



EAST BAY DISCHARGERS AUTHORITY  
2651 Grant Avenue  
San Lorenzo, CA 94580-1841  
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*A Joint Powers Public Agency*

NOTICE: In compliance with AB 361 (2021), the Financial Management Committee meeting scheduled below will be accessible via Zoom video conferencing. Members of the public may participate in the meeting through the Zoom link or phone number below.

- Zoom link: <https://us02web.zoom.us/j/86260440932>
- Telephone dial-in: 1(669) 900-6833, meeting ID #862 6044 0932

### **ITEM NO. 13**

## **REGULATORY AFFAIRS COMMITTEE AGENDA**

**Monday, May 16, 2022**

**9:00 A.M.**

**East Bay Dischargers Authority  
2651 Grant Avenue, San Lorenzo, CA 94580**

**Committee Members: Cutter (Chair); Johnson**

- RA1. Call to Order**
- RA2. Roll Call**
- RA3. Public Forum**
- RA4. EBDA NPDES Compliance – See Item No. OM4**  
(The Committee will review NPDES Permit compliance data.)
- RA5. Update on Nature-based Solutions for Shoreline Resilience**  
(The Committee will receive information supporting a presentation to Commission.)
- RA6. Sanitary Sewer System Waste Discharge Requirements Update**  
(The Committee will receive an update on this permit renewal process.)
- RA7. NPDES Fees**  
(The Committee will receive an update on NPDES permit fees.)
- RA8. NPDES Permit Reissuance**  
(The Committee will receive an update on EBDA's permit renewal process.)
- RA9. Motion Authorizing the General Manager to Execute a Professional Services Agreement with Pacific EcoRisk in the Amount of \$119,619 for Effluent Toxicity Testing**  
(The Committee will consider the motion.)

## **RA10. Adjournment**

Any member of the public may address the Committee at the commencement of the meeting on any matter within the jurisdiction of the Committee. This should not relate to any item on the agenda. Each person addressing the Committee should limit their presentation to three minutes. Non-English speakers using a translator will have a time limit of six minutes. Any member of the public desiring to provide comments to the Committee on any agenda item should do so at the time the item is considered. Oral comments should be limited to three minutes per individual or ten minutes for an organization. Speaker's cards will be available and are to be completed prior to speaking.

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in an Authority meeting, or you need a copy of the agenda, or the agenda packet, in an appropriate alternative format, please contact the Administration Manager at (510) 278-5910 or [juanita@ebda.org](mailto:juanita@ebda.org). Notification of at least 48 hours prior to the meeting or time when services are needed will assist the Authority staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

In compliance with SB 343, related writings of open session items are available for public inspection at East Bay Dischargers Authority, 2651 Grant Avenue, San Lorenzo, CA 94580. For your convenience, agenda items are also posted on the East Bay Dischargers Authority website located at <http://www.ebda.org>

<p><b>The next Regulatory Affairs Committee meeting is scheduled on Monday, July 18, 2022 at 9:00 a.m.</b></p>
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## **ITEM NO. RA5 UPDATE ON NATURE-BASED SOLUTIONS FOR SHORELINE RESILIENCE**

### **Recommendation**

For the Committee's information only; no action is required.

### **Background**

Wetlands, horizontal levees, and other "Nature-based Solutions" (NbS) have the potential to provide multiple benefits including water quality improvement through reduction of nutrients and contaminants of emerging concern, creation or restoration of habitat, and protection from sea level rise. As noted previously, the Authority has been engaged in several parallel projects that seek to advance NbS concepts along the East Bay shoreline, including the Transforming Shorelines Project. Transforming Shorelines is led by the San Francisco Estuary Partnership (SFEP) and funded by USEPA Region 9 under its Water Quality Improvement Fund. The project contains a number of components aimed at advancing NbS at wastewater treatment plants. Elements include:

- Establishment of the Transforming Shorelines Collaborative, a stakeholder group that will collaborate on challenges and opportunities associated with NbS projects around the Bay, including San Leandro, Hayward, Oro Loma, and others
- Continued UC Berkeley research at the Oro Loma Horizontal Levee demonstration project, including study of reverse osmosis (RO) concentrate treatment
- A feasibility study for NbS at the Hayward Ponds
- Design and environmental permitting of the EBDA First Mile horizontal levee project
- Collaboration for development of treatment wetlands at San Leandro

EBDA is leading the Hayward and First Mile projects with support from SFEP and the EBDA Member Agencies.

### **Discussion**

In November 2019, the Commission approved Resolution 19-42 authorizing the General Manager to enter into a funding agreement with the Association of Bay Area Governments, SFEP's parent agency. Per that agreement, SFEP is passing through grant funds to EBDA to reimburse the Authority for consultant costs associated with the Hayward and First Mile projects.

In coordination with SFEP, City of Hayward, and East Bay Regional Park District (EBRPD) staff, Authority staff developed a Request for Proposals (RFP) seeking an engineering and environmental consultant for the Hayward and First Mile projects and selected Environmental Science Associates (ESA). ESA staff will join the General Manager at the May 19, 2022 Commission meeting to present updates on these projects as well as related NbS efforts, including expansion and renewal of the Hayward Area

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Shoreline Planning Agency (HASPA) Joint Powers Authority, a regional NbS study being undertaken by the Bay Area Clean Water Agencies (BACWA), efforts to streamline permitting and regulatory approvals of NbS projects, and future funding opportunities.

**ITEM NO. RA6 SANITARY SEWER SYSTEM WASTE DISCHARGE REQUIREMENTS UPDATE**

**Recommendation**

For the Committee's information only; no action is required.

**Background**

Sanitary sewer collection systems managed by public agencies, including EBDA's Member Agencies, have been governed by a general permit issued by the State Water Resources Control Board (State Water Board) since 2006. The Sanitary Sewer System (SSS) Waste Discharge Requirements (WDR) require proper management of collection systems through development, submittal, and maintenance of a Sewer System Management Plan, as well as reporting of sanitary sewer overflows (SSOs) to the state database. For the past several years, State Water Board staff has been working to update the SSS WDR. EBDA and Member Agency staff have been working through the California Association of Sanitation Agencies (CASA) and Bay Area Clean Water Agencies (BACWA) to provide input to the reissuance process.

**Discussion**

An informal draft of the new SSS WDR was released in February 2021 and contained a number of provisions that the wastewater community found highly problematic. CASA, BACWA, and other clean water partners provided written comments and met several times with State Water Board staff to express our concerns. That input was taken into account, and the formal draft released on January 31, 2022 was significantly improved. On April 8, CASA, BACWA, and others submitted comments to the State Water Board on the official draft of the re-issued SSS WDR. BACWA's comment letter is attached. It was also accompanied by a detailed markup, which can be found here: <https://bacwa.org/wp-content/uploads/2022/04/BACWA-Comments-to-SWRCB-on-Draft-SSS-WDR-2022-04-08.pdf>. The State Water Board is expected to adopt the SSS WDR before the end of 2022.



April 8, 2022

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

VIA EMAIL: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Subject: Comment Letter – Draft Sanitary Sewer Systems General Order Reissuance**

Dear Jeanine Townsend:

The Bay Area Clean Water Agencies (BACWA) appreciates the opportunity to provide comments on the Draft Sanitary Sewer Systems Waste Discharge Requirements General Order (SSS-WDR), which is proposed to replace the current order adopted in 2006 (“2006 Order”; WQO No. 2006-0003) as well as the accompanying Monitoring & Reporting Program adopted in 2013 (“2013 MRP”; Order No. WQ 2013-0058-EXEC). BACWA’s members include publicly-owned wastewater treatment works (POTWs) and collection system agencies serving 7.1 million people in the nine-county San Francisco Bay Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health.

BACWA supports the collaborative approach that State Water Board staff used to develop the draft SSS-WDR. In 2021, BACWA, the California Association of Sanitation Agencies (CASA), the Central Valley Clean Water Association (CVCWA) and the Southern California Alliance of Publicly-Owned Treatment Works (SCAP) worked extensively with State Water Board staff to provide feedback on the informal staff draft version of the draft SSS-WDR. These conversations clearly resulted in a draft SSS-WDR that reflects a deeper understanding of sewer system operations.

Because the 2006 Order has been successful in driving down the number and volume of spills, we ask that the State Water Board continue to limit the changes in the reissued SSS-WDR to those strictly necessary for improving the Order’s clarity or enforceability. This includes maintaining the order as a WDR rather than as an NPDES permit. We also request streamlining of requirements wherever possible to reduce the administrative burden of its implementation.

BACWA's detailed comments on the draft SSS-WDR are found in **Attachment A**. Our priority issues are provided first in the attachment and mostly address issues we anticipate will create confusion or compliance problems. After those, the remaining comments are sequential with the draft SSS-WDR's organization and are submitted to help ensure clarity. The detailed nature of these comments reflect the importance of the SSS-WDR in guiding day-to-day sewer system operations. The draft Order will be interpreted and implemented by more than 1,100 public agencies, as well as new private enrollees, so the smallest details in the SSS-WDR have the potential for significant impacts. Our key suggestions for reducing the cost of compliance are:

1. **Remove New Prohibition 4.1.** Prohibitions need to be unambiguous for enrollees and enforcement division staff. Unfortunately, Prohibition 4.1 contains new terminology such as "potential to discharge to waters of the State" and "promptly cleaned up" that are not defined in the draft SSS-WDR, are not used in the industry, and are therefore subject to the discretion of enforcement staff. For complete details, see comment No. 1 on page 3 of Attachment A.
2. **Streamline Reporting of Category 4 Spills.** Category 4 spills pose a low threat to water quality. The draft SSS-WDR proposes a complex incentive system in which only certain enrollees with low spill rates would qualify for reduced reporting. We request that all enrollees report Category 4 spills within annual reports rather than monthly reports. For complete details, see comment No. 4 on page 7 of Attachment A.
3. **Remove New Requirements for Receiving Water Field Testing.** The new receiving water field testing requirements found in Section 2.3.2 of Attachment E will result in significant equipment and labor costs for enrollees. Unfortunately, despite this expense, the resultant data may not be useable for enforcement. Compliance with water quality objectives for turbidity and other parameters is based on an observed difference compared to background conditions, which exceeds the scope of the proposed sampling in the draft SSS-WDR. Due to the mismatch between effort and utility, this testing requirement should be removed. For complete details, see comment No. 8 on page 14 of Attachment A.

BACWA looks forward to continuing to work with State Water Board staff during implementation of the SSS-WDR. We have the following recommendations to ensure that the reissued SSS-WDR continues to reduce spill rates without draining critical resources away from agencies' core mission -- protecting the environment and public health:

1. **Establish an Implementation Committee.** Allocate State Water Board staff time to participate in a formal implementation committee with stakeholders, including enrollees, consultants, our member organizations, and other member organizations such as the California Rural Water Association. The purpose of the committee would be to develop guidance and evaluate the success of the reissued Order's requirements for spill response, CIWQS data management, annual reports, preparation of Sanitary Sewer Management Plans (SSMPs), auditing standards, and more. This guidance can then be distributed through formal training sessions offered by the member organizations and others

2. **Delay the Effective Date.** The effective date of the reissued SSS-WDR should **be at least 180 days** after the adoption date. Critically, this will allow agencies time to update their Spill Emergency Response Plans to reflect the requirements in the reissued SSS-WDR. It will also provide a smooth transition for agencies whose SSMPs are being updated around the time of the adoption hearing.
3. **Provide Compliance Assistance to Small and Disadvantaged Communities.** The SSS-WDR is a complex document, with many new requirements. Most enrollees do not have dedicated regulatory staff to respond to the reissued SSS-WDR. Of the 1,182 enrollees of the 2006 Order, more than 80% are small (less than 100 miles of sewer pipelines) and about 50% are very small (less than 20 miles of sewer pipelines). The State Water Board can help these agencies comply by:

- a. **Providing Simplified Templates** of SSMPs, audit reports, and annual reports that could be used by small enrollees or enrollees in disadvantaged communities. Templates can help clarify the minimum expectations for compliance, as well as providing a consistent structure for documenting agency information. The most challenging element of SSMPs and Annual Reports lays in the requirements to write original narrative explanations that start with “blank slates.” This type of writing requires training, experience, and staff availability that many agencies cannot muster.

In terms of facilitating the adoption of template-based tools, we would like to call the State Water Board’s attention to its current work in assisting with the development of a templated Water Shortage Contingency Plan for small water suppliers.

- b. **Increasing funding** for sewer system capital improvements through the Clean Water State Revolving Fund (CWSRF). Originating and managing CWSRF funding is a challenging and time-consuming task that can sometimes exceed the administrative resources of enrollees. Unlike treatment plant projects, collection systems are comparatively simple. The State Water Board’s input in facilitating the process for small and disadvantaged agencies would hasten and promote the overall goal of strengthened collection system infrastructure.
- c. **Providing planning grants** to small disadvantaged communities and small severely disadvantaged communities for assistance in resiliency planning, which is required is required by the draft SSS-WDR.

Resiliency planning, because it is new to the collection system world with this draft SSS-WDR, requires technical, geological, and hydraulic skills that will be challenging for even the most sophisticated and well-financed agencies to execute. Grant assistance would be helpful for small disadvantaged agencies if they are expected to produce a technically respectable and compliant response to this requirement.

In closing, we appreciate the opportunity to comment on the draft SSS-WDR and look forward to continued dialogue with the State Water Board and your staff to finalize and adopt it. We also want to reiterate our gratitude to everyone who met us with over the last year for your



accessibility and in-depth discussions and language clarifications about the update to this Order. Please do not hesitate to contact us with any questions or concerns.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Lorien Fono". The signature is fluid and cursive, with the first name "Lorien" being more prominent than the last name "Fono".

Lorien Fono, Ph.D., P.E.  
Executive Director  
Bay Area Clean Water Agencies

**Enclosures:**

Attachment A – Detailed Comments on Draft SSS-WDR

cc: BACWA Executive Board  
Andrew Damron, co-chair, BACWA Collection Systems Committee  
Tyree Jackson, co-chair, BACWA Collection Systems Committee

## **ITEM NO. RA7 NPDES FEES**

### **Recommendation**

For the Committee's information only; no action is required.

### **Background**

Each year, EBDA pays a fee to the State Water Resources Control Board (State Water Board) associated with the Authority's National Pollutant Discharge Elimination System (NPDES) permit. These fees, which cover State Water Board programs as well as Regional Water Quality Control Board (Regional Water Board) expenses, are significant. Historically, the state's General Fund funded a large share of the programmatic expenses of the State and Regional Water Boards, however during the economic downturn, costs were shifted, putting the entire burden on permittees to cover all costs through fees.

This past year, EBDA's NPDES fee was \$603,000, an 11.9% increase over the prior year. Cumulatively over the past four years, NPDES fees have increased by 45.5%, and the State Water Board is currently projecting an additional 7.3% increase in fees for next year. EBDA's NPDES fee now represents 12% of the Authority's operating budget.

### **Discussion**

Given that the state now has a significant surplus, the Commission, along with other stakeholders, has asked why State and Regional Water Board funding continues to be entirely fee-based. The California Association of Sanitation Agencies (CASA), along with a long list of Water Board permittees, submitted the attached letter to Governor Newsom's office, posing exactly that question, and proposing that the Governor's revised budget allocate General Fund dollars to water quality programs. Staff will continue to track this effort and advocate for relief from continuing escalation of water quality fees.



April 14, 2022

Governor Gavin Newsom  
1021 O Street, Suite 9000  
Sacramento, CA 95814

Dear Governor Newsom,

The undersigned organizations representing multiple stakeholders paying into water quality programs at the State Water Resources Control Board (SWRCB) respectfully request an allocation of general fund dollars for programs in the Waste Discharge Permit Fund (WDPF) as part of your 2022-2023 May Budget Revision.

During previous Administrations, when California was experiencing record budget deficits and the economic future of the state was uncertain, all costs for the water quality programs were shifted onto those entities

regulated by the SWRCB and Regional Water Boards. To this day, as programs at SWRCB expand, these costs continue to skyrocket through a fee-based process.

Since then, the economic outlook for California has become much different, and we have been engaging in conversations with SWRCB leadership and staff to find creative solutions to these water quality-related fee increases that have no end in sight.

The 2022-2023 budget surplus provides an opportunity to achieve our shared goals of maximizing water use, protecting water quality, and improving climate resiliency while balancing compliance goals at the SWRCB.

As such, we urge you to utilize a portion of the state's budget surplus to: (1) assist in offsetting some of the foundational costs of SWRCB programs that generally benefit the public statewide, and (2) assist in building a more robust reserve that can be utilized during tough economic times, a concept similar to a "rainy day fund."

Of particular interest for the undersigned organizations is the WDPF that funds water quality programs at the SWRCB and the regional water boards. Currently, the program is 100 percent fee-based, and we are seeking general fund dollars to provide temporary relief to fee payers in the following amounts.

Three-year general fund allocation for foundational costs: \$150.9 million over three years, which includes:

- Foundational Programs (Basin Planning, TMDLs): \$32 million per year
- Surface Water Ambient Monitoring Program (SWAMP) and Groundwater Ambient Monitoring and Assessment (GAMA) Program: \$16.5 million per year
- Beach Monitoring: \$1.8 million per year

Further, the SWRCB strives to keep a five percent reserve fund, and we are seeking a 10 percent reserve to allow more flexibility within the fee system. A one-time allocation of this request is \$24.9 million (for 10 percent reserve). The amount needed for a 10 percent reserve from each fund includes:

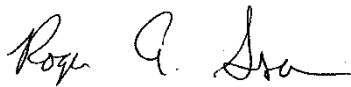
- WDPF: \$17.6 million
- Water Rights Fund: \$3.4 million
- Drinking Water: \$3.9 million

Thank you for your consideration of this request for the May Budget Revision. We look forward to working with you on this and other related requests.

Sincerely,



Emily Rooney, President  
Agricultural Council of California



Roger Isom, President/CEO  
California Cotton Ginners and Growers Association  
Western Agricultural Processors Association



Michael Müller, Dir. of Government Relations  
California Association of Winegrape Growers



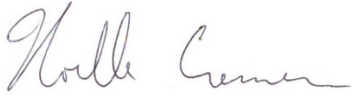
Jared Voskuhl, Manager Regulatory Affairs  
California Assn. of Sanitation Agencies (CASA)



Gail Delihant, Sr. Dir. CA Government Affairs  
Western Growers Association



Danny Merkley, Director, Water Resources  
California Farm Bureau



Noelle Cremers, Dir. Env. & Regulatory Affairs  
Wine Institute



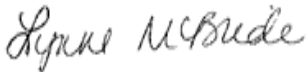
Karen Cowan, Executive Director  
California Stormwater Quality Association



Timothy A. Johnson, President/CEO  
California Rice Commission



Casey Creamer, President/CEO  
California Citrus Mutual



Lynne McBride, Executive Director  
California Dairy Campaign



Kevin Abernathy, General Manager  
Milk Producers Council



Anja Raudabaugh, CEO  
Western United Dairies



Bill Schiek, Executive Director  
Dairy Institute of California



Ian LeMay, President  
California Fresh Fruit Association



Christopher Valadez, President  
Grower-Shipper Association of Central California



Aubrey Bettencourt, President  
Almond Alliance of California



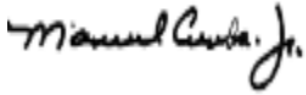
Richard Matoian, President  
American Pistachio Growers



Renee Pinel, President/CEO  
Western Plant Health Association



Joani Woelfel, President & CEO  
Far West Equipment Dealers Association



Manuel Cunha, Jr., President  
Nisei Farmers League



Will Scott, Jr., President  
African American Farmers of California



Todd Sanders, Executive Director  
California Apple Commission  
California Blueberry Association  
California Blueberry Commission  
Olive Growers Council of California



Chris Zanolini, Executive Director  
Plant California Alliance

## ITEM NO. RA8 NPDES PERMIT REISSUANCE

### Recommendation

For the Committee's information only; no action is required.

### Background

The Authority operates under a National Pollutant Discharge Elimination System (NPDES) [permit](#) issued by the Regional Water Quality Control Board (Regional Water Board) for its combined discharge to the San Francisco Bay through the EBDA outfall. The permit includes monitoring requirements, pollution prevention and pretreatment provisions, and effluent limits that the Authority must adhere to. EBDA's current permit went into effect on July 1, 2017 and is set to expire on June 30, 2022.

Nine months prior to permit expiration, permittees are required to submit a Report of Waste Discharge (ROWD) summarizing discharge data, and an application for permit reissuance. With the assistance of regulatory consultant EOA, Inc. (EOA), EBDA submitted its ROWD and renewal application to the Regional Water Board in September 2021.

### Discussion

On April 4, 2022, staff received an administrative draft of EBDA's new NPDES permit with a request for comments within two weeks. With the rapid support of Member Agency staff, EOA, and legal counsel Meyers Nave, EBDA staff submitted a markup to the Regional Water Board on April 18, 2022, as requested. Overall, staff believes that the permit was well-drafted and that EBDA will be able to consistently comply with its provisions. Changes from the current permit and other items of note in the new draft are as follows:

- **Total Residual Chlorine:** As previously discussed, in 2020 the Regional Water Board updated the Basin Plan, the regional document that sets water quality standards, to remove the performance-based 0.0 mg/L instantaneous maximum limit for chlorine residual and replace it with a water quality-based objective and averaging period. Because it is water quality-based, this approach allows effluent limits for deep water dischargers to be calculated considering dilution. For EBDA, this means that instead of complying with an instantaneous maximum limit of 0.0 parts per million (or mg/L), EBDA's new proposed limit is 0.98 mg/L, measured as a one-hour average concentration. Compliance with this limit can be achieved with minimal SBS dosing, and perhaps no SBS addition under most conditions.

Prior to implementing its new objectives in permits, the Basin Plan Amendment must be approved by the Environmental Protection Agency (EPA), which must consult with other federal agencies. Unfortunately, EPA has not yet approved the Amendment and recently received comments from the U.S. Fish and Wildlife Service (USFWS) on the document. It is not known how long it will take for EPA to resolve USFWS's comments. Regional Water Board staff has therefore included a

trigger in EBDA's permit so that the new limit will automatically take effect the first of the month following approval of the Basin Plan Amendment. Staff is working with Regional Water Board staff to identify ways to collaborate with the federal agencies to move the amendment more quickly toward approval.

- **Toxicity:** The State Water Board has been working for a long time on developing a new policy with an aim to improve consistency in the way that whole effluent toxicity is regulated in permits across the state. Toxicity is measured by testing live organisms' response to effluent exposure in order to assess any synergistic effects of pollutants in effluent. The Authority's current permit requires quarterly testing for chronic and acute toxicity using fathead minnow, a freshwater species. There is no effluent limit for chronic toxicity, but exceedance of a threshold triggers additional monitoring and studies to understand the cause.

Based on the new policy, all dischargers that exceed five million gallons per day will have effluent limits for chronic toxicity. The new policy also requires use of the Test of Significant Toxicity (TST), which is a different statistical method for establishing toxicity based on organism data. The Toxicity Policy was adopted by the State Water Board and is currently awaiting EPA approval. Based on the experience with EPA approval of the non-controversial chlorine residual Basin Plan Amendment, Regional Water Board staff does not anticipate that the policy will be in place by the time EBDA's permit is renewed. Therefore, EBDA's draft NPDES permit contains toxicity language based on continuation of the existing framework for toxicity testing. A proposed contract for the toxicity tests to be performed by Pacific EcoRisk is included as Item No. RA9.

- **Cargill Brine Project.** As requested by EBDA in the reissuance application, the draft permit contains certain requirements that would change if/when EBDA notifies the Regional Water Board that a discharge of brine from Cargill has commenced. Inclusion of these changes using a notification trigger alleviates the need to amend the permit if/when the Cargill project is completed. Specifically, effluent limits for ammonia and total residual chlorine would be modified, along with EBDA's whole effluent toxicity testing species. The rationale for these changes is described below.
  - Effluent limits: Modeling performed for EBDA by Larry Walker Associates showed that the change in density of EBDA's effluent associated with the brine addition would slightly reduce the amount that the effluent is diluted by Bay water at the Authority's deep water outfall, from 75:1 dilution to 72:1. This change affects two parameters for which effluent limitations are calculated using dilution – ammonia and total residual chlorine. Therefore, the permit includes footnotes identifying changes to the ammonia and chlorine effluent limits upon notification of the brine discharge. Staff does not foresee any challenges complying with the lower limits. EBDA's peak



ammonia concentration during the last permit term was 41 mg/L, whereas the proposed ammonia limits are 86 mg/L pre-brine discharge and 83 mg/L with brine. Similarly, EBDA expects to reliably comply with the change in chlorine residual limit from 0.98 mg/L pre-brine to 0.94 mg/L post-brine by managing dechlorination to maintain a safety factor.

- Toxicity: As noted above, EBDA currently uses fathead minnow to test for acute and chronic toxicity of its effluent. The minnow is a freshwater species that is expected to be sensitive to the additional salt associated with the brine. Upon notification that brine discharge has commenced, EBDA will switch to marine species, performing chronic toxicity testing using the blue mussel (*Mytilus galloprovincialis*) and acute testing using rainbow trout (*Onchorhynchus mykiss*). Because the test methods for toxicity using marine species include addition of salt to a specified level, EBDA could continue testing with the marine species in the future, even if the Cargill brine discharge is suspended.
- **Monitoring Updates to Fund Regional Monitoring of Contaminants of Emerging Concern (CECs):** In late 2021, the Regional Water Board adopted a blanket permit amendment, modifying all wastewater discharge permits to reduce certain monitoring requirements and, in exchange, increase funding requirements for agencies to contribute to the Regional Monitoring Program (RMP). The concept behind this “Alternative Monitoring and Reporting (AMR)” Program was to reduce unnecessary and duplicative monitoring, particularly associated with pretreatment programs, in favor of funding regional monitoring and studies of CECs in the Bay. The following changes to EBDA’s permit were carried forward into the new draft:
  - Reduction for Oro Loma in influent and biosolids monitoring for volatile organic compounds and base/neutrals and acid extractable organic compounds. Oro Loma has fewer industrial dischargers than the other members and therefore benefits from reduced pretreatment monitoring.
  - Increase in mercury influent monitoring for EBDA and LAVWMA member agencies from annual to quarterly.
  - Reduction for member agencies in mercury effluent monitoring from monthly to quarterly.
  - Reduction for EBDA outfall in mercury effluent monitoring from monthly to quarterly.

The net savings of \$31,680 is now required to be paid to the RMP for CECs monitoring.

After reviewing and addressing EBDA’s comments on the administrative draft, Regional Water Board staff plans to release a formal Tentative Order version of the permit in mid-May for a 30-day public comment period. The permit is currently on the Regional Water

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Board's calendar for adoption at its July 13, 2022 meeting. The existing permit will automatically be continued until the new permit becomes effective, currently scheduled for September 1, 2022.

**ITEM NO. RA9 MOTION AUTHORIZING THE GENERAL MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH PACIFIC ECORISK IN THE AMOUNT OF \$119,619 FOR EFFLUENT TOXICITY TESTING**

**Recommendation**

Approve a motion authorizing the General Manager to enter into a professional services agreement with Pacific EcoRisk in the amount of \$119,619 for fiscal years 2022/2023 through 2026/2027.

**Background**

EBDA's NPDES discharge permit requires testing of the effluent's acute and chronic toxicity to ensure that the discharge is not impacting the biota living around the outfall. Tests are performed using live organisms, and their survival and growth response are measured while exposed to a range of concentrations of effluent. As noted in Item No. RA8, EBDA's new NPDES permit, expected to be approved in July 2022 and effective September 1, 2022, has similar whole effluent toxicity testing requirements.

**Discussion**

The Authority has used Pacific EcoRisk for bioassay testing services for the past eleven years. City of San Leandro staff previously conducted acute toxicity testing at the Marina Dechlorination Facility, while chronic toxicity was contracted to Pacific EcoRisk. Conducting toxicity testing is very labor intensive and contains significant inherent risk, since you are dealing with live organisms. Only a handful of large wastewater agency labs currently maintain chronic toxicity testing in-house.

Given the exceptional quality data and defensible results achieved by Pacific EcoRisk, their reputation as the highest quality bioassay laboratory in the state, and the potential for extensive regulatory costs if effluent toxicity limits are exceeded, staff recommends continuing with Pacific EcoRisk for NPDES permit chronic toxicity testing services through a sole source procurement continuation. Pacific EcoRisk has provided excellent customer service and has implemented numerous efforts that have streamlined the process and minimized waste of resources.

The current agreement with Pacific EcoRisk expires on June 30, 2022 at the end of this fiscal year. The term of the proposed new agreement would be July 1, 2022 through June 30, 2027, concluding at the expiration of the Authority's new 5-year NPDES permit. As noted in Item No. RA8, the new permit provides for EBDA to switch to toxicity testing with a marine species upon commencement of the Cargill brine discharge. Pacific EcoRisk has provided two quotes (see attached) – one for testing with the current freshwater species and one for testing with the future marine species.

The following table shows the estimated costs for each fiscal year of the contract. For conservatism, staff has assumed that testing continues with freshwater species (fathead minnow) for the duration of the five-year permit term. The estimate also assumes a

Agenda Explanation  
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Regulatory Affairs Committee  
May 16, 2022

maximum of 5% annual price increases.

Fiscal Year	Cost	Test Assumed
2022/2023	\$ 21,648	Acute and chronic Fathead Minnow
2023/2024	\$ 22,730	Acute and chronic Fathead Minnow
2024/2025	\$ 23,867	Acute and chronic Fathead Minnow
2025/2026	\$ 25,060	Acute and chronic Fathead Minnow
2026/2027	\$ 26,313	Acute and chronic Fathead Minnow
Total	\$ 119,619	

As shown in the table below, if the brine discharge and associated switch from fathead minnow to rainbow trout and blue mussel occur in FY 2024/2025 as projected, the Authority will realize some cost savings. Pacific EcoRisk will only bill EBDA for work actually conducted.

Fiscal Year	Cost	Test Assumed
2022/2023	\$ 21,648	Acute and chronic Fathead Minnow
2023/2024	\$ 22,730	Acute and chronic Fathead Minnow
2024/2025	\$ 22,208	Trout + Mytilus
2025/2026	\$ 23,318	Trout + Mytilus
2026/2027	\$ 24,484	Trout + Mytilus
Total	\$ 114,389	

**Pacific EcoRisk**

2250 Cordelia Rd.  
Fairfield, CA 94534  
PH (707)207-7760

FAX (707)207-7916

**Quote**

Quote #:	<b>EB103</b>
Effective	<b>7/1/22</b>
Date:	
Good	<b>6/30/23</b>
through:	

**East Bay Dischargers Authority**

2651 Grant Ave.  
San Lorenzo, CA 94580

Contact: **Jacqueline Zipkin**

Phone: 510-278-5910

email: [jzipkin@ebda.org](mailto:jzipkin@ebda.org)

Service	Quantity	Unit	Unit Fee	Net Fee
<b>NPDES Toxicity Testing Services:</b>				
<b>Acute Toxicity Tests</b>				
96-hr daily renewal test with fathead minnows	4	ea.	\$777	\$3,108
MOPS buffer and pH adjustment (2 samples)	4	ea.	\$376	\$1,504
Daily ammonia, alkalinity, and hardness analyses	4	ea.	\$180	\$720
<b>Chronic Toxicity Tests</b>				
7-day survival and growth test with fathead minnows (Dilution series)	4	ea.	\$2,206	\$8,824
MOPS buffer and pH adjustment (4 samples)	4	ea.	\$511	\$2,044
Concurrent reference toxicant test (50% discount)	4	ea.	\$882	\$3,528
Sample Pick-Up (4 sample pick-ups per test)	16	ea.	\$120	\$1,920
<b>Total =</b>				<b>\$21,648</b>

**Notes and Assumptions:**

- Total reflects annual costs for quarterly acute and chronic compliance testing.
- Cost is for fiscal year 2022/23.
- Rate increase applied annually not to exceed 5%.
- Cost includes standard report TAT of 14 calendar days from test termination.

**Pacific EcoRisk**
**Quote**

2250 Cordelia Rd.  
Fairfield, CA 94534  
PH (707)207-7760

FAX (707)207-7916

Quote #:	<b>EB104</b>
Effective	
Date:	<b>7/1/24</b>
Good	
through:	<b>6/30/25</b>

**East Bay Dischargers Authority**  
2651 Grant Ave.  
San Lorenzo, CA 94580

Contact: **Jacqueline Zipkin**  
Phone: 510-278-5910  
email: [jzipkin@ebda.org](mailto:jzipkin@ebda.org)

Service	Quantity	Unit	Unit Fee	Net Fee
<b>NPDES Toxicity Testing Services:</b>				
<b>Acute Toxicity Tests</b>				
96-hr daily renewal test with rainbow trout (Control + 1 treatment)	4	ea.	\$900	\$3,600
MOPS buffer and pH adjustment (2 samples)	4	ea.	\$423	\$1,692
Daily ammonia, alkalinity, and hardness analyses	4	ea.	\$200	\$800
<b>Chronic Toxicity Tests</b>				
48-hr larval development test with <i>Mytilus sp.</i> (Control + 5 treatments)	4	ea.	\$2,319	\$9,276
pH adjustment (1 sample)	4	ea.	\$519	\$2,076
Concurrent reference toxicant test (50% discount)	4	ea.	\$927	\$3,708
Sample Pick-Up (2 sample pick-ups per test)	8	ea.	\$132	\$1,056
<b>Total =</b>				<b>\$22,208</b>

**Notes and Assumptions:**

- Total reflects annual costs for quarterly acute and chronic compliance testing.
- Cost is for fiscal year 2024/25.
- Rate increase applied annually not to exceed 5%.
- Cost includes standard report TAT of 14 calendar days from test termination.