No Change to Ordinance	Option A - Reduce Tampering and Diversion	Option B - Eliminate Tampering	Option C - Eliminate Ordinance	ADDITIONAL Option D - Eliminate Ordinance	Other charges imposed under current rates & charges
Meter Tampering	\$ 1,000/ \$ 2,000/ \$ 3,000	\$ 200/ \$ 400/ \$ 800	No Penalty Charge ¹	No Penalty Charge ¹	\$ 200/ \$ 400/ \$ 800	Trip Chgs \$90 Lock 57 Plug 394 \$541
Lateral Diversion	\$ 1,000/ \$ 2,000/ \$ 3,000	\$ 200/ \$ 400/ \$ 800	\$ 1,000/ \$ 2,000/ \$ 3,000	No Penalty Charge ¹	\$ 1,000/ \$ 2,000/ \$ 3,000	Lateral \$6,200
Unauthorized Hydrant Use	\$ 1,000/ \$ 2,000/ \$ 3,000	\$ 1,000/ \$ 2,000/ \$ 3,000	\$ 1,000/ \$ 2,000/ \$ 3,000	No Penalty Charge ¹	\$ 1,000/ \$ 2,000/ \$ 3,000	Site Visit \$217

Adjournment. Chair Patterson adjourned the meeting at 9:58 a.m.

ARC/RSC

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: July 20, 2017

MEMO TO: Board of Directors

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

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

SUBJECT: Planning Committee Minutes – July 11, 2017

Chair Frank Mellon called to order the Planning Committee in the Training Resource Center at 10:05 a.m. Directors Doug Linney and Marguerite Young were present at roll call. Staff present included: General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Director of Operations and Maintenance Michael J. Wallis, Director of Water and Natural Resources Richard G. Sykes, Manager of Information Systems Nicholas J. Irias, Associate Civil Engineer Cindy Hunt, Senior Civil Engineer Alice E. Towey, Special Assistant to the General Manager Alison A. Kastama, and Secretary of the District Rischa S. Cole.

Public Comment. None.

Lead Sampling at K-12 Schools. Associate Civil Engineer Cindy Hunt provided an overview of the outreach plan to all public and private school districts in the service area regarding EBMUD's Kindergarten to 12th grade schools lead sampling initiative. In December 2016, the State Water Resources Control Board Division of Drinking Water, issued the District a water supply permit amendment. The amended permit requires the District to perform no-cost lead sampling at K-12 schools within the service area that request testing up until November 2019. The District has identified 520 public and private K-12 schools in its service area. To meet the amended permit requirements by November 2019, staff is proactively reaching out to schools about the initiative so the District can manage requests and complete lead sampling for all interested sites. Since February 2017, the District has received requests and completed sampling for seven schools in Walnut Creek, five schools in Orinda and five schools in the Acalanes Union High School District. In March and April 2017, West Contra Costa County and San Lorenzo Unified School Districts requested lead sampling for a total of 70 schools. These samplings are scheduled to be completed by December 31, 2017. The District will develop a Request for Proposals to seek a consultant contract to complete the sampling and hire a Limited-Term Water Distribution Supervisor in FY18 to manage the initiative and consultant contract. The Committee asked staff to include retired school administrators in their outreach efforts and to include the sampling program information in upcoming Board presentations to constituents and in the Customer Pipeline newsletter.

Demonstration Recharge Extraction and Aquifer Management (DREAM) Project.

Senior Civil Engineer Alice E. Towey provided an update on the project in which EBMUD would provide 1,000 acre-feet (AF) of Mokelumne River surface water to farmers who are currently pumping groundwater. In exchange, the District would receive up to 500 AF of groundwater for export to its customers. On April 11, 2017, San Joaquin County issued the groundwater export permit for the project. EBMUD, San Joaquin County, and North San Joaquin Water Conservation District are finalizing the project Operations and Funding Agreements. The Funding Agreement outlines

Board of Directors
Planning Committee
Minutes of July 11, 2017
July 20, 2017

mechanisms for tracking and reimbursement of project costs. EBMUD has agreed to pay a total of \$4 million to San Joaquin County for costs associated with the demonstration project, of which \$1.75 million must be used to improve the North San Joaquin Water Conservation District South System. The remaining \$2.25 million would be used to design, construct, and operate the project components. The Operations Agreement details which agency has responsibility for the design, construction, and operation of the various project components. Staff will bring final agreements to the Board for consideration later this summer and once approved, petition the State Water Resources Control Board to make changes to the District's water rights Permit 10478 to allow diversion of Mokelumne River water to the project. The Committee thanked staff for the update.

Work Management Systems Replacement Project. Manager of Information Systems Nicholas J. Irias presented an overview of the District's work management systems. He reviewed the types of systems currently in use noting that most of these systems are over 15 years old, obsolete, not well integrated and unable to support current and future District needs. Additionally, work management systems have evolved and current marketplace platforms may more easily accommodate the District's needs with limited customization. Mr. Irias stated the project seeks to replace and consolidate these numerous systems into newer and simpler architecture that can deliver the full range of needed functionality. Staff is seeking to contract with Westin Engineering, Inc., a firm with specialized knowledge of the current work management system marketplace, to develop a project roadmap. If approved, the contractor would work closely with knowledgeable staff both on the software system and workflow side of the existing applications. This effort would take approximately three years to complete.

Local 21 and Local 2019 were notified of this agreement on May 2, 2017, and Local 21 did not raise any specific issues. The District and Local 2019 met on June 6, 2017 to further discuss the contract. While Local 2019 has opined that this work should be performed by District forces, based on prior similar projects, staff has determined that proceeding without independent expert review is not prudent for a project of this scale and complexity. The full cost of effort required for the replacement project is estimated to be \$5-10 million. The Board will consider a contract with Westin Engineering, Inc. in an amount not to exceed \$104,200 at its Regular meeting on July 11. If approved, staff will begin gathering information for the project roadmap. After discussing the information provided, the Committee agreed that the item should be forwarded to the full Board for consideration.

Adjournment. Director Mellon adjourned the meeting at 10:55 a.m.

ARC/RSC