



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

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

Notice of Location Change

**REGULAR CLOSED SESSION
and
REGULAR BUSINESS MEETINGS
Thursday, September 28, 2021
Virtual**

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

Dated: September 23, 2021

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

Rischa S. Cole
Secretary of the District

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

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

AGENDA
REGULAR CLOSED SESSION
Tuesday, September 28, 2021
11:00 a.m.
*****Virtual****

Location

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

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

ROLL CALL:

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

ANNOUNCEMENT OF CLOSED SESSION AGENDA:

1. Existing litigation pursuant to Government Code section 54956.9(a):
 - a. *David Estopinal v. East Bay Municipal Utility District*
Contra Costa County Superior Court, Case No. C20-01593
 - b. *Carl Bennett and Dawn Bennett v. East Bay Municipal Utility District, et al.*,
Contra Costa County Superior Court, Case No. C20-01714
 - c. *Herbert Brown v. East Bay Municipal Utility District*
Contra Costa County Superior Court, Case No. C20-02480
2. Conference with Labor Negotiators Clifford C. Chan, General Manager; David A. Briggs, Director of Operations & Maintenance; Laura A. Acosta, Manager of Human Resources; and Niger M. Edwards, Manager of Employee Relations, pursuant to Government Code Section 54957.6 regarding COVID-19 response-vaccine directive: American Federation of State, County and Municipal Employees, Locals 444 and 2019; and International Federation of Professional & Technical Engineers, Local 21.

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

REGULAR BUSINESS MEETING

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

Location

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

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

ROLL CALL:

BOARD OF DIRECTORS:

- Pledge of Allegiance

ANNOUNCEMENTS FROM CLOSED SESSION:

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

CONSENT CALENDAR: (Single motion and vote approving 10 recommendations.)

1. Approve the Regular Meeting Minutes of September 14, 2021.
2. File correspondence with the Board.
3. Authorize an agreement beginning on or after September 28, 2021 with InfraTerra, Inc. in an amount not to exceed \$1,035,105 for specialized consulting services for the seismic retrofit design of the Main Wastewater Treatment Plant Administrative Facilities under SD-433.
4. Authorize actions related to concrete repair services.
 - 4a. Authorize agreements with Arrowhead Concrete Construction, Bruce Enterprises, Gary Golobe dba Cornerstone Paving, Pacific General Engineering, and Sonnikson and Stordahl Construction for concrete repair services beginning on or after September 28, 2021, for one year, in an aggregate amount not to exceed \$1,900,000.
 - 4b. Authorize additional agreements for concrete repair services, on an as-needed basis, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager's monthly report.

CONSENT CALENDAR: (Continued)

5. Authorize staff to continue using the state contract previously authorized under Board Motion No. 057-21 with Enterprise Holdings, Inc. to increase the authorized amount by \$180,000 to a total amount not to exceed \$410,000 and extend the duration to February 28, 2022 for long-term vehicle rental.
6. Approve the assignment of the agreement previously authorized under Board Motion No. 174-16 from Altivon, LP, to ConvergeOne, Inc. for Contact Center telephony services.
7. Authorize payment in the amount of \$450,000 to Marina Village Office Park for the acquisition of a one-year temporary construction easement and a permanent pipeline easement for the Oakland Inner Harbor Pipeline Crossing.
8. Authorize the continued purchase of gasoline and diesel fuel at market prices for five years, beginning on or after October 1, 2021 for a total cost, after the addition of taxes, not to exceed \$15,000,000.
9. Authorize the Office of General Counsel to continue employment of the law firm of Barg, Coffin, Lewis & Trapp, LLP, for specialized legal services related to environmental issues and regulatory compliance.
10. Approve the August 2021 Monthly Investment Transactions Report.

DETERMINATION AND DISCUSSION:

11. Adopt a proclamation in recognition of the 100th Birthday of United States National Park Ranger Betty Reid Soskin. (Resolution)
12. Adopt a resolution to declare October 6, 2021 to be "Clean Air Day" at the District and encourage all employees to participate in California Clean Air Day. (Resolution)
13. Board of Directors Vacation Schedule.
14. Conduct a second and final reading and vote on the new Excessive Water Use Penalty Ordinance, which repeals Ordinance No. 364-15 entitled "Excessive Water Use Penalty Ordinance for Drought Stages 3 and 4" and reenacts its provisions as amended to (i) conform the Ordinance to the requirements of Chapter 3.3 of Division 1 of the California Water Code by prohibiting and penalizing excessive water use during a declared Stage 2 drought while mandatory water use restrictions are in effect and/or when the District is affected by a Governor-declared drought emergency based on local conditions, (ii) modify the definition of excessive water use in certain circumstances, (iii) fix the penalty amount, and (iv) make other changes necessary or appropriate for the effective implementation of the Ordinance.
(2nd Reading and Vote – Ordinance No. 373-21)
15. Make requisite findings and adopt a resolution to continue to hold meetings of the Board of Directors via teleconference under Assembly Bill 361 until such time as the State of Emergency resulting from the COVID-19 pandemic no longer impacts the ability of Board members to meet safely in person. (Resolution)

DETERMINATION AND DISCUSSION: (Continued)

16. General Manager's Report:
- Coronavirus Update
 - 2021 Drought Update

REPORTS AND DIRECTOR COMMENTS:

17. Committee Reports:
- Planning
 - Redistricting Ad Hoc
 - Finance/Administration
18. Other Items for Future Consideration.
19. Director Comments.

ADJOURNMENT:

The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, October 12, 2021.

Disability Notice

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

Document Availability

Materials related to an item on this agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 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, September 28	Redistricting Ad Hoc Committee	9:00 a.m. Virtual	<ul style="list-style-type: none"> Determine Target Ward Population Deviation and Redistricting Software Demonstration
	Finance/Administration Committee	10:30 a.m. Virtual	<ul style="list-style-type: none"> Monthly Investment Transactions Report Fiscal Year 2022 Insurance Summary
	Board of Directors	11:00 a.m. Virtual 1:15 p.m. Virtual	<ul style="list-style-type: none"> Closed Session Regular Meeting
Tuesday, October 12	Planning Committee	TBD Virtual	
	Legislative/Human Resources Committee	TBD Virtual	
	Board of Directors	11:00 a.m. Virtual 1:15 p.m. Virtual	<ul style="list-style-type: none"> Closed Session Regular Meeting
Tuesday, October 26	Redistricting Ad Hoc Committee	TBD Virtual	
	Finance/Administration Committee	TBD Virtual	
	Board of Directors	11:00 a.m. Virtual 1:15 p.m. Virtual	<ul style="list-style-type: none"> Closed Session Regular Meeting

2021 Board Committee Members

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



APPENDIX

**Closed Session and Regular Business Meetings
Tuesday, September 28, 2021
11:00 a.m. and 1:15 p.m.**

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

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

Online

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

Webinar ID: 970 6508 6667

Passcode: 238500

By Phone

Telephone: 1 669 900 6833

Webinar ID: 970 6508 6667

Passcode: 238500

International numbers available: <https://ebmud.zoom.us/u/adMXn1VnPP>

Providing public comment

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

If you wish to provide public comment please:

- Use the raise hand feature in Zoom to indicate you wish to make a public comment
<https://support.zoom.us/hc/en-us/articles/205566129-Raising-your-hand-in-a-webinar>
 - If you participate by phone, press *9 to raise your hand
- When prompted by the Secretary, please state your name, affiliation if applicable, and topic
- The Secretary will call each speaker in the order received
- Comments on **non-agenda items** will be heard at the beginning of the meeting
- Comments on **agenda items** will be heard when the item is up for consideration
- Each speaker is allotted 3 minutes to speak; the Board President has the discretion to amend this time based on the number of speakers
- The Secretary will keep track of time and inform each speaker when the allotted time has concluded

Submitting written comments or materials

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

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

MINUTES

Tuesday, September 14, 2021
East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California
****Virtual****

Regular Closed Session Meeting

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:02 a.m. He announced that in accordance with the Governor's Executive Order N-08-21 which suspends portions of the Brown Act, this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting.

ROLL CALL

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

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Assistant General Counsel Jonathan D. Salmon (Item 1a), Director of Wastewater Eileen M. White (Item 1a), Assistant General Counsel Lourdes Matthew (Items 2, 3 and 4) Director of Operations and Maintenance David A. Briggs (Items 2 and 3), Manager of Security and Emergency Preparedness Steven G. Frew (Item 2), Manager of Human Resources Laura A. Acosta (Items 3 and 4), Manager of Employee Relations Niger M. Edwards (Items 3 and 4), Director of Finance Sophia D. Skoda (Item 4), and IEDA representatives Jeff Bailey and Gregory Ramirez (Item 4).

PUBLIC COMMENT

- Addressing the Board were the following: 1) Justin Young, EBMUD Associate Electrical Engineer and Chair of the AFSCME Local 2019 Contracting Out Committee commented on a contract for plant inspection services scheduled for Board consideration on September 28 and said the union is requesting the District review staffing for the Design and Construction Divisions once the District completes the study regarding capital project staffing resources; 2) Eric O. Larsen, President, AFSCME Local 444 commented on the Bay Area CPI, fair wages for employees, the compensation study conducted by the District, equity adjustments for some Local 444 classifications, requests for COVID-19 data, and the union's opposition to the District's vaccination mandate. He asked the Board to offer weekly testing for employees as an option to mandatory vaccinations; 3) Ivette Rivera, EBMUD employee commented on the civil rights lawsuit filed by former EBMUD employees Ayriel Bland and Saji Pierce, the civil rights lawsuit she previously filed against the District, and asked the Board to review the U.S. EEOC 2016 manual; 5) Brandon Batteate, 2nd Vice President, AFSCME Local 444 commented the District should not mandate vaccines for employees and cited data from the CDC VAERs site/system; and 6) Kasie Evans, AFSCME Local 2019 commented on the District's vaccine mandate and expressed opposition to mandatory vaccinations for employees.

Director Mellon requested a copy of the information cited by Brandon Batteate.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:20 p.m. He announced that in accordance with the Governor's Executive Order N-08-21 which suspends portions of the Brown Act, this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting.

ROLL CALL

Directors John A. Coleman, Andy Katz, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. Director Lesa R. McIntosh joined the meeting at 1:25 p.m. All Directors participated remotely. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President Linney led the Pledge of Allegiance.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Justin Young, EBMUD Associate Electrical Engineer commented on equity adjustments for the Associate Electrical Engineer classification and the total compensation study for the classification; 2) George Cleveland, Chief Steward, AFSCME Local 2019 commented on the District's vaccination mandate, a data breach during testing notifications to employees, the Bay Area CPI, and concerns regarding the consent form employees are required to sign for COVID-19 testing; 3) Nick Lawrence, customer commented on dangerous conditions on Tappan Terrace in Orinda, calculations he was expecting from District staff, and his potential exposure to poison oak during a visit to the Lafayette Reservoir on September 10. He said he would be submitting a Public Records Act request for information; and 4) Ivette Rivera, EBMUD employee commented on Kasie Evans' comments during the Closed Session public comment period and former General Manager Craig Spencer's separation from the District. She said she would be submitting a Public Records Act request for information.

Staff was asked to reach out to Mr. Lawrence about the incident at Lafayette Reservoir and to provide information on how rubber or metal piping material would perform if there is a fire in Tappan Terrace.

CONSENT CALENDAR

- Motion by Director McIntosh, seconded by Director Mellon to approve the recommended actions for Items 1-9 on the Consent Calendar carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

1. **Motion No. 151-21** – Approved the Regular Meeting Minutes of August 24, 2021.
2. The following correspondence was filed with the Board: **1)** Presentation entitled, “2021-2022 Redistricting Guidelines and Criteria,” dated September 14, 2021; **2)** Presentation entitled, “Los Vaqueros Reservoir Expansion,” dated September 14, 2021; **3)** Presentation entitled, “First Reading of Amendments to the Excessive Water Use Penalty Ordinance,” dated September 14, 2021; **4)** Presentation entitled, “Drought Update,” dated September 14, 2021; and **5)** Presentation entitled, “Coronavirus Update,” dated September 14, 2021.
3. **Motion No. 152-21** – Awarded a contract to the lowest responsive/responsible bidder, Frank A. Olsen Company LLC, to supply four butterfly valves for the Upper San Leandro Water Treatment Plant beginning on or after September 14, 2021 for a total cost, after the addition of taxes and fees, not to exceed \$308,700.
4. **Motion No. 153-21** – Awarded a contract to the lowest responsive/responsible bidder, Atlas Performance Industries, Inc., for supplying a 48-ft by 60-ft commercial modular building for the District-Owned North Orinda Sports Fields Temporary Maintenance Facilities Project for a total cost, after the addition of taxes and fees, not to exceed \$402,652 under Request for Quotation No. 2119.
5. **Motion No. 154-21** – Authorized an agreement beginning on or after September 15, 2021 with Jacobs Associates, Inc. dba McMillen Jacobs Associates in an amount not to exceed \$562,340 for entry plans and inspection services for the San Pablo Supply Tunnel and the Upper San Leandro Supply Tunnel.
6. **Motion No. 155-21** – Authorized an amendment to the agreement previously amended under Board Motion No. 077-19 with Pacific States Environmental Contractors, Inc. to increase the agreement amount by \$6,800,000 to a total amount not to exceed \$28,106,000 and extend the agreement term to October 3, 2023 for trench soils management and removal services.
7. **Motion No. 156-21** – Authorized an amendment to the agreement previously authorized under Board Motion No. 073-21 with Oppenheimer Investigations Group to increase the agreement amount by \$30,000 to a total amount not to exceed \$140,000 and extend the agreement term to June 30, 2022, for Equal Employment Opportunity investigative services.
8. **Motion No. 157-21** – Approved a 65-month lease agreement with 25 Orinda Way LLC, for 4,461 square feet of office space located at 25 Orinda Way, Orinda to support the District’s Orinda Water Treatment Plant’s Disinfection Improvements and Chemical Systems Safety Improvement Projects construction management team. The term of the lease is March 2022 through July 2027. The base monthly rent is \$17,621 with a three percent annual escalation and pass-through costs.

9. **Motion No. 158-21** – Authorized the Office of General Counsel to continue the employment of the law firm of Hanson Bridgett LLP, for specialized legal services related to construction, public contracts and procurement, claims, intellectual property and technology matters, tax, public pension law, labor and employment, and litigation matters in an additional amount not to exceed \$175,000.

DETERMINATION AND DISCUSSION

10. Board of Directors Vacation Schedule.

President Linney announced the Board would discuss its 2022 and future vacation schedules. The Board has traditionally canceled its meetings scheduled for the fourth Tuesday in August provided it did not adversely impact the operations of the District, to accommodate planned vacations of Directors and staff. At its May 26, 2020 meeting, the Board voted to cancel its meetings scheduled for the fourth Tuesday in July 2021 instead of the meetings scheduled for the fourth Tuesday in August, and to calendar a discussion on revising its summer vacation schedule after July 2021. The Board discussed revisions to its 2022 and future vacation schedules and Secretary of the District Rischa S. Cole provided background on key District actions and activities (e.g., processing information for the District's Multi-Family Residential Lien Program, the Wet Weather Facility Charge and Board elections). After additional Board discussion regarding potential impacts to these and other activities, General Manager Clifford C. Chan said staff would conduct an additional review, including an option for the Board to consider canceling its meetings scheduled for the second Tuesday in August, and present this information at a future meeting. The Board did not take action on this item.

11. Approve Guidelines and Criteria for the District's 2021-2022 Redistricting Efforts.

Secretary of the District Rischa S. Cole presented an overview of the draft guidelines and criteria. The Board's Redistricting Ad Hoc Committee met on June 22, 2021 and reviewed the redistricting guidelines and criteria from 2011-2012 as well as provisions of the FAIR MAPS Act (AB 849 – Bonta) to determine guidelines and criteria for 2021-2022. Based on feedback from the Committee, staff presented draft guidelines and criteria for the District's 2021-2022 redistricting efforts at the August 24, 2021 Redistricting Ad Hoc Committee meeting. During the August 24 meeting, the Committee directed staff to maintain transparency with redistricting efforts and adjust redistricting efforts based on the public's interest and costs; and to make an additional revision to the guidelines and criteria to clarify the Board will "adhere to provisions of the FAIR MAPS Act as much as reasonable." The draft guidelines and criteria were updated and include information on how the Board will, as much as reasonable, adopt provisions of the FAIR MAPS Act as best practices when establishing ward boundary lines; a reference to communities of interest; and updated criteria language to clarify actions to be completed by the Committee and meetings and hearings to be conducted by the full Board. Ms. Cole said the updated guidelines and criteria will ensure the Board is conducting its redistricting efforts in accordance with the Municipal Utility District Act and the Elections Code. Next, she reviewed the redistricting activity schedule which was updated based on input from the Committee during its August 24 meeting. President Linney announced the Committee is recommending the guidelines and criteria as well as the redistricting activity schedule for Board approval.

- Addressing the Board was George Cleveland who commented on whether the definition of communities of interest include unincorporated communities and asked the Board to consider moving the City of El Sobrante from Ward 3 to Ward 1 when redistricting plans are being developed.
- Motion by Director Coleman, seconded by Director Patterson to approve the recommended actions for Item 11 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

**12.1- Authorize Actions Related to the District's Participation in the Los Vaqueros Reservoir
12.3 Expansion Project.**

Director of Water and Natural Resources Michael T. Tognolini presented an overview of the District's plan to participate in Contra Costa Water District's (CCWD) proposed Los Vaqueros Reservoir Expansion Project. Staff is requesting the Board adopt a resolution authorizing the General Manager to sign the Los Vaqueros Reservoir Joint Exercise of Powers Agreement on behalf of the District. Once fully executed, the agreement would form the Los Vaqueros Reservoir Joint Powers Authority (JPA), a new public agency. EBMUD will join the JPA and continue to work with other participating water districts to negotiate a set of agreements to govern the proposed project. Joining the JPA will not irrevocably commit EBMUD to the project. Rather, EBMUD may withdraw from the JPA at any time before a Service Agreement is executed between the JPA and EBMUD along with a Final Funding Agreement between the JPA and the California Water Commission. He highlighted some of the key off-ramps that would allow the District to withdraw from the JPA before a Final Funding Agreement is executed and actions taken by the other participating water districts to join the JPA. If the Board authorizes the District to join the JPA, within 30 days, the Board will need to appoint a representative to serve as a Director of the JPA's Board of Directors and an alternate. Each JPA member's Director and alternate will serve without compensation from the JPA. The appointees will serve at the pleasure of EBMUD, hold office until their successor is selected by EBMUD, and may be removed at any time by EBMUD, with or without cause. Each appointee may be a member of EBMUD's Board of Directors or a management-level employee. The primary Director must be designated by name. The alternate Director, if a management-level employee, may be designated by name or position title. He reviewed the appointees from the other participating water districts noting appointees are a combination of Board members and staff. In conclusion, Mr. Tognolini reviewed the proposed amendments to the project's Multiparty Agreement which expires on December 31, 2021. The amendments propose to increase the agreement amount by \$897,120 to a total amount not to exceed \$2,264,910 and extend the agreement term to December 31, 2022 to fund planning and other pre-construction activities for the proposed project. Although the total cost of the additional work in the amended Multiparty Agreement is \$22,831,798, he said EBMUD's share of the cost is \$897,120. The total capital costs of the project are currently estimated at approximately \$900 million, of which \$470 million is funded by a California Water Commission grant awarded to CCWD. Although the details of cost allocation are still being negotiated, staff estimates that EBMUD's portion of capital costs for 30,000 acre-feet of storage in Los Vaqueros Reservoir is approximately \$50 to \$100 million depending on whether federal grant funding is secured. President Linney asked Board members to advise if they were interested in serving as the representative and alternate on the LVE JPA. Director Coleman said he would serve as the representative and Director McIntosh said she would serve as the alternate.

- Motion by Director Coleman, seconded by Director McIntosh to approve the recommended actions for Item 12.1 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

12.1. **35245-21** – Authorizing the General Manager to Execute the Los Vaqueros Reservoir Joint Exercise of Powers Agreement.

- Motion by Director Coleman, seconded by Director McIntosh to approve the recommended actions for Item 12.2 to appoint Director John A. Coleman to serve as representative and Director Lesa R. McIntosh to serve as an alternative representative to the Board of Directors of the Los Vaqueros Reservoir Joint Powers Authority carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

12.2. **35246-21** – Appointing a Representative and an Alternative Representative to the Board of Directors of the Los Vaqueros Reservoir Joint Powers Authority.

- Motion by Director Young, seconded by Director McIntosh to approve the recommended actions for Item 12.3 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

12.3. **Motion No. 160-21** – Authorized an amendment to the cost-sharing agreement previously authorized under Board Motion Nos. 039-19 and 203-20 with seven other water agencies to increase the agreement amount by \$897,120 to a total amount not to exceed \$2,264,910 and extend the agreement term to December 31, 2022 to fund planning and other pre-construction activities for the proposed Los Vaqueros Reservoir Expansion Project.

13. **Introduction and First Reading of the Excessive Water Use Penalty Ordinance.**

Manager of Water Conservation Alice E. Towey introduced the first reading of the new Excessive Water Use Penalty Ordinance, which repeals Ordinance No. 364-15 entitled "Excessive Water Use Penalty Ordinance for Drought Stages 3 and 4" and reenacts its provisions as amended to (i) conform with requirements of Chapter 3.3 of Division 1 of the California Water Code by prohibiting and penalizing excessive water use during a declared Stage 2 drought while mandatory water use restrictions are in effect and/or when the District is affected by a Governor-declared drought emergency based on local conditions, (ii) modify the definition of excessive water use in certain circumstances, (iii) fix the penalty amount, and (iv) make other changes necessary or appropriate for the effective implementation of the Ordinance. Ordinance No. 364-15 was enacted in 2015 during the last drought to discourage excessive discretionary use of water by single family residential (SFR) customers during a Stage 3 and 4 drought. She reviewed the requirements in SB 814 which was signed into law in 2016 and said while Ordinance No. 364-15 complies with SB 814 requirements in most respects, the new Water Shortage Contingency Plan adopted by the Board in June 2021 revised the District's Drought Management Program guidelines to include mandatory rationing as part of Stage 2 droughts; prior to this revision, rationing at this stage was voluntary. To comply with state law, the ordinance must be amended. The amendments would prohibit excessive water use during a declared Stage 2 drought and authorize penalties while mandatory rationing is in effect and/or when the District is affected by a drought emergency declared by the Governor based on local conditions. The amendments would also adjust the

existing excessive water use thresholds for Stage 3 drought, provide customers an opportunity to correct an apparent violation before a penalty is imposed, fix a penalty amount which applies whenever the Ordinance's prohibitions take effect, and make other changes to conform to state law or to improve the effective implementation of the Ordinance. Staff evaluated the penalty thresholds and is recommending a threshold of 66 CCF/month, or approximately 1,646 gallons per day (gpd) for a Stage 2 drought. This represents approximately 7.3 times the average 2020 SFR water use of 225 gpd. In 2020, approximately 1.5 percent of SFR customers had at least one billing cycle that exceeded this threshold. For a Stage 3 drought, staff is recommending the threshold be lowered to 59 CCF/month. This represents about 6.5 times the average 2020 SFR water use. Approximately two percent of SFR customers would be affected by this threshold based on 2020 billing data. The Stage 4 thresholds would remain unchanged. Ms. Towey discussed the plan to proactively reach out to high water users in advance of activating the new ordinance, proposed amendments to the enforcement process, and the exceptions and appeals process. The second reading and vote on the ordinance is scheduled for September 28, 2021 and the ordinance would become effective 30 days after enactment.

There was considerable Board discussion regarding the penalty amount for the recommended thresholds for a Stage 2 drought and a recommendation to consider reducing the penalty amount from \$2 per CCF to \$1 per CCF; the California Public Records Act requirement to disclose the name, address, and usage data of residential customers that violate the ordinance; the Board's ability to set different penalty amounts for each drought stage; the proactive outreach outlined in the proposed ordinance; a recommendation to send certified letters to customers who were assessed an excessive use penalty during the last drought; and a proposal from Director Katz to revise provisions in the ordinance to provide a "preemptive warning" by proactively communicating with customers whose billing history indicates they may be approaching or near a penalty threshold when the District is declaring a drought. Staff responded to questions from the Board regarding the State's legal authority to dictate which drought stage could be declared by the District; if the District could face legal jeopardy from releasing the names, addresses and usage data of residential customers that violate the ordinance; how staff accounted for evapotranspiration and lot size while developing the penalty thresholds; potential legal issues or other impacts to implementing the ordinance if revisions are needed based on today's discussion; how the District would process leak adjustments if a customer has been assessed an excessive use penalty; clarification on the definition of a first exceedance during a drought cycle; whether a certified letter to a customer regarding high use would be considered a notice of violation; a proposal to add a second trigger to the warning provisions in the ordinance; and strengthening the proactive outreach plan.

- Addressing the Board was George Cleveland who asked for clarification on when, during the billing cycle, a customer who may have experienced a leak would receive a warning or a penalty for excessive use and how the District would address an account if a customer does not pay their bill after losing an appeal of the excessive use penalty.

Ms. Towey and Manager of Customer and Community Services Andrew L. Lee provided clarification for Mr. Cleveland's questions. After additional discussion, General Manager Chan said staff will keep the proposed ordinance language but will update the outreach plan language based on feedback received today. He also confirmed the penalty amounts for drought Stages 2 through 4 would remain at the proposed \$2 per CCF.

Ordinance No. 373-21 – Introduction and first reading of the Excessive Water Use Penalty Ordinance (*repeals Ordinance No. 364-15 entitled "Excessive Water Use Penalty Ordinance for Drought Stages 3 and 4" and reenacts its provisions as amended to (i) conform the Ordinance to the requirements of Chapter 3.3 of Division 1 of the California Water Code by prohibiting and penalizing excessive water use during a declared Stage 2 drought while mandatory water use restrictions are in effect and/or when the District is affected by a Governor-declared drought emergency based on local conditions, (ii) modify the definition of excessive water use in certain circumstances, (iii) fix the penalty amount, and (iv) make other changes necessary or appropriate for the effective implementation of the Ordinance*). (Introduction and first reading only).

14. **General Manager's Report.**

2021 Coronavirus Update

Director of Operations and Maintenance David A. Briggs presented an update on daily positive COVID-19 cases in Alameda and Contra Costa counties which he noted were trending downward; the most recent vaccination rates for the District, state and the counties; the number of positive employee and contractor COVID-19 cases at the District to date noting 54 percent of cases in the last three months involved fully vaccinated staff; the number of staff currently quarantined; and implementation of the District's vaccination policy. Regular COVID-19 testing began on Monday, September 13 and is required for all employees reporting to a District worksite who do not have proof of full vaccination on file with the District. Testing is being performed on District time and is being paid for by the District. All employees are required to be vaccinated by November 1, 2021; however, exemptions will be granted to employees with legitimate medical and religious reasons. After November 1, the District will continue paying for testing for exempted employees. He reviewed the District's paid leave policy and said after September 30, the District will only provide paid leave for employees who are vaccinated or exempted, and quarantined due to close contact at work and for employees feeling ill and needing leave after receiving a vaccine. The District continues completing other policy implementation actions including meeting and conferring with the unions; communicating with employees; providing an online process for employees to upload vaccination status; negotiating change orders with contractors and vendors to include the District's COVID-19 safety requirements; and finalizing a frequently asked questions document for staff. He said staff recently amended two contracts executed by the General Manager in January 2021 under the emergency declaration in response to the COVID-19 pandemic. Under an emergency declaration, the General Manager is authorized to enter into contracts for up to \$500,000 each. The contract for COVID-19 contact tracing was amended to increase the amount from \$50,000 to \$220,175 and the contract for COVID-19 testing kits was increased from \$257, 975 to \$500,000. Staff will ask the Board to consider authorizing additional funding for the COVID-19 testing kit contract within the next few weeks.

- Addressing the Board were the following: 1) Rachel Varao, EBMUD employee commented on a letter she sent to the Board and Human Resources requesting a letter of informed consent, Statement of Economic Interest filings for the Board, the dependent verification audit recently conducted by the District, how vaccinated individuals can also transmit COVID-19, and concerns her personal medical information is being provided to supervisors during COVID-19 testing; 2) Kasie Evans, EBMUD employee began commenting on the District's vaccination policy but experienced technical difficulties; and 3) Gary Walters II,

EBMUD employee commented on clarification regarding breakthrough cases for vaccinated individuals versus unvaccinated individuals, information in the Coronavirus update presentation, and the ability for the Board to use this time as an opportunity to bring the agency together.

Drought Plan Update

General Manager Clifford C. Chan reported customers have responded to the District's conservation messaging and reduced overall water use by 8.5 percent in July, 9 percent in August, and to date approximately 8 percent in September as compared to 2020. Director of Operations and Maintenance David A. Briggs said the end of the water year is about two weeks away and the District is projecting approximately 435,000 acre-feet (AF) of carry over storage. Diversions of the 33,250 AF of Central Valley Project (CVP) allocation through the Freeport Regional Water Authority (FRWA) will begin in early October to take advantage of off-peak energy pricing. Emergency repairs on the District's Mokelumne Aqueduct No. 2 began September 13 and are scheduled to be completed by the end of the month. Until then, CVP water will only flow through Mokelumne Aqueduct No. 1. Director of Water and Natural Resources Michael T. Tognolini said the District is working with the U.S. Bureau of Reclamation (USBR) and Contra Costa Water District (CCWD) to obtain 2,000 AF of previously stored water in Los Vaqueros Reservoir based on a prior agreement with CCWD. The water will be delivered to the District via FRWA by dedicating 2,000 AF of CCWD's CVP contract allocation to the District in exchange for the water stored in Los Vaqueros Reservoir. In addition, FRWA and the District will divert and wheel another 3,200 AF of CCWD's CVP allocation for CCWD pursuant to existing agreements. Staff is developing the 2022 water transfers supply strategy if conditions remain dry next year. Staff initiated discussions with potential sellers and is developing a plan to secure up to 50,000 AF of supplemental supply for next year if needed. Transfer water would be delivered through FRWA. He provided an update on Marin Municipal Water District's (MMWD) request for the District to potentially wheel water for MMWD in 2022. A memorandum of understanding for a planning study is being developed to review capacity restraints, sources of supply and how water can be moved through the system if capacity is available. Mr. Tognolini noted the District has limited operational and staffing resources available to support MMWD activities as staff works on planning for EBMUD's water needs in 2022. In August, the state issued an initial curtailment order for the District's diversions of its Mokelumne and Bixler water rights. These orders do not have a significant impact on the District's water supply. The District is also required to increase its monthly reporting on calendar year 2021 diversions to include projected diversions. Senior Public Information Representative Andrea A. Pook provided an overview of the newly developed Water Supply Reliability fact sheet which highlights the District's commitment to diversify and increase water supplies and describes efforts taken since 1970 that have helped the District weather continued cycles of drought. The fact sheet is available on ebmud.com/watersupply. Staff continues outreach on the District's social media platforms and is including "drought myth busters" in social media posts. In 2021, staff has conducted approximately 70 interviews with local media and conducted 50 presentations. Director McIntosh asked about the District's outreach to homeowners associations and to consider increasing outreach to customers living in homeowners associations. The Board requested an electronic copy of the Water Supply Reliability fact sheet.

- Addressing the Board was Rachel Varao, EBMUD employee who commented on the District's vaccination policy and asked when employees would receive a copy of the District's written vaccination policy.

August 2021 Monthly Report

General Manager Clifford C. Chan said he is available to answer questions regarding the monthly report provided in the Board agenda materials.

REPORTS AND DIRECTOR COMMENTS

15. Committee Reports.

- Filed with the Board were the Minutes for the May 17, 2021 EBMUD/EBRPD Liaison Committee meeting and the August 24, 2021 Redistricting Ad Hoc and Finance/Administration Committee meetings.
- Planning Committee Chair Marguerite Young reported the Committee met earlier in the day (remotely) and received updates on the Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Projects; Water Quality Semi-Annual Report; Regulatory Compliance Semi-Annual Report; Main Wastewater Treatment Plant Seismic Retrofit Program; and Camanche-Riverview Campground Fire Protection.

16. Other Items for Future Consideration.

None.

17. Director Comments.

- Director Coleman reported participating in the following: meeting with representatives from AFSCME Local 2019 on September 2 (remotely); presentation at the Rotary Club of Livermore Valley in Livermore on September 7; and presentation at the Pleasant Hill City Council on September 13 (remotely). He reported on plans to participate in the following: presentation at the Walnut Creek Chamber of Commerce on September 14 (remotely); ACWA Federal Affairs Committee on September 16 (remotely); legal deposition for EBMUD on September 15 and 16 (remote and in person); East Bay Leadership Council Board meeting on September 17 (remotely); Retirement event for EBMUD employee Steve Frew in Lafayette on September 17; Pleasant Hill Rotary in Pleasant Hill on September 23; Bay Area Council Water Task Force on September 23 (remotely); DERWA Board meeting in Dublin on September 27; and UMWRA Board meeting in Valley Springs on October 1.
- Directors Katz, McIntosh, Mellon, Patterson, Young, and President Linney had no reports.

ADJOURNMENT

President Linney adjourned the meeting at 4:05 p.m.

SUBMITTED BY:

Rischa S. Cole, Secretary of the District

APPROVED: September 28, 2021

Doug A. Linney, President of the Board

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AGENDA NO. 3.
MEETING DATE September 28, 2021

**TITLE MAIN WASTEWATER TREATMENT PLANT ADMINISTRATIVE
FACILITIES SEISMIC RETROFIT DESIGN SERVICES**

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

RECOMMENDED ACTION

Authorize an agreement beginning on or after September 28, 2021 with InfraTerra, Inc. in an amount not to exceed \$1,035,105 for specialized consulting services for the seismic retrofit design of the Main Wastewater Treatment Plant (MWWTP) Administrative Facilities under SD-433.

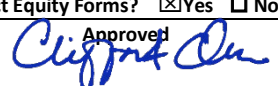
SUMMARY

The District is retrofitting MWWTP facilities to improve seismic resiliency. This agreement will provide engineering design services to evaluate and design facility improvements to mitigate seismic vulnerabilities. The consultant will also provide design services during construction. This project will improve life safety and reduce operational impacts in the event of a major earthquake. This item was discussed at the September 14, 2021 Planning Committee meeting.

DISCUSSION

The facilities included in this project were built between 1949 and 1974 with modifications made over the years. Codes related to seismic safety have changed significantly since these facilities were constructed. In 2016, the District initiated a seismic update evaluation and risk assessment of all MWWTP facilities. The facilities in this project are considered among the higher risk facilities and include the MWWTP Administration and Laboratory Building, Field Services Building, Building 1084, and site-wide electrical equipment anchorage. Design services will include the preliminary and final design, independent peer review, and engineering design services during construction. The services contracted for in this agreement cannot be satisfactorily performed under the District civil service and therefore must be contracted out. This project supports the District's Long-Term Infrastructure Investment Strategic Plan goal for meeting operational needs and reliability goals by effectively maintaining infrastructure.

CONSULTANT SELECTION

Funds Available: FY22, CIP 2014086, Page 64	Budget Coding: 928/7999/2014954/5231	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Wastewater	Eileen M. White	
		General Manager
Attachment(s): P-035; P-061		

A request for proposals was posted on the District's website and sent to 45 firms, including 36 local business enterprises with expertise in water and wastewater engineering or seismic evaluation and retrofit design. Three firms submitted proposals and a short-list of two firms was established. InfraTerra, Inc. was selected based on its specialized expertise in seismic structural evaluation and retrofit design and experience on similar projects.

SUSTAINABILITY

Economic

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

Social

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

Environmental

The MWWTP is a critical facility that protects public health and water quality in the San Francisco Bay. This project will support the resiliency of the MWWTP in the event of a major earthquake.

ALTERNATIVES

Delay or do not proceed with the work. This alternative is not recommended because retrofit improvements for these higher-risk facilities are needed to make the MWWTP more resilient in the event of a major seismic event.


Select a different consultant to perform the work. This alternative is not recommended because InfraTerra, Inc. is best qualified to complete this project. InfraTerra, Inc. has recent, specialized experience completing seismic structural evaluations and retrofit designs.

Perform the work with District forces. This alternative is not recommended because District forces are not available to perform the scope of this work due to other high-priority projects.



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE Professional Services Agreement - SD-433 Main Wastewater Treatment Plant Administrative Facilities Seismic Retrofit Design Services						DATE: August 10, 2021							
CONTRACTOR: InfraTerra, Inc. San Francisco, CA 94103					Small Business					PERCENTAGE OF CONTRACT DOLLARS			
BID/PROPOSER'S PRICE: \$1,035,105 *		FIRM'S OWNERSHIP			Availability Group		Contracting Objectives		Participation				
		Ethnicity		Gender		White Men		25%		52.0%			
		Asian		Men		White Women		6%		0.0%			
						Ethnic Minorities		25%		48.0%			
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: InfraTerra, Inc.		\$465,797	Asian	X				45.0%					
SUBS: HDR Engineering		\$465,797	White	X		45.0%							
Degenkolb Engineers		\$72,458	White	X		7.0%							
Hattin Construction Management		\$31,053	Black	X				3.0%					
TOTAL		\$1,035,105				52.0%	0.0%	48.0%	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:			7		1		2		10				
Percent of Total Employees:			70.0%		10.0%		20.0%						
MSA Labor Market %:			29.2%		22.5%		48.3%						
MSA Labor Market Location:			San Francisco										
COMMENTS													
Contract Equity Participation - 52% White Men participation and 48% Ethnic Minority participation.													
*Total not to exceed: \$1,035,105													
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended					
(P-035 - 7/11) NA				Page: 1 of 1 NA				 4544_P					



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: Main Wastewater Treatment Plant Administrative Facilities Seismic Retrofit Design Services		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
		National	10.5	10.7	3.7	0.7	27.3		
Professional Services Agreement - SD-433 DATE: 8/10/2021		9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9		
		Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2		
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number		B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %	
RP	EMM: A/PI - SBE	Company Wide	0	0	3	0	3	30.0%	48.3%
Infraterra, Inc. Christopher Hitchcock 5 Third Street San Francisco, CA 94103 925-818-3690		Manager/Prof	0	0	1	0	0	0.0%	
		Technical/Sales	0	0	2	0	2	100.0%	
		Clerical/Skilled	0	0	0	0	0	0.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	3	0	0	0.0%	39.9%
		AA Plan on File:	NA		Date of last contract with District:		NA		
		Co. Wide MSA:	San Francisco		# Employees-Co. Wide:		10	Bay Area: 10	
S	WM: LBE	Company Wide	141	538	791	87	1,557	18.2%	27.2%
HDR Engineering Dawn Sornson 100 Pringle Avenue, Suite 400 Walnut Creek, CA 94596 402-399-1415		Manager/Prof	95	387	691	81	1,254	18.1%	
		Technical/Sales	35	101	63	3	202	19.6%	
		Clerical/Skilled	10	50	37	3	100	17.0%	
		Semi/Unskilled	1	0	0	0	0	16.7%	
		Bay Area	9	28	72	0	109	28.1%	39.9%
		Co. Wide MSA:	Sacramento		# Employees-Co. Wide:		8,568	Bay Area: 388	
S	WM	Company Wide	2	30	49	0	81	40.7%	27.2%
Degenkolb Engineers Mark Berkowitz 375 Beale Street, Suite 500 San Francisco, CA 94105 415-392-6952		Manager/Prof	1	21	42	0	64	37.9%	
		Technical/Sales	1	4	4	0	9	81.8%	
		Clerical/Skilled	0	4	2	0	6	40.0%	
		Semi/Unskilled	0	1	1	0	2	13.3%	
		Bay Area	0	10	31	0	41	38.3%	39.9%
		Co. Wide MSA:	Sacramento		# Employees-Co. Wide:		0	Bay Area: 4	
S	EMM: B - L/SBE	Company Wide	4	0	2	0	6	120.0%	47.8%
Hattin Construction Management, Inc Roosevelt Hattin, Jr 300 Frank H. Ogawa Plaza, Suite 239 Oakland, CA 94612 510-832-5800		Manager/Prof	4	0	1	0	5	100.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	0	1	0	1	100.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	4	0	2	0	6	100.0%	39.9%
		Co. Wide MSA:	Oakland		# Employees-Co. Wide:		6	Bay Area: 6	
P	WM: LBE	Company Wide	7	41	76	1	125	21.5%	27.3%
Simpson Gumpertz & Heger Inc Julianne C. Nevins 1999 Harrison Street, Suite 2400 Oakland, CA 94612 781-907-9306		Manager/Prof	4	37	73	1	115	21.9%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	3	4	3	0	10	27.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	3	7	28	0	38	35.5%	39.9%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		582	Bay Area: 107	

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

AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

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AGENDA NO. 4a-4b.
MEETING DATE September 28, 2021

TITLE CONCRETE REPAIR SERVICES

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

RECOMMENDED ACTION


- A. Authorize agreements with Arrowhead Concrete Construction, Bruce Enterprises, Gary Golobe dba Cornerstone Paving, Pacific General Engineering, and Sonnikson and Stordahl Construction for concrete repair services beginning on or after September 28, 2021, for one year, in an aggregate amount not to exceed \$1,900,000.
- B. Authorize additional agreements for concrete repair services, on an as-needed basis, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager's monthly report.

SUMMARY

The District uses concrete repair services to restore concrete streets, sidewalks, curbs, and gutters following repair and replacement of water distribution infrastructure. Emergencies, unplanned work, seasonal variations in demand, staff vacancies, and a 30-day turnaround (often driven by permit conditions mandated by the cities and counties) require the District to contract a portion of concrete repair to augment District staff.

DISCUSSION

The District has been using concrete repair services to supplement District forces since the early 1990s. The use of these services is necessary to address the existing and persistent backlog of sidewalk repair jobs. Four Limited-Term Concrete Finisher positions and associated equipment were included in the FY20/21 budget to reduce concrete repair services. All four positions are now filled allowing the District to evaluate internal productivity levels and capabilities while also reducing contract services to some degree.

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

Long-term staffing needs will be evaluated using this information. These agreements will allow the District to reduce and manage the current backlog. This work supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

SERVICE PROVIDER SELECTION

A request for proposals was posted on the District's website and sent to seven potential proposers. Five service providers submitted proposals. Arrowhead Concrete Construction, Bruce Enterprises, Gary Golobe dba Cornerstone Paving, Pacific General Engineering, and Sonnikson and Stordahl Construction were selected based on the ability to provide services with one-day notice and meet the minimum requirements. Specific jobs will be completed on a job-by-job basis based on location and vendor availability.

SUSTAINABILITY

Economic

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

Social

Local 444 was notified of these agreements on July 29, 2021 and issues were addressed at a meeting on August 5, 2021. While Local 444 objects to contracting these services, Local 444 does not object to these agreements.

Environmental

The use of concrete repair services helps maintain efficient street, sidewalk, and meter box repairs and replacement projects, and also reduces impacts to local environments around District.

ALTERNATIVES

Do not contract for concrete repair services. This alternative is not recommended because this service is critical to District operations.

Add staff and equipment. This alternative is not recommended because staff is currently evaluating internal capabilities.



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 Concrete Repair Services							DATE: September 9, 2021					
CONTRACTOR: Various Firms (See Below)					PERCENTAGE OF CONTRACT DOLLARS							
BID/PROPOSER'S PRICE: \$1,900,000 *		FIRM'S OWNERSHIP		White Men		25%		60.0%				
		Ethnicity	Gender	White Women		6%		0.0%				
		See Below	-	Ethnic Minorities		25%		40.0%				
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: Arrowhead Concrete Construction		\$380,000	Hispanic	X				20.0%				
Bruce Enterprises		\$380,000	White	X		20.0%						
Gary Golobe dba Cornerstone Paving		\$380,000	White	X		20.0%						
Pacific General Engineering		\$380,000	Hispanic	X				20.0%				
Sonnikson and Stordahl Construction		\$380,000	White	X		20.0%						
TOTAL		\$1,900,000				60.0%	0.0%	40.0%	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:			See Attached Form P-061									
Percent of Total Employees:												
MSA Labor Market %:												
MSA Labor Market Location:												
COMMENTS												
Contract Equity Participation - 60% White Men participation and 40% Ethnic Minority participation. Contract Duration: One Year Total not to exceed: \$1,900,000												
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: Concrete Repair Services		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: 9/9/2021	9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9	
		Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2		
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	EMM: H - SBE	Company Wide	0	5	0	0	5	71.4%	48.4%
Arrowhead Concrete Construction Matthew Zepeda 12653 E. Jahant Road Acampo, CA 95220 209-400-1942		Manager/Prof	0	2	0	0	2	100.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	2	0	0	2	100.0%	
		Semi/Unskilled	0	1	0	0	1	33.3%	
		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:		7 Bay Area: 0		
RP	WM: SBE	Company Wide	0	3	0	0	3	42.9%	23.4%
Bruce Enterprises Donna Simnick 1475 Petaluma Blvd., South Petaluma, CA 94953 707-781-9686		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	3	0	0	3	60.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA:	Sonoma		# Employees-Co. Wide:		7 Bay Area: 7		
RP	WM: SBE	Company Wide	0	4	0	0	4	80.0%	23.4%
Gary Golobe dba Cornerstone Paving Gary Golobe 1415 Fulton Road, Suite 205 A-1 Santa Rosa, CA 95403 707-763-3407		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	4	0	0	4	100.0%	
		Bay Area	0	4	0	0	4	0.0%	39.9%
		Co. Wide MSA:	Sonoma		# Employees-Co. Wide:		5 Bay Area: 5		
RP	EMM: H - L/SBE	Company Wide	2	3	0	0	5	71.4%	38.5%
Pacific General Engineering James Akridge 2934 Pacheco Blvd. Martinez, CA 94553 925-260-3307		Manager/Prof	0	1	0	0	1	50.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	1	1	0	0	2	66.7%	
		Semi/Unskilled	1	1	0	0	2	100.0%	
		Bay Area	2	3	0	0	5	0.0%	39.9%
		Co. Wide MSA:	Contra Costa		# Employees-Co. Wide:		7 Bay Area: 7		
RP	WM: L/SBE	Company Wide	1	34	3	0	38	57.6%	38.5%
Sonnikson and Stordahl Construction Karen Lynch 4858 Sunrise Drive Martinez, CA 94553 925-229-4028		Manager/Prof	0	3	0	0	3	30.0%	
		Technical/Sales	0	1	0	0	1	0.0%	
		Clerical/Skilled	1	30	3	0	34	61.8%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	1	34	3	0	38	0.0%	39.9%
		Co. Wide MSA:	Contra Costa		# Employees-Co. Wide:		66 Bay Area: 66		

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. 5.
MEETING DATE September 28, 2021

TITLE AUTHORIZE CONTINUED LONG-TERM VEHICLE RENTAL

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

RECOMMENDED ACTION

Authorize staff to continue using the state contract previously authorized under Board Motion No. 057-21 with Enterprise Holdings, Inc. to increase the authorized amount by \$180,000 to a total amount not to exceed \$410,000 and extend the duration to February 28, 2022 for long-term vehicle rental.

SUMMARY

Additional vehicles are temporarily required to reduce carpooling to and from job sites during the pandemic, minimizing the potential for employee-to-employee transmission of COVID-19.


DISCUSSION

The District owns 46 pool vehicles. Pool vehicles are used by District staff for business travel and while regularly assigned vehicles are repaired. An additional 30 rental vehicles are needed during the pandemic to minimize employee carpooling for District business. Current health code and OSHA requirements generally prohibit carpooling during work.

In October 2020, the General Manager authorized the original rental agreement for \$80,000 through May 31, 2021. On March 23, 2021, the Board authorized an amendment amount not to exceed \$230,000. There is an ongoing need for these rental vehicles. The state contract supports the District's Workforce Planning and Development Strategic Plan goal.

SERVICE PROVIDER SELECTION

Public Contract Code, Section 10298 allows agencies such as EBMUD to purchase directly from competitively awarded state contracts without pursuing separate competitive bidding. The state has a contract with one commercial rental vehicle vendor, Enterprise Holdings, Inc., for long-term rentals (minimum of 30 days).

Funds Available: FY22	Budget Coding: 756/0780656/5296	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Maintenance and Construction	Michael R. Ambrose	 General Manager
Attachment(s): P-035; P-061		

SUSTAINABILITY

Economic

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

Social

This state contract reduces the risk of employee-to-employee COVID-19 transmission.

ALTERNATIVES

Do not authorize staff to continue using the state contract. This alternative is not recommended because the District does not have sufficient pool vehicles to meet the current demand.

Purchase additional vehicles. This alternative is not recommended because the need is not expected to be longer than six months.



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 Long-Term Vehicle Rental				DATE: September 23, 2021								
CONTRACTOR: Enterprise Holdings, Inc. Atlanta, GA 30384				PERCENTAGE OF CONTRACT DOLLARS State Contract								
BID/PROPOSER'S PRICE: \$180,000 *		FIRM'S OWNERSHIP Ethnicity: White Gender: Men		White Men 25%		White Women 6%		Ethnic Minorities 25%		Participation 100.0% 0.0% 0.0%		
CONTRACT EQUITY PARTICIPATION												
COMPANY NAME PRIME: Enterprise Holdings, Inc. SUBS: None		ESTIMATED AMOUNT \$180,000	ETHNICITY White	GENDER M: X W:		White-Men 100.0%	White-Women 0.0%	Ethnic Minorities 0.0%	Unclassified 0.0%	Publicly Held Corp. 0.0%	Gov't/Non Profit 0.0%	Foreign 0.0%
TOTAL		\$180,000		100.0%		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
No. of Employees:		White Men		White Women		Ethnic Minorities		Total Employees				
Percent of Total Employees:		INFORMATION NOT PROVIDED										
MSA Labor Market %:												
MSA Labor Market Location:												
COMMENTS Contract Equity Participation - 100% White Men participation. *Total not to exceed: \$410,000												
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.

[illegible]

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



AGENDA NO. 6.
MEETING DATE September 28, 2021

TITLE ASSIGNMENT OF CONTACT CENTER TELEPHONY TO CONVERGE ONE, INC.

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

RECOMMENDED ACTION

Approve the assignment of the agreement previously authorized under Board Motion No. 174-16 from Altivon, LP, to ConvergeOne, Inc. for Contact Center telephony services.

SUMMARY

In October 2016, The District entered into an agreement with Altivon, LP for data/voice circuitry, telecom services, licensing, cloud-based hosting, and support for a Contact Center solution. This solution serves as the primary telephone interface between the District and its customers. ConvergeOne, Inc. acquired Altivon, LP and the successor entity is now ConvergeOne, Inc. The acquisition includes the assumption of the agreement previously entered into by the District with Altivon, LP. All Altivon, LP contractual obligations with the District remain in full force and effect with ConvergeOne, Inc. until October 31, 2023. The assignment will not materially affect the performance of the agreement. This assignment supports the District's Customer and Community Services Strategic Plan goal.

SUSTAINABILITY

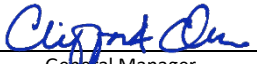
Economic

There is no economic impact as a result of this assignment. ConvergeOne, Inc. will continue to provide services under the same terms and conditions as the existing agreement.

ALTERNATIVE

Do not approve assignment of the agreement. This alternative is not recommended because it would result in the disruption of the District's ability to provide Contact Center services to its customers.

I:\Sec\2021 Board Related Items\092821 Board Agenda Items\ISD\Assignment of Contact Center Telephony to Converge One, Inc.docx

Funds Available: FY22/23	Budget Coding: 252/8583/5312	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Information Systems	Andrew J. Levine	 General Manager
Attachment(s): P-035; P-061		

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CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE Professional Services Agreement - Assignment Assignment of Contact Center Telephony to ConvergeOne, Inc.						DATE: September 7, 2021						
CONTRACTOR: ConvergeOne, Inc.* Bloomington, MN 55437					PERCENTAGE OF CONTRACT DOLLARS							
BID/PROPOSER'S PRICE: \$1,747,000 **		FIRM'S OWNERSHIP		White Men		25%		100.0%				
		Ethnicity	Gender	White Women		6%		0.0%				
		White	Men	Ethnic Minorities		25%		0.0%				
CONTRACT EQUITY PARTICIPATION												
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
				M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIME: ConvergeOne, Inc.		\$1,747,000	White	X		100.0%						
SUBS: None												
TOTAL		\$1,747,000				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:		1,391		617		442		2,450				
Percent of Total Employees:		56.8%		25.2%		18.0%						
MSA Labor Market %:		39.0%		33.7%		27.3%						
MSA Labor Market Location:		Total USA										
COMMENTS												
Contract Equity Participation - 100.0% White Men participation Contract Duration: Five-Year Contract with 2 One-Year Renewal Options *Previous Contractor: Altivon, L.P. **Total Not to Exceed (annual estimated cost \$511,000 for year one and \$206,000 for years two through five)												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
(P-035 - 7/11) NA				Page: 1 of 1 NA				4557R_P				

AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

[illegible]

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



AGENDA NO. 7.
MEETING DATE September 28, 2021

**TITLE OAKLAND INNER HARBOR PIPELINE CROSSING - MARINA VILLAGE OFFICE
PARK EASEMENTS ACQUISITION**

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

RECOMMENDED ACTION

Authorize payment in the amount of \$450,000 to Marina Village Office Park (MVOP) for the acquisition of a one-year temporary construction easement (TCE) and a permanent pipeline easement for the Oakland Inner Harbor Pipeline Crossing (Project).

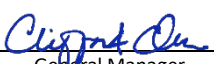
SUMMARY

As part of its 2014 Master Plan for Alameda-North Bay Farm Island, the District is replacing the existing crossing pipeline underneath the Oakland Inner Harbor, from Oakland to Alameda. The Project includes installation of 3,000 feet of pipeline underneath the Oakland Inner Harbor beginning on Fallon Street in Oakland to Marina Village Parkway in Alameda to ensure reliable water service to Alameda customers. The Project will be installed by a horizontal directional drilling (HDD) method, where a borehole will be drilled under the harbor. Once the borehole is completed, a new 32-inch water pipeline will be pulled through the borehole. The new pipeline will then be connected to the existing water system at both ends and the old crossing pipeline will be abandoned.

The District must acquire a permanent easement for the new pipeline and a TCE to support the construction activities from MVOP (Attachment). The District has offered the appraised value of \$450,000 for these easements to MVOP, which they have accepted. This action constitutes one of the five easements needed to construct the Project in the proposed alignment. Prior to this action, the District secured one of the easements needed. In addition to securing easement rights from MVOP, the District must secure three other easement rights before the project advertises for bid in November 2021.

DISCUSSION

The District studied several alignments to identify the most viable alternative to replace the existing crossing. To support the alternative deemed most viable by the study, the District must acquire five easements to construct the Project in the proposed alignment. Because the new pipeline runs underneath MVOP's properties, the District must acquire an easement from MVOP.

Funds Available: FY22, CIP#1006298, Pg. 14	Budget Coding: 534-2011560:27-5316	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Customer and Community Services	Andrew L. Lee	 General Manager
Attachment(s): Map of Lease Property		

Additionally, it is also necessary to acquire a TCE from MVOP for the use of their property during the construction of the Project. Because of the construction method being used, the District will install an HDD pit on MVOP's property. The District will use the TCE area to fuse the pipelines together before it is pulled into the pit and then underneath the inner harbor to Fallon Road in Oakland. The TCE granted by MVOP will include a laydown area, entrance to the HDD pit, storage for equipment, and storage for spoils from the project prior to off haul.

Acquisition of these easements is necessary to support construction activities. The District offered MVOP the appraised value of \$450,000 for these easements, which they have accepted with the following considerations:

- A permanent 8,881 square feet pipeline easement.
- The use of 37,000 square feet of ground space under a TCE for one year at the MVOP property.
- Economic losses due to impacts on rental or marketability of the office building due to the District's construction activities.
- Fees incurred by the Grantor in recordation of these easements.
- Replacement for the 130 parking spaces impacted by the Project.

The District is in negotiations for the remaining three easement rights. These easements support the District's Long-Term Infrastructure Investment Strategic Plan goal.

SUSTAINABILITY

Economic

The appraised value of \$450,000 to be paid to MVOP for these easements is available in the adopted capital budget for the Large Diameter Pipeline Program.

Social

The existing crossing was constructed in soft soils and is susceptible to failure during a significant seismic event, which would impact water services to Alameda customers. The acquisition of the easement is essential to ensure long-term water service reliability and redundancy for approximately 80,000 residents in Alameda.

Environmental

A California Environmental Quality Act Environmental Impact Report was certified by the Board on December 13, 2016.

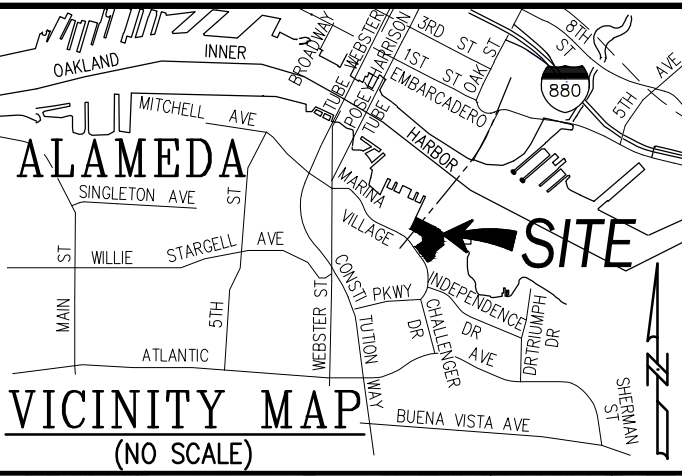
ALTERNATIVES

Do not acquire these easements. This alternative is not recommended because the existing pipeline has reached the end of its useful life. Furthermore, the existing cast iron transmission pipeline is susceptible to catastrophic failure during a major seismic event.

Identify an alternate alignment for the crossing. This alternative is not recommended because the proposed alignment for a crossing to replace the existing pipeline is the most viable option. Selecting an alternative would significantly delay the project.

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ATTACHMENT



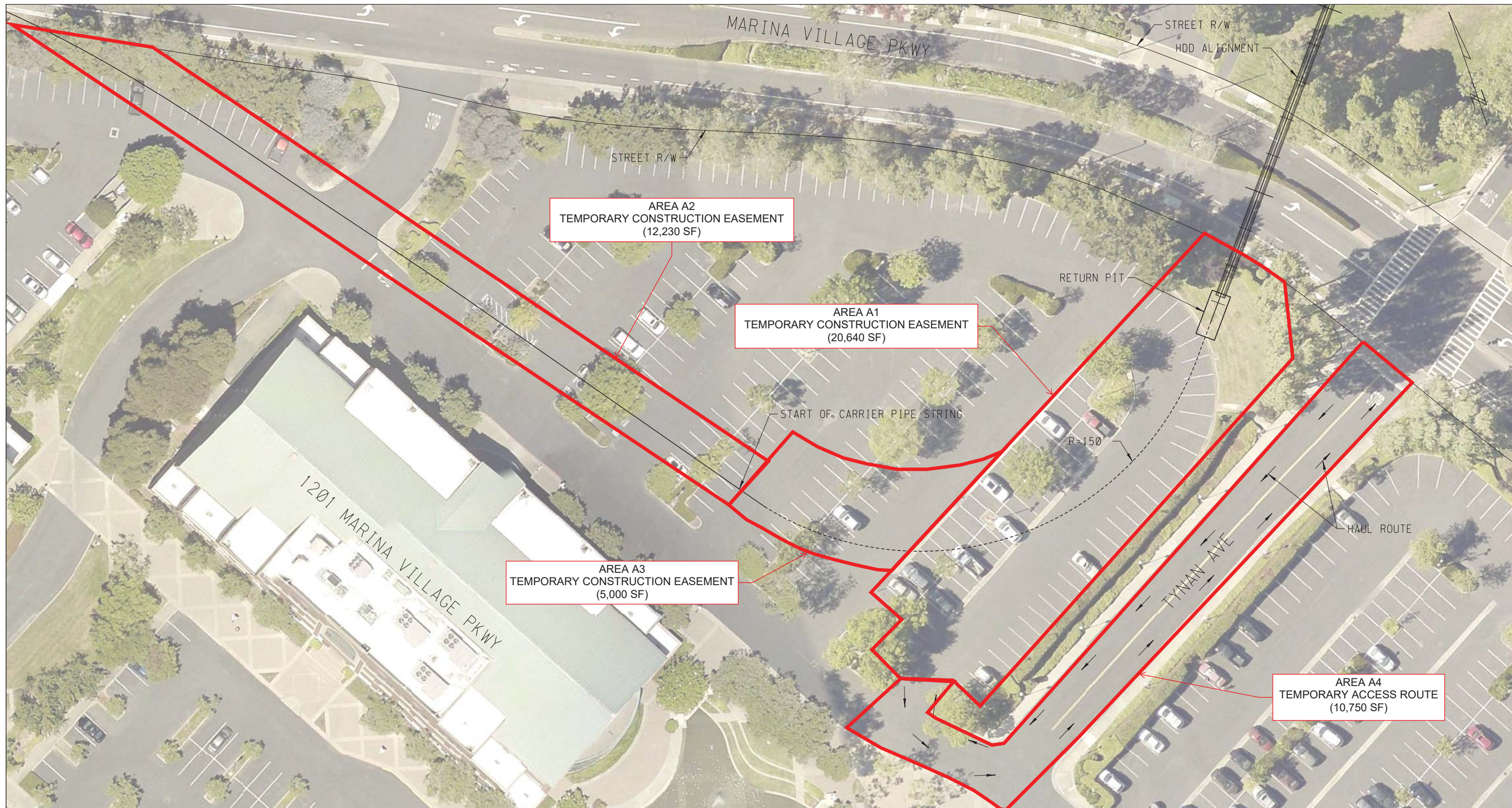
EBMUD EASEMENT ON APN 74-1334-9 & 10
ALAMEDA - OAKLAND
INNER HARBOR CROSSING
CITY OF ALAMEDA - ALAMEDA COUNTY



EAST BAY MUNICIPAL UTILITY DISTRICT
OAKLAND, CALIFORNIA

SCALE : 1" = 60'

DATE : 16 JULY 2021



Attachment

**OAKLAND INNER HARBOR PIPELINE CROSSING
TEMPORARY CONSTRUCTION EASEMENT AT 1201 MARINA VILLAGE PKWY**





AGENDA NO. 8.
MEETING DATE September 28, 2021

TITLE AUTHORIZATION TO PURCHASE GASOLINE AND DIESEL FUEL

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

RECOMMENDED ACTION

Authorize the continued purchase of gasoline and diesel fuel at market prices for five years, beginning on or after October 1, 2021 for a total cost, after the addition of taxes, not to exceed \$15,000,000.

SUMMARY

Vehicle fuel remains a price-volatile commodity with fuel costs nearly doubling in Fiscal Year 2021 (FY21). Just-in-time fuel procurements aid in maintaining all District fueling station bulk tanks at a 75 percent or greater level to address emergency preparedness needs. By engaging gasoline and fuel distributors in biweekly competition and awarding to the lowest responsible bidder, the District obtains the most favorable market pricing available at the time of bid. This strategy has been employed by the District for over two decades and has consistently provided lower pricing than the “at the pump” rate, as well as a varied and dependable supply chain by utilizing multiple suppliers. Purchasing fuel in this manner supports the District’s Long-Term Financial Stability Strategic Plan goal.

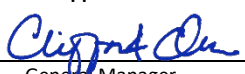
VENDOR SELECTION

When a bulk fuel purchase is requested, the District solicits quotations from bulk fuel suppliers and awards the purchase to the lowest responsive and responsible vendor. By engaging the bulk fuel supply community in a just-in-time competitive bidding process for each order, the District is able to obtain the most current low market-rate pricing with the additional benefit of competition within the marketplace.

SUSTAINABILITY

Economic

The FY22/23 adopted operating budget includes funding for the first two years. Funding for the additional years will be considered as part of the associated budget development process.

Funds Available: FY22/23	Budget Coding: WSO/756/8345/5288	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Finance	Sophia D. Skoda	 General Manager
Attachment(s): N/A		

Social

Due to the nature of this purchase, Contract Equity Program (CEP) forms are not included; however, staff works closely with the Contract Equity Office to ensure the fuel replenishment program complies with all related District objectives. Appropriate CEP documentation is collected at the time of competition if such documentation is not already available in District files.

Environmental

The District purchases renewable diesel fuel for all diesel fueling stations. Renewable diesel is a more sustainable and environmentally friendly product.

ALTERNATIVES

Establish long-term contracts that utilize a routine price adjustment clause. This alternative is not recommended because price adjustment clauses work most effectively in 6 to 12-month increments of time. Market pricing remains the most accurate pricing tool where prices must adjust weekly to remain consistent with the market.

Conduct formal competitive bids each week. This alternative is not recommended because it would not be feasible or cost-effective given the bidding requirements of the Municipal Utility District Act and that procurements are needed in a just-in-time manner to ensure that all fueling sites are maintained at the capacity level of 75 percent or greater to address emergency needs.



AGENDA NO. 9.
MEETING DATE September 28, 2021

TITLE AUTHORIZE CONTINUED EMPLOYMENT OF BARG, COFFIN, LEWIS & TRAPP, LLP, FOR SPECIALIZED LEGAL SERVICES

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

RECOMMENDED ACTION

Authorize the Office of General Counsel (OGC) to continue employment of the law firm of Barg, Coffin, Lewis & Trapp, LLP, for specialized legal services related to environmental issues and regulatory compliance in an additional amount not to exceed \$250,000.

DISCUSSION


The firm of Barg, Coffin, Lewis & Trapp, LLP, has been retained to assist OGC in environmental and regulatory compliance issues and related litigation. OGC is requesting authorization for additional funds for services described in a separate confidential attorney-client privileged informational memorandum to the Board.

SUSTAINABILITY

Economic

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

I:\Sec\2021 Board Related Items\092821 Board Agenda Items\OGC – Barg Coffin.docx

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

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CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE Professional Services Agreement - Amendment Authorize Continued Employment of Barg, Coffin, Lewis & Trapp, LLP for Specialized Legal Services					DATE: August 31, 2021					
CONTRACTOR: Barg, Coffin, Lewis & Trapp, LLP San Francisco, CA 94111					PERCENTAGE OF CONTRACT DOLLARS					
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men	25%	100.0%				
		Ethnicity	Gender	White Women	6%	0.0%				
\$250,000 *		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
PRIME: Barg, Coffin, Lewis & Trapp, LLP	\$250,000	White	X		100.0%					
SUBS: None										
TOTAL		\$250,000			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:		1	3	4	8					
Percent of Total Employees:		12.5%	37.5%	50.0%						
MSA Labor Market %:		32.3%	27.8%	39.9%						
MSA Labor Market Location:		9 Bay Area Counties								
COMMENTS										
Contract Equity Participation - 100.0% White Men participation.										
*Total not to exceed: \$250,000										
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: Authorize Continued Employment of Barg, Coffin, Lewis & Trapp, LLP for Specialized Legal Services		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
		National	10.5	10.7	3.7	0.7	27.3		
Professional Services Agreement - Amendment		DATE: 8/31/2021	9 Bay Area Counties		5.5	16.2	14.2	0.4	39.9
			Alameda/CC Counties		10.7	15.6	15.4	0.5	46.2
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM: SBE	Company Wide	0	0	3	0	3	37.5%	39.9%
Barg, Coffin, Lewis & Trapp, LLP Carol McDermott 600 Montgomery Street, Suite 525 San Francisco, CA 94111 415-228-5410		Manager/Prof	0	0	2	0	2	33.3%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	0	1	0	1	50.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	3	0	3	37.5%	39.9%
		AA Plan on File:	NA		Date of last contract with District:		7/23/2021		
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		8 Bay Area: 8		

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 September 28, 2021

TITLE MONTHLY INVESTMENT TRANSACTIONS REPORT

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

RECOMMENDED ACTION

Approve the August 2021 Monthly Investment Transactions Report.

SUMMARY


In accordance with Policy 4.07 – Investment Policy, staff prepares a monthly transactions report for the Finance/Administration Committee to review and for the Board to consider each month. The August 2021 report is being submitted to the Board for consideration. This report was reviewed at the September 28, 2021 Finance/Administration Committee meeting.

DISCUSSION

Pursuant to Policy 4.07, staff generates a monthly report of investment transactions (buys, sales, deposits, withdrawals) as well as transactions that occur as a feature of the securities held (interest, calls, maturities). Information on portfolio performance, balances, and other factors are presented in the quarterly investment report.

In August 2021, the portfolio increased from \$710.6 million to \$749.4 million. Net transactions increased the total by \$38.6 million. Interest received added approximately \$0.2 million to the portfolio. Deposits into short-term liquidity funds totaled \$8.9 million, and \$13.8 million was withdrawn. The District purchased \$102.0 million in securities, and \$34.0 million in securities matured. No securities were called or sold. Net transactions at the District's commercial bank resulted in a decrease of \$24.5 million.

I:\Sec\2021 Board Related Items\092821 Board Agenda Items\ FIN - Monthly Investment Transactions Report 092821.docx

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Finance	Sophia D. Skoda	 General Manager
Attachment(s): August 2021 Monthly Investment Transactions Report		

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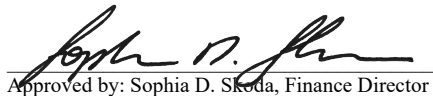
Monthly Investment Transactions Report

August 2021

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

09/09/2021
Date

SDS:AMM:lm



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Transactions Summary
August 2021

Portfolio	Beginning Balance*	Monthly Net Transaction Activity	Monthly Interest Activity	Ending Balance
001 - Water System Consolidated	506,092,189.22	68,000,000.00	6,144.24	574,098,333.46
007 - Wastewater Consolidated	74,579,961.07	-	1,230.96	74,581,192.03
049 - Ferc Partnership	2,000,000.00	-	-	2,000,000.00
009 - BACWA	2,262,600.00	-	-	2,262,600.00
015 - DERWA	1,000,000.00	-	-	1,000,000.00
002 - FRWA	1,000,000.00	-	-	1,000,000.00
014 - IICP	150,500.00	-	-	150,500.00
010 - UMRWA	64,000.00	-	-	64,000.00
003 - Employees Retirement	23,527,246.15	(4,926,000.00)	-	18,601,246.15
099 - Wells Fargo**	99,880,157.61	(24,488,882.23)	218,090.80	75,609,366.18
Total	710,556,654.05	38,585,117.77	225,466.00	749,367,237.82

* Portfolio balance presented at face value.

**Wells Fargo's month-end available balance per bank statement. Gross amount; not allocated by fund and not included in balances above.

Leanne Maloney

Prepared by: Leanne Maloney, Accountant III

Marina Hughes

Reviewed by: Marina Hughes, Accounting Supervisor

Andrea Miller

Approved by: Andrea M. Miller, Controller

9/3/21

Date

9/3/21

Date

9/3/21

Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
August 2021

Portfolio	Buys	Deposits	Matured	Calls	Sales	Withdrawals	Non-Investment Transactions*	Net Transaction Activity
001 - Water System Consolidated	102,000,000.00	-	(34,000,000.00)	-	-	-	-	68,000,000.00
007 - Wastewater Consolidated	-	-	-	-	-	-	-	-
049 - Ferc Partnership	-	-	-	-	-	-	-	-
009 - BACWA	-	-	-	-	-	-	-	-
015 - DERWA	-	-	-	-	-	-	-	-
002 - FRWA	-	-	-	-	-	-	-	-
014 - IICP	-	-	-	-	-	-	-	-
010 - UMRWA	-	-	-	-	-	-	-	-
003 - Employees Retirement	-	8,919,000.00	-	-	-	(13,845,000.00)	-	(4,926,000.00)
065 - Water S2008A DSRF	-	-	-	-	-	-	-	-
068 - Water 2010A DSRF	-	-	-	-	-	-	-	-
Investment Activity Total	102,000,000.00	8,919,000.00	(34,000,000.00)	-	-	(13,845,000.00)	-	63,074,000.00
099 - Wells Fargo	(102,000,000.00)	(8,919,000.00)	34,000,000.00	-	-	13,845,000.00	38,585,117.77	(24,488,882.23)
Total	-	-	-	-	-	-	38,585,117.77	38,585,117.77

*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 Charléty, Principal Mgmt Analyst

Approved by: Robert L. Hanray, Treasury Manager

Date

9/9/2021

Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
August 2021

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	US Treasuries	T-Bill 0 9/30/2021	912796F61	8/25/2021	8/26/2021	9/30/2021	34,000,000.00	33,999,007.20	0.00	33,999,007.20
001 - Water System Consolidated	US Treasuries	T-Note 1.25 10/31/2021	912828T67	8/18/2021	8/19/2021	10/31/2021	34,000,000.00	34,080,410.00	128,192.93	34,208,602.93
001 - Water System Consolidated	US Treasuries	T-Note 1.5 10/31/2021	912828YP9	8/25/2021	8/26/2021	10/31/2021	34,000,000.00	34,087,958.00	163,532.61	34,251,490.61
Total							102,000,000.00			

102,000,000.00 102,167,375.20 291,725.54 102,459,100.74



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
August 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Deposits										
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	8/19/2021	8/19/2021	N/A	4,453,000.00	4,453,000.00	0.00	4,453,000.00
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	8/11/2021	8/11/2021	N/A	4,466,000.00	4,466,000.00	0.00	4,466,000.00
Total							8,919,000.00			

8,919,000.00	8,919,000.00	0.00	8,919,000.00
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EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
August 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Matured										
001 - Water System Consolidated	US Treasuries	T-Bill 0 8/24/2021	912796K32	8/24/2021	8/24/2021	8/24/2021	34,000,000.00	34,000,000.00	0.00	34,000,000.00
Total							34,000,000.00			

34,000,000.00	34,000,000.00	0.00	34,000,000.00
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EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
August 2021

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

No Transactions this Period

0.00	0.00	0.00	0.00
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EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
August 2021

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

No Transactions this Period

0.00	0.00	0.00	0.00
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EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
August 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Withdrawals										
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	8/31/2021	8/31/2021	N/A	2,500,000.00	2,500,000.00	0.00	2,500,000.00
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	8/30/2021	8/30/2021	N/A	11,345,000.00	11,345,000.00	0.00	11,345,000.00
Total							13,845,000.00			

13,845,000.00	13,845,000.00	0.00	0.00
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EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
August 2021

Portfolio	Total Interest Received	Interest Transferred to Wells Fargo*	Net Interest Activity (Reinvested)**
001 - Water System Consolidated	70,759.83	(64,615.59)	6,144.24
007 - Wastewater Consolidated	154,706.17	(153,475.21)	1,230.96
049 - Ferc Partnership	-	-	-
009 - BACWA	-	-	-
015 - DERWA	-	-	-
002 - FRWA	-	-	-
014 - IICP	-	-	-
010 - UMRWA	-	-	-
003 - Employees Retirement	-	-	-
065 - Water S2008A DSRF	-	-	-
068 - Water 2010A DSRF	-	-	-
Interest Transactions Total	225,466.00	(218,090.80)	7,375.20
099 - Wells Fargo	-	218,090.80	218,090.80
Total	225,466.00	-	225,466.00

*Coupon and other interest received; reinvestment unavailable.

**Coupon and other interest payments reinvested in specific portfolio.

Leanne Maloney
 Prepared by: Leanne Maloney, Accountant III
Marina Hughes
 Reviewed by: Marina Hughes, Accounting Supervisor
Andrea Miller
 Approved by: Andrea M. Miller, Controller

9/3/21
 Date
 9/3/21
 Date
 9/3/21
 Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
August 2021

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	Money Market Mutual Funds	Fidelity Investments MM	MM4022	8/31/2021	8/31/2021	N/A	0.00	0.00	229.34	229.34
001 - Water System Consolidated	Medium Term Notes	MICROSOFT CORP 2.375 2/12/2022	594918BA1	8/12/2021	8/12/2021	2/12/2022	0.00	0.00	64,386.25	64,386.25
								Total		64,615.59
007 - Wastewater Consolidated	Money Market Mutual Funds	Fidelity Investments MM	MM4022	8/31/2021	8/31/2021	N/A	0.00	0.00	59.46	59.46
007 - Wastewater Consolidated	Medium Term Notes	APPLE INC 2.15 2/9/2022	037833AY6	8/9/2021	8/9/2021	2/9/2022	0.00	0.00	40,323.25	40,323.25
007 - Wastewater Consolidated	Medium Term Notes	APPLE INC 2.5 2/9/2022	037833CM0	8/9/2021	8/9/2021	2/9/2022	0.00	0.00	54,287.50	54,287.50
007 - Wastewater Consolidated	Medium Term Notes	MICROSOFT CORP 2.375 2/12/2022	594918BA1	8/12/2021	8/12/2021	2/12/2022	0.00	0.00	58,805.00	58,805.00
								Total		94,670.21
							0.00	0.00	218,090.80	188,688.30



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
August 2021

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	Local Government Investment Pool	CalTRUST LGIP	CALTRUST923C	8/31/2021	8/31/2021	N/A	0.00	0.00	526.42	526.42
001 - Water System Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	8/31/2021	8/31/2021	N/A	0.00	0.00	4,429.53	4,429.53
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	MM3767	8/31/2021	8/31/2021	N/A	0.00	0	585.53	585.53
001 - Water System Consolidated	Money Market Mutual Funds	Morgan Stanley IMM	0852	8/31/2021	8/31/2021	N/A	0.00	0.00	602.76	602.76
									Total	6,144.24
007 - Wastewater Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	8/31/2021	8/31/2021	N/A	0.00	0.00	924.38	924.38
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	MM3767	8/31/2021	8/31/2021	N/A	0.00	0.00	151.08	151.08
007 - Wastewater Consolidated	Money Market Mutual Funds	Morgan Stanley IMM	0852	8/31/2021	8/31/2021	N/A	0.00	0.00	155.50	155.50
									Total	1,230.96
							0.00	0.00	7,375.20	7,375.20



AGENDA NO. 11.
MEETING DATE September 28, 2021

TITLE RECOGNITION OF THE 100th BIRTHDAY OF UNITED STATES NATIONAL PARK RANGER BETTY REID SOSKIN

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

RECOMMENDED ACTION

Adopt a proclamation in recognition of the 100th Birthday of United States National Park Ranger Betty Reid Soskin.

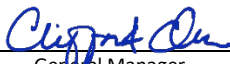
DISCUSSION

On September 22, 2021, Betty Reid Soskin celebrated her 100th birthday. Ms. Soskin, the most senior National Park Ranger serving the United States, was a leader in the effort to plan and develop the Rosie the Riveter Park to memorialize the role of women on the Home Front during World War II.

The attached proclamation recognizes Betty Reid Soskin for her outstanding service in preserving and sharing the history of African Americans and women during World War II and for her commitment to civil rights in the Bay Area.

This action supports the District's efforts that recognize the contributions of women in construction, water, park service, and other non-traditional careers.

I:\Sec\2021 Board Related Items\092821 Board Agenda Items\OGM-Betty Reid Soskin.docx

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Office of the General Manager - Communications	Kelly A. Zito	 General Manager
Attachment(s): Proclamation; Resolution		

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RESOLUTION NO. _____

ADOPTING A PROCLAMATION IN RECOGNITION OF THE 100th BIRTHDAY OF
UNITED STATES NATIONAL PARK RANGER BETTY REID SOSKIN

Introduced by Director

; Seconded by Director

WHEREAS, Betty Reid Soskin is recognized as an East Bay-based civil rights activist, musician, and pioneering businesswoman who co-founded one of the first Black-owned record stores in the Bay Area; and

WHEREAS, Ms. Soskin, an accomplished songwriter, wrote music for the civil rights movement, marched with and fundraised for the Black Panthers, and later performed with the Oakland Symphony and Chorus; and

WHEREAS, Ms. Soskin was actively involved in the early planning stages and development of a park to memorialize the role of women on the Home Front during World War II leading to the birth of the Rosie the Riveter/World War II Home Front National Historical Park established in 2000, to provide a site where future generations could remember the contributions women made to the war effort; and

WHEREAS, Ms. Soskin is committed to sharing with park visitors what she and other Black women experienced during World War II and chronicling over 90 years of Bay Area history, and officially joined the National Park Service as a ranger in 2004; and

WHEREAS, Ms. Soskin continues to share stories of the African American experience during World War II, and the many other stories of Richmond during the war that have not been told; and

WHEREAS, Ms. Soskin, as the most senior National Parks Ranger serving the United States, demonstrates the crucial role oral history plays in shaping our narratives, chronicles, archives, and memorials;

NOW, THEREFORE, BE IT RESOLVED that the East Bay Municipal Utility District Board of Directors hereby expresses its gratitude to Betty Reid Soskin for her outstanding service to civil rights and history, as well as her commitment to serving as spokesperson for the diverse experiences of the domestic war-effort during World War II and wishes her a joyous 100th birthday.

ADOPTED this 28th day of September, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

President

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel



AGENDA NO. 12.
MEETING DATE September 28, 2021

TITLE RESOLUTION SUPPORTING CALIFORNIA CLEAN AIR DAY

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

RECOMMENDED ACTION

Adopt a resolution to declare October 6, 2021 to be "Clean Air Day" at the District and encourage all employees to participate in California Clean Air Day.

SUMMARY


Exposure to air pollution affects everyone's health. Air pollution causes or worsens many diseases involving the lungs and breathing, leading to hospitalizations, chronic illness, or even premature death. As an environmental steward, the District has taken actions to reduce air pollution and protect environmental health including adopting aggressive greenhouse gas reduction goals.

DISCUSSION

Designed around individual actions, California Clean Air Day is a non-profit, statewide program built on the idea that shared experiences unite people to action to improve community health. In 2020, over 1.6 million Californians committed to taking simple, individual actions to clear the air and improve their and their community's health. In addition, more than 500 companies, agencies, and organizations supported California Clean Air Day. California Clean Air Day allows for virtual participation and the ability for businesses, schools, government agencies, and other organizations to engage their customers, students, and employees to reduce air pollution through a variety of activities including, planting trees, changing cleaning products, and leaving their cars at home.

The District has been participating for many years in the Bay Area Air Quality Management District's Spare the Air Employer Program to educate employees about alternatives to driving alone and provide notifications of Spare the Air Alerts. The District's Alternative Commute Program was created to decrease motor vehicle travel and traffic congestion, and reduce emissions of greenhouse gases and other air pollutants.

The District has also adopted aggressive greenhouse gas reduction goals, purchased more efficient and cleaner vehicles, adopted renewable fuels, joined industry groups such as CALSTART and the Global Drive to Zero that support clean transportation, and expanded its renewable energy generation.

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Maintenance and Construction	Michael R. Ambrose	 General Manager
Attachment(s): Resolution		

To acknowledge Clean Air Day, staff will review operation and maintenance activities to minimize air pollution. Employees will be encouraged to commute to work using mass transit or by walking or bicycling. This resolution supports the District's Water Quality and Environmental Protection Strategic Plan goal.

SUSTAINABILITY

Economic

Adoption of this resolution has no fiscal impact to the District.

Social

Taking actions to reduce air pollution supports the health and well-being of the District's customers, visitors, and workforce, and also helps to mitigate the impacts of climate change.

Environmental

Actions resulting from this resolution will help protect the District's customers, workforce, visitors, and community at large from harmful air pollutants.

ALTERNATIVE

Do not adopt the resolution. This alternative is not recommended because the goals of California Clean Air Day are consistent with the District's mission and Sustainability and Resilience, Climate Action, and Energy policies.

RESOLUTION NO. _____

RESOLUTION SUPPORTING DECLARATION OF CALIFORNIA CLEAN AIR DAY

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District (District) is a municipal utility district responsible for supplying drinking water and providing wastewater treatment service to customers in portions of Alameda and Contra Costa Counties; and

WHEREAS, the District's mission is to "manage the natural resources with which the District is entrusted; to provide reliable, high quality water and wastewater services at fair and reasonable rates for the people of the East Bay; and to preserve and protect the environment for future generations"; and

WHEREAS, the District has demonstrated leadership in environmental stewardship, including adopting Policy 7.05 – Sustainability and Resilience, Policy 7.15 – Climate Action, and Policy 7.07 – Energy; and

WHEREAS, the District has been participating for many years in the Bay Area Air Quality District's Spare the Air Employer Program to educate employees about alternatives to driving alone and provide notifications of Spare the Air Alerts; and

WHEREAS, the District's Alternative Commute Program was created to decrease motor vehicle travel and traffic congestion and reduce emissions of greenhouse gases and other air pollutants; and

WHEREAS, the District has also adopted aggressive greenhouse gas reduction goals, purchased more efficient and cleaner vehicles, adopted renewable fuels, joined industry groups, CALSTART and the Global Drive to Zero, supporting clean transportation, and expanded its renewable energy generation; and

WHEREAS, based on research by the American Lung Association, the Bay Area has some of the worst air quality in the United States; and

WHEREAS, air pollution contributes to higher rates of cancer and heart and lung diseases, which adversely affect health; and

WHEREAS, protecting the health and well-being of our customers, visitors, and workforce is vital; and

WHEREAS, emissions from vehicles, industry, and household sources can significantly affect the natural environment, air quality and well-being of East Bay residents; and

WHEREAS, individual actions such as limiting vehicle idling, walking or biking to work and school, carpooling, and conserving energy can directly improve air quality in our region; and

WHEREAS, District employees, vendors and elected officials have tremendous power to help lower emissions; and

WHEREAS, pledges by individuals have shown to result in action; and

WHEREAS, the California Clean Air Day Clean Air Pledge asks Californians to pledge on October 6 to commit to taking at least one action from a list of the most common things an individual can do to clean the air; and

WHEREAS, education about air quality can raise community awareness, encourage our community to develop better habits, and improve our community health; and

WHEREAS, Californians will be joining together across the state to clear the air on October 6, 2021; and

WHEREAS, the East Bay Municipal Utility District is committed to protecting the health of our customers, workforce, visitors, and community at large;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Municipal Utility District does hereby declare that October 6, 2021, be “Clean Air Day” in the District; and

BE IT FURTHER RESOLVED that our departments ask their employees to take the Clean Air Pledge for California Clean Air Day; and

BE IT FURTHER RESOLVED that we encourage all customers, businesses, employees, and community members to participate in Clean Air Day and help clear the air for all Californians.

ADOPTED this 28th day of September, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: September 28, 2021

MEMO TO: Board of Directors

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

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

SUBJECT: Board of Directors Vacation Schedule

SUMMARY

At its September 14, 2021 meeting, the Board of Directors discussed its 2022 and future vacation schedules. Based on the Board's discussion and staff input, the Board requested additional feedback and asked staff to calendar this topic for a future meeting. The Board also asked staff for information on potential District impacts if meetings scheduled for the second Tuesday in August were canceled. The Board will discuss this item at its September 28, 2021 meeting.

DISCUSSION

The Board has traditionally canceled the Board Committee, Closed Session, and Regular meetings scheduled for the fourth Tuesday in August provided it did not adversely impact the operations of the District, to accommodate planned vacations of Directors and staff. At its May 26, 2020 meeting, the Board received information on its vacation scheduling history, vacation schedules at other agencies, and potential impacts to key District actions and activities if the Board revised its vacation schedule. Based on this information and the ensuing discussion, the Board voted to cancel its meetings scheduled for the fourth Tuesday in July 2021 instead of the customary fourth Tuesday in August and to calendar a discussion on revising its summer vacation schedule after July 2021.

At its September 14, 2021 meeting, the Board discussed some key District actions and activities scheduled for 2022 and the pros and cons of canceling Board meetings scheduled for the fourth Tuesday in July or the second or fourth Tuesday in August.

Canceling meetings scheduled for the fourth Tuesday in July

As reported on September 14, each year, the District must submit information regarding the Multi-Family Residential Lien Program and Wet Weather Facility Charge to the counties by August 10 for inclusion on the property tax rolls. Sufficient time is needed to notice and conduct public hearings for these two items and for staff to complete administrative actions in advance of the counties' August 10 deadline. Staff reconfirmed that if the Board cancels its meetings scheduled for the fourth Tuesday in July and needs to take additional actions on one or both of these items, a special meeting must be scheduled during its vacation period. Additionally, if the Board is required to hold a special meeting to take actions related to the Wet Weather Facility

Charge, in accordance with Health and Safety Code section 5473, at least two-thirds (i.e., five Board members) would have to participate in the meeting in accordance with provisions in the Brown Act, and vote in the affirmative to adopt the necessary report and approve all actions.

Canceling meetings scheduled for the second Tuesday in August

Staff did not identify any key actions or activities that could be potentially impacted if the Board voted to cancel its meetings scheduled for the second Tuesday in August. However, canceling these meetings may not benefit those wishing to schedule vacations with school-age children since the school year for many public and charter schools begins in early August. Furthermore, two committee meetings (Planning and Legislative/Human Resources) are scheduled for the second Tuesday of each month versus the typical one committee meeting (Finance/Administration) scheduled on the fourth Tuesday of each month. Cancelling the Board meetings scheduled for the second Tuesday in August could result in staff having to reschedule multiple committee meeting items.

Canceling meetings scheduled for the fourth Tuesday in August

As reported on September 14, during election years, Assembly Bill 408 (AB 408), codified as Section 11852.5 of the Municipal Utility District Act, permits the Board to appoint a candidate in lieu of holding an election if only one or no candidate runs for an open ward seat. The window for the Board to exercise its AB 408 authority is short (usually 7 days or less and after Board meetings held on the second Tuesday in August). In 2016, 2018, and 2020, the Board canceled its meetings scheduled for the fourth Tuesday in August and held special meetings to exercise its AB 408 authority. In 2022, the seats in Ward Nos. 2, 3, 4, and 7 will be up for election. If the Board cancels its meetings scheduled for the fourth Tuesday in August 2022 and needs to take action to exercise its AB 408 authority, it will need to schedule a special meeting during its vacation period and a quorum of the Board would have to participate in the meeting according to provisions in the Brown Act and vote in the affirmative to exercise the Board's AB 408 authority. This would also be the case in future election years.

FISCAL IMPACT

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

NEXT STEPS

The Board will discuss revisions to its 2022 and future vacation schedules at its meeting on September 28, 2021.

CCC:RSC



AGENDA NO. 14.
MEETING DATE September 28, 2021

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

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

RECOMMENDED ACTION

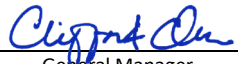
Conduct a second and final reading and vote on the new Excessive Water Use Penalty Ordinance, which repeals Ordinance No. 364-15 entitled "Excessive Water Use Penalty Ordinance for Drought Stages 3 and 4" and reenacts its provisions as amended to (i) conform the Ordinance to the requirements of Chapter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

SUMMARY

The District is proposing to repeal the Excessive Water Use Penalty Ordinance, Ordinance No. 364-15 (Ordinance), originally enacted in 2015 and reenact its provisions with amendments in a new ordinance that would prohibit and authorize penalties for excessive water use during a declared Stage 2 drought while mandatory rationing is in effect and/or when the District is affected by a drought emergency declared by the Governor based on local conditions. The amendments would also adjust the existing excessive water use thresholds for Stage 3 drought, provide customers an opportunity to correct an apparent violation before a penalty is imposed, fix a penalty amount which applies whenever the Ordinance's prohibitions take effect, and make other changes to conform to State law or to improve the effective implementation of the Ordinance. The first reading of the Ordinance was conducted on September 14, 2021; based on that discussion, additional information on outreach is provided herein.

DISCUSSION

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

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

On August 30, 2016, the Governor signed into law Senate Bill (SB) 814, adding language to the Water Code (commencing with section 365) that prohibits “excessive water use” by SFR customers and individually metered customers in multi-family dwellings whenever mandatory rationing is in effect, or when the Governor declares a drought emergency based on local conditions. Each urban retail water supplier is required to define “excessive water use” within its boundaries and establish a method of identifying and discouraging such excessive water use.

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

Thresholds

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

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

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

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

In accordance with SB 814, the District has considered multiple factors in developing these thresholds, including average daily use, varying household sizes, amount of landscaped area on a property, and the rate of evapotranspiration. Specifically, these thresholds are sufficient to provide an adequate supply of water for any SFR customer to meet their reasonable indoor needs based on varying household sizes,

while maintaining substantial outdoor irrigation giving considerations to evapotranspiration and seasonal weather changes. For example, the Stage 4 drought threshold of 40 CCF per month is expected to provide sufficient water to irrigate 7,500 square feet of landscaping, after reasonable indoor needs are met, based on the typical rate of evapotranspiration within the warmer inland portions of the service area where single-family customers' irrigation needs tend to be more intensive.

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

Penalty

Water Code section 366 authorizes the District to impose a maximum administrative civil penalty of up to \$500 per CCF of excessive water use. The Ordinance's existing penalty of \$2 per CCF was established in 2015. The proposed Ordinance retains the \$2 per CCF penalty for Stages 3 and 4 and would impose the same penalty during Stage 2, and during any Governor-declared local drought which the Board has found affects the District. The Board may change the penalty in the future through future ordinance amendments.

Process

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

Outreach

Based on Board input, staff will conduct broad customer outreach any time the Ordinance is activated, with the goal of reducing the number of exceedances by increasing customer awareness of the Ordinance and providing customers with tools and resources to manage their water use. In identifying customers for this targeted outreach effort, the District will use past and recent water consumption data and previous violators of the Ordinance. Outreach methods may include email, direct mailings, certified mail, or phone calls. Customers will be notified of the Ordinance, alerted to their high-water use, and offered links to District resources on topics like lawn conversion, efficient irrigation, and leak detection. Additionally, customers will be reminded violators of the Ordinance are subject to financial penalties and to potential disclosure under the California Public Records Act.

Schedule

This is the second reading of the Ordinance. The Board may consider it for adoption. If approved on September 28, 2021, the Ordinance will take effect on October 29, 2021, but the excessive water use prohibitions and associated penalties will not be implemented unless and until the Board does one of the following: (i) declares a Stage 2 or higher drought and adopts mandatory water use reductions, or (ii) determines the District is affected by a Governor's drought proclamation based on local drought conditions. In addition, the Public Utilities Code requires that within 15 days of its adoption, a summary of the Ordinance be published in a newspaper of general circulation in the District's service area.

SUSTAINABILITY

Economic

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

Environmental

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

ALTERNATIVE

Do not approve the request to repeal Ordinance No. 364-15 and reenact its provisions with amendments in a new ordinance. This alternative is not recommended because the proposed amendments are required to comply with State law.

ORDINANCE NO. _____

EXCESSIVE WATER USE PENALTY ORDINANCE

Introduced by Director

; Seconded by Director

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. DEFINITIONS

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

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

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

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

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

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

“District” means the East Bay Municipal Utility District.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. REDUCTIONS IN WATER SUPPLY

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

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

C. DECLARATION AND NOTICE OF WATER SHORTAGE STAGES

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

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

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

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

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

D. IMPLEMENTATION OF WATER SHORTAGE STAGES

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

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

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

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

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

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

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

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

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

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

E. RULES AND REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

F. VIOLATIONS, PENALTIES, AND OTHER REMEDIES

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

a. deemed a waste of water;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. APPEAL PROCEDURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

President

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

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel

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AGENDA NO. 15.
MEETING DATE September 28, 2021

TITLE ADOPT A RESOLUTION CONTINUING VIRTUAL MEETINGS OF THE BOARD

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

RECOMMENDED ACTION

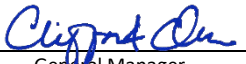
Make requisite findings and adopt a resolution to continue to hold meetings of the Board of Directors (Board) via teleconference under Assembly Bill 361 (AB 361) until such time as the State of Emergency resulting from the COVID-19 pandemic no longer impacts the ability of Board members to meet safely in person.

SUMMARY

Recently enacted AB 361 modifies the Ralph M. Brown Act (Brown Act) to allow governing bodies of local public agencies to continue to utilize teleconferencing for meetings of the governing bodies, so long as a State of Emergency is in effect and either state or local officials have imposed or recommended measures to promote social distancing or the governing body has determined that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. Since the Executive Order currently allowing such teleconferencing is set to expire on September 30, 2021, staff is recommending the Board continue the use of virtual Board meetings pursuant to AB 361 in order to provide for the health and safety of Board members and meeting attendees.

DISCUSSION

For over a year, meetings of the Board, including committee meetings, closed session meetings, special meetings, ad hoc committee meetings, and workshops, have been mostly held virtually via “teleconference” under a series of Executive Orders issued by Governor Gavin Newsom. These Executive Orders suspended provisions of the Brown Act under Government Code section 54953 that require all meetings of the Board to be held in person, subject to limited teleconferencing allowances requiring notice of all teleconference locations so as to allow members of the public to be given in-person access to teleconference locations and requiring a quorum of the Board to participate from a location within the service area. The last of these Executive Orders, Order N-08-21, is set to expire at midnight on September 30, 2021.

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Office of General Counsel	Derek McDonald	 General Manager
Attachment(s): Resolution		

In order to allow teleconferencing to continue during the pandemic, the legislature amended the Brown Act through AB 361, which was signed into law on September 16, 2021. AB 361 amends Government Code section 54953 and allows governing bodies to hold meetings virtually so long as:

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

On September 20, 2021, Governor Newsom issued Executive Order N-15-21, which affirmed that effective October 1, 2021, governing bodies of local public agencies could utilize teleconferencing for public meetings in accordance with the provisions of AB 361. Executive Order N-15-21 suspends Government Code section 54953 in its entirety until October 1, 2021.

The District's Board meetings, committee meetings, closed session meetings, special meetings, ad hoc committee meetings, and workshops are attended by District staff and members of the general public. At this time, there is no statewide mandate requiring persons to be vaccinated in order to enter public facilities and the Brown Act precludes the Board from requiring meeting attendees to be vaccinated as a condition of attendance. Given that it is not possible to predict how many persons will attend a Board meeting so as to allow for social distancing and other safety measures, staff is recommending the Board utilize its authority under AB 361 to authorize the continued use of teleconferencing for all Board meetings, committee meetings, closed session meetings, special meetings, ad hoc committee meetings, and workshops.

Though the Board can make the findings required by AB 361 at any time after it goes into effect, staff recommends the Board utilize the process authorized by Executive Order N-15-21 and make the required AB 361 findings at the September 28, 2021 Board meeting. This will allow Board-related meetings to take place virtually under the authority of Executive Order N-08-21, and thereafter the Board's resolution will be in place in time to authorize Board-related meetings to take place virtually on October 12 under Government Code section 54953(e)(1)(C).

AB 361 requires the governing body to reaffirm the findings above "not later than 30 days after teleconferencing for the first time pursuant to" AB 361, and then not later than every 30 days thereafter. The September 28, 2021 Board meeting will be the first time the Board holds a meeting "pursuant" to AB 361, in order to make the initial findings in support of authorization to hold Board meetings virtually. The Board will be asked to consider the required AB 361 findings at regularly scheduled Board meeting no more than 30 days apart until such time as the State of Emergency ends or the Board determines virtual meetings are no longer necessary to provide for the health or safety of meeting attendees.

ALTERNATIVE

Do not make findings and adopt a resolution to continue meetings via teleconference. This alternative is not recommended because the District cannot require members of the public who wish to attend the Board meetings to be vaccinated.

RESOLUTION NO. _____

AUTHORIZING CONTINUED UTILIZATION OF TELECONFERENCING FOR MEETINGS
OF THE EAST BAY MUNICIPAL UTILITY DISTRICT BOARD OF DIRECTORS UNDER
ASSEMBLY BILL 361 UNTIL SUCH TIME AS THE STATE OF EMERGENCY
RESULTING FROM THE COVID-19 PANDEMIC NO LONGER IMPACTS THE
ABILITY OF MEETING ATTENDEES TO MEET SAFELY IN PERSON

Introduced by Director

; Seconded by Director

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

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which repealed or modified certain provisions of previously-issued Executive Orders related to the pandemic and extended certain provisions so as to enable the State of California to continue to respond to the COVID-19 pandemic; and

WHEREAS, Paragraph 42 of Executive Order N-08-21 suspended provisions of the Ralph M. Brown Act at California Government Code section 54953 and provided that governing bodies of local public agencies in the State of California could utilize teleconferencing to hold public meetings in place of in-person meetings, subject to certain requirements; and

WHEREAS, Executive Order N-08-21 specified that it would remain in effect through September 30, 2021; and

WHEREAS, on September 16, 2021, Governor Newsom signed Assembly Bill 361 (AB 361) into law; and

WHEREAS, AB 361 provides that a governing body of a local public agency may conduct public meetings via teleconferencing in any of the following circumstances: (A) the governing body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing; or (B) the governing body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or (C) the governing body holds a meeting during a proclaimed state of emergency and has previously determined, by majority vote, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; and

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

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

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

WHEREAS, on September 20, 2021, Governor Newsom issued Executive Order N-15-21, which affirmed that Executive Order N-08-21 would remain in effect through September 30, 2021; affirmed that effective October 1, 2021, governing bodies of local public agencies could utilize teleconferencing for public meetings in accordance with the provisions of AB 361; and allowed governing bodies of local public agencies to meet under California Government Code section 54953(e)(1)(B) prior to September 30, 2021 to determine, by majority vote, whether as a result of the State of Emergency, meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, in accordance with Executive Order N-15-21, the District Board of Directors (Board) has met under California Government Code section 54953(e)(1)(B) to determine whether, as a result of the State of Emergency, meeting in person would present imminent risks to the health or safety of attendees;

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

1. The Board has considered the circumstances of the State of Emergency declared by Governor Newsom; and
2. Both State and local officials continue to recommend measures to promote social distancing.

BE IT FURTHER RESOLVED that, pursuant to AB 361 and based on the findings above, all District Board meetings, committee meetings, closed session meetings, special meetings, ad hoc committee meetings, and workshops will be held via teleconference in accordance with the provisions of California Government Code section 54953(e).

BE IT FURTHER RESOLVED that the Board shall, not later than 30 days after September 28, 2021, and every 30 days thereafter, consider the findings above and, if they hold true, adopt them by majority vote, until such time as the State of Emergency is rescinded or the Board determines the State of Emergency does not directly impact the ability of Board members and meeting attendees to meet safely in person and state or local officials no longer impose or recommend measures to promote social distancing.

ADOPTED this 28th day of September, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel

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ITEM 16

CORONAVIRUS UPDATE

WILL BE PROVIDED
AS AN ORAL REPORT

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: September 28, 2021

MEMO TO: Board of Directors

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

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

SUBJECT: 2021 Drought Update

SUMMARY

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

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

Projected October 1, total system storage has increased slightly, to approximately 435,000 acre-feet (AF). Total storage in Pardee and Camanche reservoirs is currently 74 percent of average and 55 percent of capacity, and total storage in the East Bay reservoirs is currently 86 percent of average and 68 percent of capacity.

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

Supplemental Supply Operations

The District will begin diverting Central Valley Project (CVP) water on October 4 via the Freeport Regional Water Project (FRWA). Emergency repair of Mokelumne Aqueduct No. 2 was completed last week and full conveyance capacity was restored. Diversion will be continuous for the next five months as the District conveys 33,250 AF of CVP water and 2,000 AF of transferred CVP water from Contra Costa Water District (CCWD), and wheels an additional 3,200 AF of CVP to CCWD pursuant to the settlement agreement.

The District is concurrently pursuing a variety of water transfers for 2022 should the drought continue. Staff initiated discussions with potential sellers and is developing a plan to secure up to 50,000 AF of supplemental supply for next year if needed. Transfer water would be delivered through FRWA.

Treated Water Quality

The District's CVP water will be delivered to San Pablo Reservoir and Upper San Leandro (USL) Reservoir for treatment at Sobrante and USL Water Treatment Plants (WTPs). These WTPs will be operated at higher-than-normal rates during the drought. The WTPs are capable of treating Sacramento River water. Both plants have flocculation and sedimentation basins; and the ozonation systems have been upgraded with new, more efficient equipment. The distribution system's water quality is monitored regularly, and staff responds quickly to water quality issues.

Regional Drought Assistance

The District continues discussions with Marin Municipal Water District (MMWD) to explore the possibility of wheeling transfer water to MMWD in 2022 if the drought continues. The District communicated to MMWD that any support from the District for MMWD will be reimbursed, will not impact the District's ability to obtain its own transfer water, and will not impact District customers.

Staff has conducted a preliminary analysis which concluded that wheeling of water for MMWD through the Freeport Project is very limited given that the District needs to reserve the full capacity of Freeport for the District customer needs. Even if the significant raw water capacity limitations are addressed, initial analyses also indicate limitations in delivery rates to avoid pressure impacts to the distribution system. While the District may be able to assist MMWD depending on conditions next year, no firm commitments can be made at this time. Staff advised MMWD to evaluate other wheeling options, including use of the District's intertie with the City of Hayward, and options that do not rely on the District such as local desalination.

Customer Outreach and Activity

Attachment 1 shows August and year-to-date data for select Water Conservation programs. The District continues to see high levels of activity in the flowmeter and lawn rebate programs, including participation in the new "Super Rebate" program that provides an added incentive to customers who pursue more sustainable and low water principles in their lawn replacement projects.

To date, staff has given 52 presentations (Attachment 2). This includes presentations in many classrooms and for community groups. This month the District launched its second fall webinar series, covering topics like "Fall Garden Maintenance" and "Save Our Water, Save Our Trees." This year's series will include a new feature, called "Office Hours," wherein customers can

receive more personalized assistance on specific topics. Offered in both Spanish and English, the first office hours sessions will focus on home leak repair and the District's lawn rebate program.

Homeowners Associations (HOAs)

The District's drought communications include outreach to HOAs. Staff recently updated ebmud.com/hoa with information on the drought, and this information is also shared with HOAs through bi-monthly multi-family water reports, water budgets, and via webinars, presentations, flyers, and other materials that are distributed to HOAs upon request.

The District offers several rebates for multi-family residential customers and conducts water use audits which often include the distribution of water-efficient fixtures. For HOAs and property management firms that manage multiple accounts, staff can help them to link those accounts on the District's web portal so that they can more easily track water use and monitor for leaks.

HOAs that have dedicated irrigation accounts for common areas participate in EBMUD's Irrigation Reduction Information System (IRIS) Program. Through the IRIS program, customers receive customized monthly irrigation water budgets based on their property characteristics and localized weather data. These water budgets also provide a mechanism for the District to provide timely communications on the drought.

Staff is developing more proactive communications for HOAs that could include direct communications with HOAs and their residents including through HOA newsletters. In late spring 2022, the District will be able to message to HOA residents as part of the Customer Relations Management (CRM) program currently under development.

Media

Drought coverage continues in the media, with multiple stories on water supply and reservoir levels on ABC7, KNTV, Bay City News, and The Hill; the excessive water use ordinance on KTVU; and water conservation tips in various outlets.

CCC:KZ:cw

Attachments


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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: September 23, 2021

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager 

FROM: Rischa S. Cole, Secretary of the District 

SUBJECT: Planning Committee Minutes – September 14, 2021

Chair Marguerite Young called to order the Planning Committee meeting at 9:15 a.m. She announced that in accordance with the Governor's Executive Order N-08-21, which suspends portions of the Brown Act, this meeting will be conducted by webinar and teleconference only. A physical location was not provided for this meeting. Directors Frank Mellon and Lesa R. McIntosh were present at roll call. All Directors participated remotely. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Director of Engineering and Construction Olujimi O. Yoloeye, Associate Civil Engineer Jeff Bandy, Associate Civil Engineer Karl F. Tingwald, Director of Water and Natural Resources Michael T. Tognolini, Manager of Mokelumne Watershed and Recreation Charles C. Beckman, Director of Operations and Maintenance David A. Briggs, Manager of Water Quality Susan M. Teefy, Manager of Regulatory Compliance David M. Woodard, Director of Wastewater Eileen M. White, Associate Civil Engineer Diana Lee, Executive Assistant II Robyn S. Johnson, and Secretary of the District Rischa S. Cole.

Public Comment. None.

Orinda Water Treatment Plant (WTP) Disinfection and Chemical Systems Safety Improvements (CSSI) Projects Update. Associate Civil Engineers Jeff Bandy and Karl F. Tingwald presented an overview of the projects which will improve disinfection reliability and reduce disinfection byproducts. The CSSI Project has been combined with the Disinfection Improvements Project into a single set of contract documents to reduce risk to the District by minimizing impacts to plant operations and simplifying construction management responsibilities. Mr. Bandy reviewed the projects' locations and settings and discussed which buildings would be demolished, new structure locations, and improvements to the chemical storage and feed systems. Staff has been coordinating with the City of Orinda to address concerns related to biological resources and transportation/traffic circulation. As a result of a traffic analysis performed by the District-retained traffic consultant, traffic safety and mitigation measures were included in contract documents and were agreed upon by District and City staff. He highlighted traffic control measures and coordination for contractors, planned haul routes for contractors, staff and heavy trucks, and other construction mitigations. He noted some trees will be removed before construction commences to allow time for newly installed landscaping to become established. The District conducted extensive public outreach and has established a dedicated project website and email address. Next, Mr. Tingwald discussed the contractor prequalification process. Due to the size and complexity of the projects and construction methods required, the District completed a rigorous process to prequalify interested bidders that includes seven general contractors, six excavation and shoring sub-contractors, and nine electrical sub-contractors. He reviewed how the District uses a partnering approach with various District workgroups, contractors, subcontractors, and suppliers to manage projects and the temporary locations for staff and contractors during construction. The District negotiated a lease for office space at 25 Orinda Way for the construction management team and contractor staff. The office space is within walking distance to

BART, about one mile from the WTP, and will include parking for contractors and a contractor vanpool. District maintenance staff will be temporarily relocated to temporary facilities at the staging area adjacent to the Orinda Sports Fields off Camino Pablo. The temporary facilities will include paving, a District-furnished mobile office building, steel storage containers and a portable shower trailer. Community use of the sports fields and parking area will not be interrupted except during paving, which will be coordinated with City staff. The Board will be asked to consider approving the lease agreement for 25 Orinda Way and purchase of the mobile office building at its meeting in the afternoon. Staff will present additional project-related contracts for consideration at Board meetings in October and December. Addressing the Committee was Justin Young, EBMUD Associate Electrical Engineer and Chair of the AFSCME Local 2019 Contract Out Committee who commented on consultants completing these projects and posed questions regarding Board approval of large capital projects, whether new District positions were created to assist with this project, and a review of previous and future projects to determine how many were or are planned to be contracted out. General Manager Chan responded to Mr. Young's comments and said staff will present information regarding long-term capital project resources that will also respond to Mr. Young's questions to the Board in spring 2022. The Committee thanked staff for their work, noting this is a large, important project for which ongoing communication with stakeholders, the City of Orinda and neighbors will be key. The Committee requested information on similar-sized ultraviolet water treatment projects installed by other agencies in the U.S. and Director Mellon asked to be notified when concrete pours for the projects are scheduled. It was moved by Director Mellon, seconded by Director McIntosh and carried (3-0) by roll call vote to accept the report and the staff recommendations.

- Director McIntosh left the meeting at 9:35 a.m. and returned at 9:38 a.m.

Water Quality Program Semi-Annual Report. Manager of Water Quality Susan M. Teefy presented an update on water quality performance for the first six months of 2021 during which the District met all federal and state drinking water standards and 120 of the District's 124 internal goals. As in previous updates, levels for three groups of disinfection byproducts (DBPs) were higher than District goals but continue to be stable. She reviewed compliance measures and testing data for total trihalomethanes and five haloacetic acids, and said future capital projects at the water treatment plants will enable better control of DBPs levels. The District continues to address customer exposure to lead in drinking water. Since 2017, over 2,000 customers have requested free lead sampling vouchers. The District continues refining its service line inventory understanding there are approximately 2,100 galvanized steel service lines remaining, most of which were installed before 1950. The District's plan to remove an average of 125 galvanized steel service lines each year, along with any associated lead goosenecks, during pipeline replacement, repair of breaks and leaks, or if needed, through a dedicated replacement activity was approved by the State Water Resources Control Board. Replacement for all galvanized lines is anticipated to take up to 20 years. The State of California and the U.S. Environmental Protection Agency (USEPA) are both modifying their lead regulations. Staff is actively participating in several working groups with both state and federal staff in developing their respective regulations to provide relevant technical input and modify the District's programs to ensure compliance and public health while minimizing unnecessary costs. She highlighted state and federal regulatory actions relating to perfluoroalkyl substances and polyfluoroalkyl substances (collectively known as PFAS) and revised microbial and DBP rules as well as USEPA actions on the proposed fifth Unregulated Contaminant Monitoring Rule that was published in March 2021. She noted that the Caldor wildfire is close to the District's Mokelumne watershed but has not caused impacts to water quality to date. Ms. Teefy responded to a question from the Committee regarding the customer lead sampling voucher program. It was moved by Director McIntosh, seconded by Director Mellon and carried (3-0) by roll call vote to accept the report.

Main Wastewater Treatment Plant (MWWTP) Seismic Retrofit Program. Associate Civil Engineer Diana Lee presented an overview of the program, annual average program costs, and upcoming projects at the MWWTP to address seismic vulnerabilities. This work is part of the long-term planning outlined in the MWWTP Master Plan. The MWWTP includes over 80 buildings and process structures with the oldest facilities built in the 1950s and major expansions constructed in the 1960s and 1970s. Seismic evaluations and retrofits were completed in the late 1990s after the 1989 Loma Prieta earthquake; however, since seismic codes and guidelines have significantly changed, in 2018, the District completed additional seismic vulnerability assessments. Ms. Lee reviewed the program goals and scope noting the scope includes the effluent outfall from the MWWTP to the San Francisco Bay. She highlighted the geotechnical investigations and assessments performed to prioritize seismic risk and said seismic retrofit projects at the plant will be phased over the next 10 years as a part of the 10-year Capital Improvements Program. Over the next five fiscal years, the District plans to complete the MWWTP Administrative Facilities Seismic Retrofit Project to retrofit or improve the MWWTP Administration and Lab building; field services building; Building 1084; anchoring for site-wide electrical equipment; and other miscellaneous seismic structural improvements. The Committee had no questions. It was moved by Director Mellon, seconded by Director McIntosh and carried (3-0) by roll call vote to accept the report.

Regulatory Compliance Semi-Annual Report. Manager of Regulatory Compliance David M. Woodard reviewed compliance activities and key regulatory issues since March 2021. During this time period, three digester gas releases occurred at the MWWTP. The Bay Area Air Quality Management District granted breakdown relief for the April release and no violation will be issued; issued a Notice of Violation (NOV) for the May release but no penalty or settlement offer has been issued at this time; and issued a Notice to Comply for the June release. A Notice to Comply is a lesser citation than an NOV and no penalty or settlement offer will result from this action. The Alameda County Department of Environmental Health granted closure of the Leaking Underground Storage Tank cleanup site at the Anderson Building in June. No further action is required for this issue. To address a series of pH exceedances and violations at the Richmond Advance Recycled Expansion facility in the sanitary sewer discharge to the West County Wastewater District (WCWD) and as outlined in WCWD's compliance schedule, the District is installing a mixing system that is scheduled to be operational in fall 2021. WCWD will not issue NOVs to the District if there are any pH exceedances during the compliance schedule period. Staff presented the final draft of the Integrated Pest Management Program guidelines to the Sustainability/Energy Committee in April 2021 and the final guidelines are posted on the District's webpage. The District's Lost Time Injury Rate has seen a 49 percent reduction in hours lost between 2010 and 2021 which is equivalent to 9.5 employees back to work. The Emergency Operations Team remains activated in response to the COVID-19 pandemic and is also responding to PG&E Public Safety Power Shutoffs and the leak repair on Mokelumne Aqueduct No. 2. Staff will continue managing the COVID-19 pandemic, the vacuum excavator slurry pilot program, and having ongoing discussions with regulatory agencies on work in sites with contaminated soils. Director Mellon asked for additional information on the fiscal impact due to the reduction in Lost Time Injury Rate hours. It was moved by Director Mellon, seconded by Director McIntosh and carried (3-0) by roll call vote to accept the report.

Camanche-Riverview Campground Fire Protection. Manager of Mokelumne Watershed and Recreation Charles C. Beckman presented an overview of fire fuel reduction work and fire prevention in the Camanche South Shore Recreation Area. He reviewed the layout of the Riverview Campground and the adjacent mobile home park and how the District maintains the fuel treatment area located outside these spaces; described how the fire roads leading from both areas function as access points and fuel breaks; campground fire safety; and the District's Red Flag Warning procedures. The District takes considerable

measures to ensure the public can enjoy recreational activities like campfires and barbecues without posing a significant fire risk. Concession maintenance staff maintains all campfire rings and barbecues in the recreation areas, keeps the ground bare over a five-foot radius and removes hot ashes after use. Hot ash and coal receptacles are located throughout the recreation area for public use. During elevated fire danger conditions such as Red Flag Warning events, the District prohibits the use of barbecues and campfire rings. He highlighted two previous fires in the Riverview Campground caused by a camper-operated generator and lightning and said there have been no campground fires resulting from campfires or barbecues. Addressing the Committee was Bob Van Bibber, mobile home park resident who commented on park residents' concerns about fires in Riverview during red flag warning days, incidents with large campfire ring fires at the campground in July and September, and which agencies are to be contacted in an emergency. Mr. Beckman responded to questions from the Committee regarding the fires mentioned by Mr. Van Bibber, banning campfires at Riverview, and communications with and emergency contact information for the mobile home park residents. The Committee asked for an update on the two incidents mentioned by Mr. Van Bibber and to follow up with him regarding his concerns.

Adjournment. Chair Young adjourned the meeting at 10:55 a.m.

CCC/RSC