



EAST BAY DISCHARGERS AUTHORITY  
2651 Grant Avenue  
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*A Joint Powers Public Agency*

## COMMISSION MEETING AGENDA

Thursday, January 18, 2024

4:00 P.M.

Oro Loma Sanitary District Boardroom  
2655 Grant Avenue, San Lorenzo, CA 94580

This meeting will be teleconferenced from the following locations:

Hayward City Hall: 777 B Street Hayward, CA 94541

Teleconference link: <https://us02web.zoom.us/j/89796898677>

Call-in: 1(669) 900-6833 and enter Webinar ID number: 897 9689 8677

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Public Forum

## CONSENT CALENDAR

- |        |  |
|--------|--|
| MOTION | 5. Commission Meeting Minutes of December 21, 2023         |
|        | 6. List of Disbursements for December 2023 – See Item FM4  |
|        | 7. Treasurer’s Report for December 2023 – See Item No. FM5 |

## REGULAR CALENDAR

- |             |   |
|-------------|---|
| INFORMATION | 8. <b>General Manager’s Report</b><br>(The General Manager will report on EBDA issues.)   |
| INFORMATION | 9. <b>Report from the Managers Advisory Committee</b><br>(The General Manager will report on Managers Advisory Committee activities.) |
| MOTION      | 10. <b>Motion Approving Revisions to the Authority’s Personnel Policy</b><br>(The Commission will consider the motion.)               |
| INFORMATION | 11. <b>Report from the Regulatory Affairs Committee</b><br>(The General Manager will report on the meeting.)                          |
| INFORMATION | 12. <b>Report from the Financial Management Committee</b><br>(The General Manager will report on the meeting.)                        |

Agenda Explanation  
East Bay Dischargers Authority  
Commission Agenda  
January 18, 2024

- MOTION**      **13. Motion Approving Revisions to the Authority's Electronic Signature Policy – See Item No. FM7**  
(The Commission will consider the motion.)
- INFORMATION**      **14. Report from the Operations & Maintenance Committee**  
(The Operations & Maintenance and General Managers will report on the meeting.)
- INFORMATION**      **15. Items from the Commission and Staff**  
(The Commission and staff may address items of general interest.)

**16. Adjournment**

Any member of the public may address the Commission at the commencement of the meeting on any matter within the jurisdiction of the Commission. This should not relate to any item on the agenda. It is the policy of the Authority that each person addressing the Commission 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 Commission on an agenda item should do so at the time the item is considered. It is the policy of the Authority that oral comments be limited to three minutes per individual or ten minutes for an organization. Speaker's cards will be available in the Boardroom 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 the EBDA office 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 posted on the East Bay Dischargers Authority website located at <http://www.ebda.org>.

**Next Scheduled Commission meeting is  
Thursday, February 15, 2024 at 4:00 p.m.**

## GLOSSARY OF ACRONYMS

<b>ACWA</b>	Association of California Water Agencies	<b>DSRSD</b>	Dublin San Ramon Services District
<b>AQPI</b>	Advanced Quantitative Precipitation Information	<b>DTSC</b>	Department of Toxic Substances Control
<b>AMP</b>	Asset Management Plan	<b>EBDA</b>	East Bay Dischargers Authority
<b>ANPRM</b>	Advanced Notice of Proposed Rulemaking	<b>EBRPD</b>	East Bay Regional Park District
<b>BAAQMD</b>	Bay Area Air Quality Management District	<b>EIS/EIR</b>	Environmental Impact Statement/Report
<b>BACC</b>	Bay Area Chemical Consortium	<b>EPA</b>	United States Environmental Protection Agency
<b>BACWA</b>	Bay Area Clean Water Agencies	<b>FOG</b>	Fats, Oils and Grease
<b>BPA</b>	Basin Plan Amendment	<b>GASB</b>	Government Accounting Standards Board
<b>BCDC</b>	Bay Conservation and Development Commission	<b>HEPS</b>	Hayward Effluent Pump Station
<b>BOD</b>	Biochemical Oxygen Demand	<b>JPA</b>	Joint Powers Agreement
<b>CARB</b>	California Air Resources Board	<b>LAVWMA</b>	Livermore-Amador Valley Water Management Agency
<b>CASA</b>	California Association of Sanitation Agencies	<b>LOCC</b>	League of California Cities
<b>CBOD</b>	Carbonaceous Biochemical Oxygen Demand	<b>MAC</b>	Managers Advisory Committee
<b>CDFA</b>	CA Department of Food & Agriculture	<b>MCC</b>	Motor Control Center
<b>CEC</b>	Compound of Emerging Concern	<b>MCL</b>	Maximum Contaminant Level
<b>CEQA</b>	California Environmental Quality Act	<b>MDF</b>	Marina Dechlorination Facility
<b>CFR</b>	Code of Federal Regulations	<b>MG</b>	Million Gallons
<b>CMMS</b>	Computerized Maintenance Management System	<b>MGD</b>	Million Gallons per Day
<b>COH</b>	City of Hayward	<b>MMP</b>	Mandatory Minimum Penalty
<b>CPUC</b>	California Public Utilities Commission	<b>MOU</b>	Memorandum of Understanding
<b>CSL</b>	City of San Leandro	<b>MSS</b>	Mixed Sea Salt
<b>CTR</b>	California Toxics Rule	<b>N</b>	Nitrogen
<b>CVCWA</b>	Central Valley Clean Water Association	<b>NACWA</b>	National Association of Clean Water Agencies
<b>CVSAN</b>	Castro Valley Sanitary District	<b>NBS</b>	Nature-Based Solutions
<b>CWA</b>	Clean Water Act	<b>NGO</b>	Non-Governmental Organization
<b>CWEA</b>	CA Water Environment Association	<b>NOX</b>	Nitrogen Oxides
<b>DO</b>	Dissolved Oxygen	<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>DPR</b>	Department of Pesticide Regulation	<b>NPS</b>	Non-Point Source

## GLOSSARY OF ACRONYMS

<b>O&amp;M</b>	Operations & Maintenance	<b>SSMP</b>	Sewer System Management Plan
<b>OLEPS</b>	Oro Loma Effluent Pump Station	<b>SSO</b>	Sanitary Sewer Overflow
<b>OLSD</b>	Oro Loma Sanitary District	<b>SWRCB</b>	State Water Resources Control Board
<b>OMB</b>	Office of Management and Budget	<b>TDS</b>	Total Dissolved Solids
<b>P</b>	Phosphorous	<b>TIN</b>	Total Inorganic Nitrogen
<b>PAHs</b>	Polynuclear Aromatic Hydrocarbons	<b>TMDL</b>	Total Maximum Daily Load
<b>PCBs</b>	Polychlorinated Biphenyls	<b>TP</b>	Total Phosphorus
<b>PLC</b>	Programmable Logic Controller	<b>TRC</b>	Total Residual Chlorine
<b>PFAS</b>	Per and Polyfluoroalkyl Substances	<b>TSO</b>	Time Schedule Order
<b>POTW</b>	Publicly Owned Treatment Works	<b>TSS</b>	Total Suspended Solids
<b>QA/QC</b>	Quality Assurance / Quality Control	<b>UEPS</b>	Union Effluent Pump Station
<b>Region IX</b>	Western Region of EPA (CA, AZ, NV & HI)	<b>USD</b>	Union Sanitary District
<b>ReNUWit</b>	Re-Inventing the Nation's Urban Water Infrastructure Engineering Research Center	<b>UV</b>	Ultraviolet Treatment
<b>RFP</b>	Request For Proposals	<b>VFD</b>	Variable Frequency Drive
<b>RFQ</b>	Request For Qualifications	<b>VOCs</b>	Volatile Organic Compounds
<b>RMP</b>	Regional Monitoring Program	<b>WAS</b>	Waste Activated Sludge
<b>RO</b>	Reverse Osmosis	<b>WDR</b>	Waste Discharge Requirements
<b>RRF</b>	Renewal and Replacement Fund	<b>WEF</b>	Water Environment Federation
<b>RWB</b>	Regional Water Board	<b>WET</b>	Whole Effluent Toxicity or Waste Extraction Test
<b>RWQCB</b>	Regional Water Quality Control Board	<b>WIN</b>	Water Infrastructure Network
<b>SBS</b>	Sodium Bisulfite	<b>WLA</b>	Waste Load Allocation (point sources)
<b>SCADA</b>	Supervisory Control and Data Acquisition	<b>WPCF</b>	Water Pollution Control Facility
<b>SCAP</b>	Southern California Alliance of POTWs	<b>WQBEL</b>	Water Quality Based Effluent Limitation
<b>SEP</b>	Supplementary Environmental Project	<b>WQS</b>	Water Quality Standards
<b>SFEI</b>	San Francisco Estuary Institute	<b>WRDA</b>	Water Resource Development Act
<b>SFEP</b>	San Francisco Estuary Partnership	<b>WRF</b>	Water Research Foundation
<b>SLEPS</b>	San Leandro Effluent Pump Station	<b>WWTP</b>	Wastewater Treatment Plant
<b>SRF</b>	State Revolving Fund	<b>WWWIFA</b>	Water and Wastewater Infrastructure Financing Agency

## **CONSENT CALENDAR**

Consent calendar items are typically routine in nature and are considered for approval by the Commission with a single action. The Commission may remove items from the Consent Calendar for discussion. Items on the Consent Calendar are deemed to have been read by title. Members of the public who wish to comment on Consent Calendar items may do so during Public Forum.

- Item No. 5 Commission Meeting Minutes of December 21, 2023
- Item No. 6 List of Disbursements for December 2023 – See Item No. FM4
- Item No. 7 Treasurer’s Report for December 2023 – See Item No. FM5

## **Recommendation**

Approve Consent Calendar

**ITEM NO. 5 COMMISSION MEETING MINUTES OF DECEMBER 21, 2023**

**Motion to allow a member of the Commission to participate remotely pursuant to AB 2449**

Commissioner Azevedo requested to participate in today's meeting remotely under AB 2449 on the basis of "emergency circumstances," pursuant to Government Code section 54954.2 (b)(4). This section allows the Commission to consider a request for remote appearance at the start of the meeting for an emergency circumstance if the request does not allow sufficient time to place the proposed action on the posted agenda. The request for remote appearance and subsequent vote was consistent with government code and EBDA's Rules of the Commission. Commissioner Azevedo disclosed that no individuals over the age of 18 were present at the remote location.

Commissioner Andrews moved to approve the request. The item was seconded by Commissioner Johnson and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Azevedo, Lathi  
Noes: None  
Absent: None  
Abstain: None

**1. Call to Order**

Chair Lathi called the meeting to order at 4:00 P.M. on Thursday, December 21, 2023 at the Oro Loma Sanitary District, 2655 Grant Avenue, San Lorenzo, CA 94580.

**2. Pledge of Allegiance**

**3. Roll Call**

Present:	Angela Andrews	City of Hayward
	Fred Simon	Oro Loma Sanitary District
	Ralph Johnson	Castro Valley Sanitary District
	Bryan Azevedo	City of San Leandro
	Anjali Lathi	Union Sanitary District

Absent: None

Attendees:	Jacqueline Zipkin	East Bay Dischargers Authority
	Howard Cin	East Bay Dischargers Authority
	Juanita Villaseñor	East Bay Dischargers Authority
	Eric Casher	Legal Counsel
	Alex Ameri	City of Hayward
	Hayes Morehouse	City of San Leandro
	Roland Williams	Castro Valley Sanitary District

**4. Public Forum**

No members of the public were present.

## **C O N S E N T   C A L E N D A R**

- 5. Commission Meeting Minutes of November 16, 2023**
- 6. List of Disbursements for November 2023**
- 7. Treasurer's Report for November 2023**
- 8. First Quarter Expense Summary, Fiscal Year 2023/2024**

Commissioner Andrews moved to approve the Consent Calendar. The motion was seconded by Commissioner Simon and carried with the following roll call vote:

Ayes: Andrews, Simon, Johnson, Azevedo, Lathi  
Noes: None  
Absent: None  
Abstain: None

## **R E G U L A R   C A L E N D A R**

### **9. General Manager's Report**

The General Manager (GM) shared a recent opportunity to speak on Russian television about potable recycled water regulations.

### **10. Report from the Managers Advisory Committee**

The GM reported on the December 4 meeting of the Managers Advisory Committee (MAC). The MAC discussed the nutrients watershed permit and load-based nitrogen limits.

### **11. Report from the Financial Management Committee**

The GM reported on the December 20 meeting of the Financial Management Committee. The Committee reviewed the disbursement list, Treasurer's Report, and FY 2023/2024 first quarter expenses, and recommended approval. The Committee also reviewed the Electronic Signature Policy and supports staff's proposed changes. Lastly, the Committee discussed the 50<sup>th</sup> anniversary of the Authority and suggested hosting an intimate celebration.

### **12. Report from the Operations and Maintenance Committee**

The Operations and Maintenance (O&M) Manager reported on the December 19, 2023 meeting. The O&M Manager provided updates on current activities, including the Hayward Effluent Pump Station (HEPS) Pump Replacement Project, Oro Loma Effluent Pump Station (OLEPS) Emergency Outfall Upgrade and Wet Well Sluice Gate Repairs, and the Total Residual Chlorine effluent limit implementation. The GM updated the Commission on the Cargill brine project and the Advanced Quantitative Precipitation Information (AQPI) project.

### **13. Report from the Personnel Committee**

The Personnel Committee discussed revising the Personnel Policy to provide administrative leave for EBDA's management staff. The Commission supports providing ten (10) days of administrative leave and increasing the maximum vacation leave

allowance to 200 hours per year. The Policy will be brought to the Commission for approval.

**14. Items from Commission and Staff**

Nothing to report from Commission and Staff.

**15. Adjournment in Memory of Frederick Douglas Simon, Sr.**

Chair Lathi adjourned the meeting at 5:05 p.m.



**ITEM NO. 8 GENERAL MANAGER'S REPORT**

The General Manager will discuss items of interest to EBDA.

**ITEM NO. 9 REPORT FROM THE MANAGERS ADVISORY COMMITTEE**

**MANAGERS ADVISORY COMMITTEE  
AGENDA**

**Monday, January 8, 2024  
2:00 P.M.**

**Via Zoom**

- 1. Operations Update – Chlorine Residual**
- 2. Nutrients Watershed Permit Negotiation**
- 3. Biosolids Updates**
- 4. FY 2024/2025 Budget**
- 5. NPDES Annual Report Reminder**
- 6. Cargill Brine Project**
- 7. EBDA Commission Agenda**
- 8. Managers Information Sharing**

## **ITEM NO. 10 MOTION APPROVING REVISIONS TO THE AUTHORITY'S PERSONNEL POLICY**

### **Recommendation**

Approve a motion adopting the updated Personnel Policy.

### **Background**

The Authority's Personnel Policy was last revised in June 2023. The following changes were made at that time:

- Cost-of-living-adjustment range was updated.
- Table summarizing employment types and relevant status and benefits was updated to correct benefits currently provided to Regular Part-time staff.
- Pronouns were updated and simplified, where appropriate.
- Sick Leave and Bereavement Leave sections were updated to conform to current law.
- Revisions to the Family Leave section were made to clarify the applicability of Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA) to EBDA and its employees.
- California Public Records Act was recodified effective January 1, 2023; reference to the code has been updated.

Staff periodically reviews the Personnel Policy to ensure consistency with current applicable laws and industry best practices.

### **Discussion**

Based on feedback received at the December 2023 Personnel Committee and Commission Meetings, staff is proposing the following revisions to the Personnel Policy:

- Addition of ten days of Administrative Leave for exempt full-time employees.
- Addition of five days to the maximum accrual of Vacation Leave for full-time employees. Current full-time employees who were already accruing vacation at the previous maximum would now accrue at the new maximum. Language was also added to clarify that this provision does not apply to the General Manager, consistent with the Applicability provision, which states, "In the case of conflicting language, an employment agreement shall supersede this Personnel Policy."
- Revision of the minimum Sick Leave provided to part-time employees from 24 hours to 40 hours. Further review of Senate Bill 616 (SB616), which was signed into law in October and amends the Healthy Workplaces, Healthy Families Act of 2014, indicated that while EBDA's Sick Leave accrual rate is already compliant with the new law, the minimum stated in the Policy required revision.

As discussed in December, these proposed leave changes bring EBDA staff in line with leave provided to exempt employees at the Member Agencies.

# Personnel Policy

Reviewed February 17, 2005  
Reviewed March 16, 2006  
Revised March 15, 2007  
Revised March 19, 2009  
Revised July 16, 2009  
Revised November 23, 2009  
Revised April 21, 2011  
Revised March 22, 2012  
Revised March 21, 2013  
Revised November 21, 2013  
Revised May 15, 2014  
Revised May 19, 2016  
Revised September 22, 2016  
Revised October 18, 2018  
Revised August 15, 2019  
Revised January 16, 2020  
Revised November 19, 2020  
Revised June 15, 2023  
Revised January 18, 2024

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## SECTION I – DEFINITIONS

Allocation	The assignment of a position to an appropriate class on the basis of the nature, difficulty and responsibility of duties actually performed.
Applicant	Any person who has made application for a position.
Authority	The East Bay Dischargers Authority.
Candidate	A qualified applicant who has been selected to participate in the selection process.
Class or Classification	A position or group of positions, the duties and responsibilities of which are sufficiently similar so that the same descriptive title, examples of duties and tests for fitness may apply.
Class Specification	A written description of duties, responsibilities and desirable qualifications for employment in a classification.
Commission	The East Bay Dischargers Authority Commission, the legislative and governing body of the Authority.
Compensation	The salary, wage, allowances and all forms of valuable consideration paid to any employee by reason of service in any position.
Demotion	A change of an employee from one position to any other position having a lower maximum salary.
Eligible	A person whose name is on an active employment list.
Employment List	A list of persons who may be considered for appointment to a specific position with the Authority.
Employee	A person officially appointed to a position in the adopted Classification Plan.
Examination	The selection procedure used to measure the relative fitness of persons applying for positions with the Authority.
Full-Time Schedule	The Authority considers full-time employment to be forty (40) hours per week.
General Manager	The General Manager of the Authority, as appointed by the Commission or their duly designated representative.
Job Description	A written description of duties, responsibilities and desirable qualifications for employment in a specific position.



Part-time Position	A position to which an employee shall be assigned for less than forty hours per week.
Personnel Committee	A panel advisory to the Commission on personnel matters consisting of two members of the Commission.
Position	A group of current duties and responsibilities designated by the Commission as requiring the employment of one person.
Probationary Appointment	A working test period during which an employee selected from an employment list is required, by actual performance, to demonstrate fitness for the duties of the position to which appointed.
Promotion	A change of an employee from one position to another position that has a higher maximum salary.
Provisional Appointment	Appointment for a period not to exceed six months to a position for which no employment list exists.
Reallocation	Change in the assignment of a position from one existing class to a new class resulting from a change in the Classification Plan.
Regular Appointment	The type of status granted to an employee who has successfully completed a probationary period.
Seniority	The total length of satisfactory service of an employee within each specific class.
Suspension	Temporary separation of employment with or without pay.
Temporary Appointment	Assignment of an employee to a position for a limited duration.
Termination	Permanent separation of an employee from Authority service.
Unclassified Position	Certain management, professional or confidential positions designated by the Commission to fall outside the classified service and to be exempted from certain provisions of these Rules.

## **SECTION II – GENERAL PROVISIONS**

### ***Purpose***

The Personnel Policy is established to provide a comprehensive personnel system and procedure for its administration whereby the Authority may:

1. Establish consistent employment practices.
2. Provide guidelines for recruiting and selection of the best candidates.
3. Establish a fair and equitable compensation system.
4. Provide for the welfare of all employees.
5. Establish guidelines for separation of employment.

Employment under this Personnel Policy shall not constitute an employment contract, and the General Manager may interpret and implement the provisions included in this document as deemed appropriate. Any changes to this document must be in writing and must be adopted by ~~resolution of~~ the Commission. Copies shall be provided to employees so that they are aware of all changes to the Personnel Policy. No oral statements shall in any way change or alter the provisions of this Personnel Policy.

### ***Applicability***

This Personnel Policy shall apply to all employees of the Authority. In the case of conflicting language, an employment agreement shall supersede this Personnel Policy. The following list of persons are exempt from this document:

1. Commissioners of the Authority
2. Members of Committees advisory to the Commission
3. Persons engaged under contract to supply expert, professional, technical or other services
4. Volunteer personnel

### ***Administration***

The Commission shall appoint, and may remove, a General Manager who shall have responsibility for and control of the affairs of the Authority and who shall, among other duties, administer the personnel system set forth herein, including preparation and maintenance of the Classification and Compensation Plans, all essential records required for maintenance of the system and application of the rules, and shall enforce the provisions herein and all other pertinent regulations, directives and policies.

The Commission shall appoint a Personnel Committee consisting of two members of the Commission, the function of which is to review and make recommendations on all

personnel matters coming before the Commission for action, including revision to the Classification or Compensation Plans and these Rules, and to hear appeals as indicated herein. Action by the Committee with respect to grievances (Section XVIII) shall be final and shall not require further action by the Commission unless appealed to the full Commission.

### ***Non-Discrimination (Equal Employment Opportunity)***

No person within the service of the Authority, or seeking entry thereto, shall be employed, promoted, demoted, suspended, discharged, in any way favored or discriminated against, or retaliated against for charging acts of discrimination in accordance with Federal Equal Employment Opportunity Laws (EEO) and State of California Department of Fair Employment and Housing Act. This includes but is not limited to the following protected classes and activities:

- Age (40 and over)
- Ancestry
- Citizenship
- Color
- Disability (mental and physical) including HIV and Aids
- Equal Compensation
- Denial of Family and Medical Care Leave
- Gender, Gender Identity, Transgender and Gender Expression
- Genetic Characteristics and Genetic Information
- Marital Status
- Medical Condition
- Military or Veteran Status
- National Origin
- Political Affiliation
- Race
- Religion
- Religious Creed
- Sex (which includes pregnancy, childbirth and medical conditions related to pregnancy or childbirth)
- Sexual Orientation
- Whistleblowing

The Authority is an equal opportunity employer and its personnel policies shall be administered in accordance with applicable state and federal law.

### ***Incompatible Activities***

No officer or employee of the Authority shall:

1. Participate in any political activity during working hours on the Authority premises.

2. Use for private gain or advantage the influence of an Authority position or the facilities, equipment or supplies of the Authority.
3. Solicit or accept any favors or gifts from persons, concerns or corporations who have, or seek to have, business contacts with the Authority.
4. Divulge confidential information to anyone to whom issuance of such information has not been authorized by the General Manager.
5. Participate in any employment or other activity which, will prevent the employee from completing assigned duties in an efficient and capable manner, which brings discredit upon the Authority, or which might result in a conflict of interests between the employee's private interest and official duties and responsibilities, or in any event which has not been approved by the General Manager.
6. Provide information or services to contractors or other persons, which would give a competitive advantage over others dealing with the Authority.

### ***Violation***

Violation of these rules shall be grounds for rejection of application, removal from an eligible list, suspension, demotion, discharge or other discipline of employees deemed appropriate under the circumstances.

### ***Severability***

If any section, subsection, sentence, clause or phrase herein or any application thereof to any person or circumstance, is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Policy.

## **SECTION III – CLASSIFICATION PLAN**

### ***Preparation***

The General Manager may review the duties and responsibilities of all positions within the Authority service. All positions shall be grouped into classes and each class shall include those positions sufficiently similar in respect to their duties and responsibilities that similar requirements as to training, experience, knowledge, skills, personal qualities, and the same salary range may be made to apply with equity to all positions in the same class.

### ***Content***

The Classification Plan shall have written class specifications, which shall include concise descriptive titles, physical requirements and working conditions as required by the Americans with Disabilities Act, general descriptions of the essential duties and responsibilities of the class including job definitions, and statements of the required and desirable qualifications.

Each class specification outlines the main characteristics and qualification requirements of positions allocated to the class and gives examples of duties which employees holding such positions may properly be required to perform. The class specification is descriptive and explanatory, but not restrictive. The listing of particular examples of duties does not preclude the assignment of other tasks and duties of related kind or character or of lesser skills. The statement of desirable qualifications in a class specification is intended to be used as a guide in selecting candidates for employment as an aid in the preparation of competitive examination, and for use in determining the relative value of positions in one class with positions in other classes. Such personal characteristics as honesty, sobriety and industry are deemed to be included in all class requirements and need not be specifically mentioned.

Nothing in the class specifications is to be interpreted as restricting a supervisor in assigning an employee of one class to perform the duties of a higher class for limited relief periods. Such assignment to perform the work of a higher class for a limited period comes within the requirements of work in all classes.

### ***Adoption***

Before the Classification Plan or any part thereof shall become effective, it shall be adopted by the Commission upon recommendation of the Personnel Committee.

### ***Revisions***

Each basic revision in the Classification Plan shall be made in the same manner as the Plan was originally established.

The General Manager may review duties of positions and prepare recommendations to the Personnel Committee for action by the Commission to ensure that the Plan is kept current and those changes in existing classes, the establishment of new classes or the abolition of classes is properly reflected in the Classification Plan.

The General Manager may reallocate a position to a different class whenever its duties change materially. Any proposed reallocation to be made shall be made with the knowledge of the employee concerned.

Whenever a new position is proposed, the General Manager shall prepare a comprehensive statement of the circumstances and description of the proposed duties and responsibilities and recommend allocation of the position to an appropriate class in the Classification Plan. No new position shall be filled by an individual until the position has been created by the Commission and until there is an approved class specification describing the work to be performed which has been adopted under the Classification Plan.

Reclassification of a position may not be used to circumvent the procedures concerning demotion, promotion, or compensation.

### ***Incumbents of Reclassified Positions***

When a position is reclassified from one class to another, the employee occupying the position may be retained in the position without further competitive examination provided that:

1. It is determined by the General Manager that the reclassification results from a change in duties and responsibilities that have already occurred.
2. The performance of the duties and responsibilities of the incumbent have been satisfactory.
3. The General Manager certifies that the incumbent possesses the knowledge, skills and abilities necessary to perform the duties of the new class.

The incumbent has regular status in the class to which the position was formerly allocated.

## **SECTION IV – COMPENSATION PLAN**

### ***Content***

The Compensation Plan shall consist of a schedule of monthly salary ranges, the method of computing hourly equivalents of actual salaries, and a summary list of additional benefits provided by the Authority.

### ***Preparation***

At least once annually, prior to the beginning of the fiscal year, the General Manager shall prepare a tentative Compensation Plan and shall present it to the Personnel Committee for review and recommendation to the Commission.

In preparing the tentative plan, the General Manager shall take into consideration class-by-class salary comparisons with Member Agencies and other comparable agencies to be designated by the Personnel Committee and across-the-board compensation adjustments received by Member Agencies since the last EBDA adjustment. Appropriate consideration shall be given to adjustments of the cost of living as measured by the Consumer Price Index for All Urban Consumers (CPI-U), the base figure for comparison shall be the San Francisco-Oakland-Hayward, CA for the period of January 1 through December 30 of the previous year. Adjustments in the cost of living shall be considered once a year as the General Manager prepares the Compensation Plan. The cost-of-living adjustment (COLA) shall be based on the above index within a floor-to ceiling-range of 2% - 5%. The COLA range shall be reviewed every three years. In adopting a COLA, the Commission may also consider the short- and long-term financial status of the Authority. Effective July 1, by adoption of an amended Compensation Plan, adjustments shall be applied to the salary range of each position to reflect the COLA.

### ***Adoption***

The Compensation Plan for all employees shall be established by the Commission upon recommendation of the Personnel Committee prior to the effective date of any amendments thereto.

### ***Administration***

The Compensation Plan shall be administered by the General Manager. The General Manager, after review by the Personnel Committee and approval by the full Commission, shall determine the actual salary of individual employees, within the ranges established in the compensation plan, based on an evaluation of the employee's qualifications, performance and merit.

Salary step increases shall be earned, shall be subject to satisfactory service, and shall not be considered a right of the employee. After an employee completes twelve (12) months of continuous service in the same position, the employee may be advanced to the next higher rate of compensation as set forth in the Compensation Plan upon approval of the General Manager. Subsequent step increases shall be effective annually on the anniversary of the employee's hire date until the employee reaches the top step of the range. After reaching step 5, the employee shall remain at the same rate provided for at step 5 while continuing to serve in the same position, subject to satisfactory service.

A written performance evaluation shall accompany a recommendation for salary advancement. Performance standards are based on satisfactory achievement of the qualifications outlined in the classification plan in addition to customary employment standards, such as knowledge of the position; quality of work; ability to handle responsibility; acceptable rate of productivity; demonstrated initiative; and an acceptable attendance record. Performance evaluations, which may include employee comments or rebuttals, shall be maintained in the employee's personnel file. A copy shall be provided to the employee.

## **SECTION V – RECRUITMENT AND APPLICATION**

### ***Recruiting***

Public announcement of all employment opportunities shall be made at least three weeks prior to the final filing date of the announcement. The General Manager shall prepare an official announcement for posting in appropriate public places and its publication in appropriate news media or trade journals. The announcement shall contain all information of importance for potential applicants. Suitable and effective methods of distributing information concerning employment opportunities and securing the most qualified candidates available for competition shall be practiced.

### ***Application***

Applications for employment shall be made readily available to potential applicants. Applications filed with the Authority shall be filed at the time, place, and manner prescribed in the job announcement and, once filed, shall become the property of the Authority.

### ***Disqualification of Applicants***

The Authority may reject an application, may disqualify an applicant in an examination, may refuse to place a name on an eligibility list, or may remove a name from an eligibility list for any legitimate reason, including but not limited to the following:

1. Substantive failure to fulfill any of the qualifications for the class or position for which the application is made.
2. Failure to pass written examinations required by the Authority.
3. Failure to pass the appraisal board interview.
4. Failure to pass a pre-offer background check and/or post-offer physical examination.
5. Failure to furnish true statements of material facts.
6. Practice or attempted practice of fraud or deception in connection with filing an application or during examination.
7. Previous dismissal from any public service for cause.
8. Previous resignation from the Authority or a Member Agency without adequate notice or under other prejudicial circumstances.
9. Being under the influence of intoxicant(s) that would impair the applicant's ability to perform in a safe and competent manner.
10. Previous conviction of a crime against person or property of a violent nature.
11. Failure of an applicant, after notification, to present themselves promptly at the time and place designated for any portion of the examination.
12. Obtaining either directly or indirectly, information about an examination that, as an applicant or competitor, would give applicant an unfair advantage or to which applicant was not entitled.
13. Failure to respond to communications concerning the applicant's availability for employment.
14. Request by the applicant that their name be withheld from consideration.

### ***Confidentiality***

The names of applicants and information contained on applications for employment shall not be made public.



### ***Verification***

Information presented on applications may, during the course of the hiring process, be verified, and applicants may be subject to a background check by the Authority. The Authority has the right to conduct a complete and exhaustive background investigation of all applicants seeking employment.

### ***Exemption***

All at-will positions shall be exempted from the foregoing recruitment and application procedure. Recruitment and application for at-will positions shall be conducted in a manner established by the Commission as vacancies occur.

## **SECTION VI – SELECTION PROCEDURE**

The selection procedure shall be impartial, of a practical nature, and shall indicate a good faith effort to fairly measure and evaluate capacities of the applicants to execute the essential duties and responsibilities of the position to which they seek to be appointed. Applicants participating in the recruitment shall compete in the same process and follow the same selection methodology. The selection procedure may include any one or a combination of the following:

- A. Information extracted from the application form, resume and other pertinent documentation submitted;
- B. Written, practical (hands-on), or physical tests or examinations, or any combination thereof;
- C. Oral interview with an appraisal board and/or one-on-one interview with Authority staff; and/or,
- D. Other appropriate means.

Applications shall be screened and evaluated. The most qualified candidates will be selected to participate in the selection process.

The Authority shall notify each applicant in writing of their standing as important steps in the selection process are completed. Once a candidate is selected and a job offer is made, the other candidates on the eligibility list shall be notified of the fact, and informed that their names will remain on the eligibility list for that position for a period of one year.

### ***Medical Examination***

Before any appointment may be made to a regular position, the individual shall be required to satisfactorily pass a medical examination given by a regularly licensed physician designated by the Authority and made at the Authority's expense. No person shall be given a probationary or regular appointment that, at the time of such appointment, is physically unable to satisfactorily fulfill the duties of the position. An eligible candidate may be accepted conditionally when it is the opinion of the examining physician that the individual's physical disqualification may be temporary or when it is deemed that

treatment may satisfactorily correct any impairment. Such impairment shall be corrected no later than one month prior to the completion of the employee's probationary period. Regular employees being appointed to positions involving increased physical effort may also be required to satisfactorily pass an appropriate physical examination.

## **SECTION VII – EMPLOYMENT LISTS**

### ***Establishment***

At the completion of the examination process, an employment list containing the names of all persons who have successfully passed all parts of the selection process shall be prepared by the General Manager.

### ***Order of Names***

The names of successful candidates shall be placed on the employment list in the order of their final ratings. If two or more candidates have final scores that are identical, these candidates shall occupy an identical position on the employment list.

### ***Duration of List***

Each employment list shall normally remain in force for one year from the date of its establishment, except that the General Manager, may extend the list for an additional period of time up to one year.

### ***Removal of Names***

The name of any eligible candidate may be removed or withheld from an employment list for any of the reasons specified in Section V.

### ***Restoration of Names***

An eligible candidate's name shall be reinstated to an employment list in the same relative position as originally held upon showing cause satisfactory to the General Manager.

### ***Termination of List***

An employment list may be terminated prior to its usual expiration date upon recommendation of the General Manager and approval of the Commission when it is considered to be in the best of interest of the Authority.

## **SECTION VIII – APPOINTMENT**

The power to appoint, discipline and dismiss employees of the classified service shall be vested in the General Manager or designee.

The successful candidate will be required to provide proof of identity and authorization to work in the United States. Documentation of eligibility to work in the United States will be required as a condition of employment.

### ***Oath***

In accordance with California Constitution Article 20, Section 3, and as mandated by California Government Code Sections 3100-3109, all public employees are declared to be disaster service workers, and must take and subscribe to an oath of loyalty as a condition of employment.

### ***Regular Appointments***

Regular appointments shall be made by the General Manager or designee from established eligibility lists. Candidates appointed to regular positions shall be considered in a probationary status until successfully completing the probationary period. For employees who are not classified as at-will, regular appointments shall be made upon successful completion of the probationary period.

### ***Provisional Appointments***

The General Manager may make a provisional appointment to a position if there is no eligibility list for the class, and if the needs of the service require that the position be filled before a selection process can be completed. A provisional appointee shall:

- Meet the requirements of training and experience established for the position;
- Not be continued for more than thirty (30) days after an eligibility list for the position has been established, unless there are no candidates on such eligibility list who are available or wish to be considered for appointment to the position;
- Not serve under provisional appointment for longer than a 12-month period except when employed for a specific contract undertaken by the Authority.

### ***Temporary Appointments***

If an employee is needed for a temporary period, certification shall be made from the names of those eligible candidates, if any are available, that have indicated willingness to accept temporary employment and appointment shall be made by the General Manager. The duration of the temporary appointment shall be limited to the period of the need.

The acceptance or refusal of a temporary appointment shall not affect an eligible candidate's standing on an employment list and the period of temporary service shall not constitute a part of a probationary period. Successive temporary appointments to the same position shall not be made nor shall an individual receive continued temporary appointments. If an appropriate employment list does not exist, an offer of temporary appointment may be made to a person who has not qualified under provision of these rules, but through a comparable process.

### ***Part-Time Appointments***

If an employee is needed for less than a total of 40 hours per week, a part-time appointment shall be made by the General Manager from eligible candidates that have indicated willingness to accept part-time employment. The Authority is responsible for following the same recruitment/selection process for part-time employees as for regular, full-time employees.

## **SECTION IX – EMPLOYMENT STATUS**

### ***Probationary Status***

The first six (6) months of employment is a period of evaluation for all regular employees and is called a Probationary Period. This is a time to monitor both work performance and work habits of the newly appointed employee. The probationary period may be extended for an additional period, not to exceed six (6) additional months, if an employee requires additional evaluation. If an employee successfully completes the probationary period, the employee moves from probationary status to regular status.

If, at the sole determination of the Authority, the newly appointed employee is unsuccessful in completing the probationary period, the employee shall be terminated with no right of appeal or hearing.

Regular full-time employees occupying management or supervisory positions are not subject to probationary periods and serve as at-will employees at the pleasure of the Authority; they can be terminated anytime, with or without cause.

### ***Regular Full-Time Status***

Regular full-time employees are not in a temporary status and are regularly scheduled to work the Authority's full-time schedule. Generally, they are eligible for the full benefits package, subject to the terms, conditions and limitations of each benefit program.

Employees in this employment status have completed the probationary period and work a forty (40) hour work week on a regular basis.

### ***At-Will Status***

An at-will employee is one whose employment may be terminated at the discretion of the Commission and/or General Manager at any time with or without cause. At-will positions include managerial employees whose terms of employment are stipulated in a written employment agreement signed by both parties. At-will status also applies to any probationary, provisional, and/or temporary employee.

At-will employees shall enjoy the same statutory protections of regular employees, including laws that prohibit discrimination or harassment based on protected classes such

as those listed in the [Non-Discrimination section](#) of the General Provisions in Section II. At-will employees shall also be entitled to engage in protected activities without fear of retaliation, such as filing a charge of discrimination, whistleblowing or participating in an investigation.

Rules providing pre-discipline meeting rights and post-discipline appeal rights for discipline or separation for cause do not apply to at-will employees.

### ***Part-Time Employment***

Part-time positions are those that are required on a long-term basis and are scheduled to work less than 40 hours per week. Part-time employees do not serve a probationary period. At the end of each 2080 hours worked, the part-time employee is eligible for a salary step increase based on satisfactory performance. Such employees serve at the discretion of the General Manager, are at-will, and can be terminated any time, with or without cause. The General Manager shall periodically review the part-time positions to determine that there are appropriate staffing levels to meet the needs and requirements of the Authority and make adjustments as necessary.

Part-time employees shall be entitled to participate in the Authority's benefit programs as specified in the Compensation Plan. The Authority's payment toward these insurance programs shall be proportionate to the employee's scheduled work hours.

### ***Temporary Employment***

Temporary employees are hired as interim replacements if regular staff are unavailable, to temporarily supplement the workforce, or to assist in the completion of a specific project or set of projects for a limited duration. Employment beyond any initially-stated period does not in any way imply a change in employment status.

Temporary full-time employees are scheduled to work the Authority's full-time schedule. Temporary part-time employees are scheduled to work less than 40 hours per week. Employees in temporary classes are not eligible for benefits or accrued leaves, with the exception of sick leave.

### ***Resignation***

An employee who resigns shall present notice in writing to the Authority at least 14 calendar days prior to the effective date of the resignation.

### ***Reduction in Force***

The Commission may separate any employee, without prejudice, because of lack of work or funds, or because of material change in duties or organization. No regular employee, however, shall be separated while there are provisional, probationary or temporary employees serving in the same class; provided, however, a regular employee otherwise

subject to separation under this Policy may elect voluntary demotion to a lower class if vacancies exist. The order of separation due to reduction in force shall be based upon seniority. All employees subject to separation under these provisions shall receive written notice at least 14 calendar days prior to the effective date.

A summary of employment types and relevant status and benefits is provided in the following table:

	Status	Benefits
Temporary Part-time	At-will	Sick leave only
Temporary Full-time	At-will	Sick leave only
Regular Part-time	At-will	All proportionate to scheduled work hours
Probationary Full-time	At-will	All
Regular Full-time	Subject to discipline procedures	All

## SECTION X – DISCIPLINE AND GENERAL RULES OF CONDUCT

It is expected that all employees shall render the best possible service and reflect credit on the Authority. Therefore, the highest standards of professional conduct are essential and expected of all employees. This Section does not apply to temporary, probationary, and provisional employees, though the Authority holds these employees to the same high standards of professional conduct. Discipline for at-will employees is at the discretion of the General Manager.

### Disciplinary Actions

The Authority may invoke the following types of disciplinary actions:

- a) Verbal Warning
- b) Written Reprimand
- c) Suspension With or Without Pay
- d) Reduction in Pay
- e) Demotion
- f) Disciplinary Probation
- g) Discharge/Termination

### ***Grounds for Discipline***

Disciplinary measures may be taken for any good and sufficient cause. Authority employees who are employed at-will, including temporary, provisional, and probationary employees, are not subject to the requirement of good cause, and are not entitled to pre-

discipline procedures or appeals under these policies and may be separated with or without advance notice.

Good cause exists not only when there has been an improper act or omission by an employee in the employee's official capacity, but when any conduct by an employee brings discredit to the Authority, affects the employee's ability to perform their duties, causes other employees to be unable to perform their duties, or involves any improper use of the employee's position for personal advantage or the advantage of others. Rules requiring good cause do not apply to at-will employees. The type of disciplinary action shall depend on the seriousness of the offense and the relevant employment history of the employee. Causes for disciplinary action against an employee may include, but shall not be limited to, the following:

- a) Misstatements or omissions of fact in completion of the employment application or to secure appointment to a position with the Authority.
- b) Furnishing knowingly false information in the course of the employee's duties and responsibilities.
- c) Inefficiency, incompetence, carelessness or negligence in the performance of duties.
- d) Violation of safety rules.
- e) Violation of any of the provisions of these personnel rules and regulations or Authority policies.
- f) Inattention to duty.
- g) Tardiness, or overstaying lunch periods.
- h) Being under the influence of an intoxicating beverage or non-prescription drug, or prescription drugs not authorized by the employee's physician, while on duty or on Authority property, or when called in for emergency duty.
- i) Disobedience to proper authority, refusal or failure to perform assigned work, to comply with a lawful order, or to accept a reasonable and proper assignment from an authorized supervisor.
- j) Any violation of the Authority's No Harassment Policy.
- k) Unauthorized soliciting on Authority property.
- l) Unauthorized absence without leave; failure to report after leave of absence has expired or after a requested leave of absence has been disapproved, revoked or canceled; or any other unauthorized absence from work.
- m) Conviction of a felony, or a misdemeanor involving moral turpitude, or a violation of a federal, state or local law which negatively impacts the employee's ability to effectively perform assigned job or brings discredit to the Authority.
- n) Offensive treatment of the public or other employees.
- o) Falsifying any Authority document or record.

- p) Misuse of Authority property; improper or unauthorized use of Authority equipment or supplies, damage to or negligence in the care and handling of Authority property.
- q) Fighting, assault, and/or battery.
- r) Theft or sabotage of Authority property.
- s) Sleeping on the job, except as specifically authorized for 24-hour duty personnel.
- t) Accepting bribes or kickbacks.
- u) Intimidation or interference with the rights of any employee.
- v) Outside work or any other activity or conduct which creates a conflict of interest with Authority work, which causes discredit to the Authority, negatively impacts the effective performance of Authority functions or is not compatible with good public service.
- w) Failure to maintain the minimum qualifications, including necessary licenses or certifications specified for the position.
- x) Abusive or intemperate language toward or in the presence of others in the workplace.
- y) Any other conduct of equal gravity to the reasons enumerated above as determined by the Authority.

### ***Procedure for Disciplinary Action***

Regular employees covered by this policy shall be governed by the following provisions:

#### **Written Notice**

The General Manager shall issue a written notice of discipline, describing the intended discipline, the basis for the discipline, and attaching any documents upon which the discipline is based. The affected employee may respond by submitting a rebuttal to be lodged in the employee's personnel file, and in the case of a suspension of one to four days, shall have the ability to present their side of the story by responding orally or in writing before the discipline becomes final within five working days of the notice being issued. Any such response to a proposed suspension of one to four days shall be considered before a final decision is made. For minor discipline—any action up to and including a suspension of four (4) working days—no further appeal shall be permitted. For disciplinary actions of suspensions of more than four (4) working days, a reduction in pay resulting in loss of pay equal to or exceeding a suspension of more than four (4) days, demotion or termination (serious discipline), employees shall retain pre-discipline meeting and post-discipline appeal rights as described below.

#### **Pre-Discipline Meeting**

For serious discipline, the employee shall receive written notice of the charges upon which the disciplinary action is based, the materials upon which the charges are based,



and the employee's rights under *Skelly vs. State Personnel Board*, 15 Cal.3d 194 (1975.) The employee then has an opportunity to respond, either orally or in writing.

The General Manager shall designate an individual to convene a meeting to review the employee's response and position before imposing discipline. As soon as practical following the meeting, the designated individual shall present their written opinion for consideration by the General Manager. If the General Manager is not the direct supervisor of the employee, the General Manager may convene the meeting.

The employee shall be entitled to a representative of their choice; provided, however, that the inability of a particular representative to attend the meeting shall not cause a continuance of the meeting. At the meeting, the employee shall be provided the opportunity to respond to the charges and to present any new information for consideration by the General Manager or their designee.

#### Final Action

After the employee responds to the charges, they shall be given by the General Manager a final notice of discipline to be imposed and an opportunity to appeal the discipline after it is imposed, in accordance with the rules contained herein. The notice shall include the final decision, the effective date of the discipline, and the facts upon which the discipline is based.

#### Appeal

For serious discipline, employees shall have the right to appeal the final decision. The notice of appeal must be received within seven (7) calendar days from the date of the final notice of discipline, or the right to appeal is waived and the discipline shall become final.

The appeal shall be heard by an independent hearing officer from the Office of Administrative Hearings of the State of California; a neutral mediator from another recognized organization; or a neutral mediator selected by mutual agreement of the employee and the Authority.

The costs of the hearing officer shall be borne by the Authority. Either party may request that the matter be transcribed. The requesting party shall bear the expense of the transcript.

The hearing officer shall have the authority to convene the hearing, receive evidence through testimony and documents, and to make findings of fact and conclusions about the discipline. The hearing officer may recommend an outcome, but the final authority rests with the Commission. The hearing officer shall serve a recommended decision on the Authority and the employee. The Commission shall issue a final decision. The Commission's decision is reviewable by administrative writ of mandamus.

## **SECTION XI – HOURS OF WORK**

### ***Hours of Work***

A full-time employee shall be scheduled to work a forty (40) hour work week within a seven (7) day work period. Employees may vary their starting and ending times with management approval, and provided there is sufficient coverage during the hours the Authority is open to the public.

The General Manager may vary the working hours of any employee within the limits of State Law or other labor regulations should the need arise. Daily attendance records shall be kept and certified for payroll purposes. Any employee absent without leave, who fails to return to work within 24 hours after notice to return, shall be subject to disciplinary action.

### ***Overtime***

Authorized or required work performed by non-exempt employees in excess of forty (40) hours per week shall be deemed overtime.

### ***Overtime Rate***

Overtime shall be paid at the rate of one and one-half (1.5) times the straight-time hourly rate. Overtime hours may be paid on the next regular pay check. With the approval of the General Manager prior to performance of the overtime work, employees may choose to receive compensatory time off rather than overtime pay. Compensatory time shall be used or paid to the employee within a 12-month period from the date earned.

### ***Call Back***

When an employee is required to return to work following a lapse of at least one hour after their normal working hours, a minimum of two hours shall be recorded.

### ***Exception***

Exempt positions shall not accrue overtime but may adjust their working hours in lieu thereof as approved by the General Manager.

## **SECTION XII – HOLIDAYS**

### ***Authority Holidays***

The following days shall be holidays for all full-time Authority employees:

New Year's Eve

December 31

New Year's Day	January 1
Martin Luther King's Birthday	3 <sup>rd</sup> Monday in January
President's Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	4th Friday in November
Christmas Eve	December 24
Christmas Day	December 25

If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday. A part-time employee's holiday leave shall be proportionate to their scheduled work hours.

### ***Floating Holidays***

Full-time employees are allotted twenty-eight (28) hours of floating holiday to be used within the fiscal year, July 1 – June 30. Use of the allotted hours shall be approved by the General Manager. Floating holiday leave hours do not accrue and employees will not be compensated for unused hours.

A person hired after July 1, or a temporary full-time employee hired to work for less than 12 months, shall be provided the pro rata share of floating holiday hours for the number of months of work in the fiscal year compared to the annual allotment of twenty-eight (28) floating holiday hours per year.

Floating holiday hours shall be reconciled upon an employee's permanent separation from the Authority. Hours used in excess of those earned shall be deducted from the employee's final pay.

### ***Compensation for Holidays Worked***

Holidays shall be worked only on order and authorization of the General Manager. Work performed by a non-exempt employee on a holiday shall be compensated at the rate of one and one-half (1.5) times the straight-time hourly rate.

## **SECTION XIII – LEAVES AND VACATIONS**

### ***Vacation Leave Policy***

Vacation leave is an earned benefit of eligible employees and its use shall be approved by the General Manager. Employees shall take vacation leave in increments of one (1)

hour. Leave begins to accrue upon date of hire, but shall not be granted to the employee for use during the first six (6) months of employment. Vacation is accrued for all regular hours worked and shall continue to be earned during other authorized leaves with pay.

### *Vacation Leave Allowance*

All full-time employees, shall earn vacation leave at the rate of 80 working hours per year from the date of employment. Full-time employees shall earn an additional eight (8) hours vacation leave allowance for each full year of continuous employment thereafter, up to a maximum of ~~160-200~~ working hours per year. With the exception of the General Manager, whose maximum annual accrual is governed by their agreement, all full-time employees that were earning the maximum vacation leave prior to January 18, 2024, shall receive the maximum of 200 working hours per year. Part-time employees shall earn vacation leave proportionate to their scheduled work hours.

All eligible employees shall be permitted to accumulate unused vacation at a rate of 2-1/2 times their annual vacation allowance. Vacation accruals will be reviewed at the end of each fiscal year. If the accrual exceeds 2-1/2 times the annual allowance, the value of the excess accrual shall be paid to the employee at the end of that fiscal year and those hours shall be subtracted from the balance.

### *Computing and Recording Vacation Leave*

Vacation leave credits shall be computed and recorded in increments of one hour. When periods of less than one full month have been worked, vacation leave credits shall be based on service computed to the nearest half month.

On July 1st of each year, employees who have completed at least six months of satisfactory full-time continuous service shall be credited in advance with vacation leave allowance for the entire fiscal year. Vacation leave shall be earned during authorized leave with pay. When a holiday falls during an employee's absence on vacation leave, it shall not be deducted from the employee's accrued leave.

Vacation leave shall be reconciled upon an employee's permanent separation from the Authority. Unused vacation leave is not transferable to retirement service credit. Leave used in excess of earned leave shall be deducted from the employee's final pay. Leave that is earned but unused at the time of separation shall be added to employee's final pay.

### *Administrative Leave*

Exempt employees are expected to observe their regular work schedules and perform any further hours needed to satisfactorily execute the duties and responsibilities of their positions without receiving overtime pay. In recognition of the additional time they spend, all full-time exempt employees shall be granted ten (10) days at the start of each fiscal year. Any unused hours shall expire at the end of the fiscal year.

## ***Sick Leave Policy***

The Authority's sick leave policy complies with the Healthy Workplaces/Healthy Families Act of 2014. Sick leave shall be allowed in case of actual sickness of the employee. Sick leave shall be granted only on approval of the General Manager in increments of not less than one hour. If an employee will not be at work as scheduled, they must notify the supervisor within one-half hour of the time to report for work or at the first practical opportunity.

An employee may use a maximum of five (5) days of sick leave each fiscal year for absences caused by the illness or injury of a *family member*. A family member is defined as a child, parent, spouse or registered domestic partner, grandparent, grandchild, sibling, or designated person. A "designated person" under the Healthy Workplaces/Healthy Families Act means a person identified by the employee at the time the employee requests paid sick leave. This definition does not require the person be related by blood, or even a family-equivalent relationship. Use of sick leave for this purpose is intended to apply in serious and unforeseen conditions where the presence of the employee in the home or hospital is required for the care, legal requirement, or health of the family member. Authorization to use additional sick leave beyond the five-day maximum may be granted by the General Manager when exceptional circumstances warrant.

### **Sick Leave Accrual**

Employees who work thirty (30) days or more within a year shall receive sick leave in accordance with the Healthy Workplace, Healthy Families Act of 2014.

Regular and Temporary Full-time employees accrue sick leave at the rate of four (4) hours per payroll period, up to 96 hours per calendar year. Part-time employees shall accrue sick leave proportionate to their scheduled work hours, with a minimum of ~~24~~40 hours per year. Sick leave shall be cumulative without limit.

### **Computing and Recording Sick Leave**

Initial crediting of sick leave shall be based on service computed to the nearest half month. Sick leave records shall be maintained on an hourly basis. On July 1st each year, an employee shall be credited in advance with the annual allowance. After an absence is approved as sick leave, it shall be deducted from the employee's leave balance. If at time of separation an employee owes the Authority for unearned sick leave, the actual time shall be deducted from their final pay.

### **Medical and Dental Appointments**

Sick leave may be used for medical, dental, therapy or similar purposes for a minimum period of one (1) hour and should not exceed four (4) hours except in unusual circumstances. A maximum of forty (40) hours of sick leave per year may be used for

medical, dental or therapy appointments for a family member when the employee's presence is required.

### **Payment for Unused Sick Leave**

CalPERS' sick leave credit benefit is included in the Authority's pension contract. An employee whose effective date of retirement is within four months of separation from employment shall be credited with 0.004 year of service credit for each unused day of sick leave.

Upon the death of an employee prior to separation from employment, the employee's heir(s) or beneficiary(ies) shall receive compensation for sick leave earned but unused by the employee equal to 0.167% of the number of hours of sick leave, times the number of whole months of continuous employment, times the employee's hourly rate of pay at the time of death.

### **Bereavement Leave**

Full-time regular employees shall be granted bereavement leave with pay not to exceed twenty-four (24) hours, as necessary, upon the occasion of the death of a family member. A family member is defined as a spouse, domestic partner, child, parent, parent-in-law, sibling, grandparent, or grandchild. An employee may also use other available paid time off such as vacation pay, personal leave, sick leave, or compensatory time off during their leave. The General Manager may grant bereavement leave for other relatives on a case-by-case basis. Additional leave for travel purposes not to exceed five (5) calendar days may be granted by the General Manager when circumstances warrant.

### **Catastrophic Leave**

Full-time regular employees (i.e., excludes temporary, probational, and part-time employees), are eligible to receive catastrophic leave donations in the following circumstances:

- The employee must have exhausted all available leave (i.e., vacation and sick leave, floating holidays).
- The absence must be due to the employee's or their spouse, domestic partner, or child's life threatening or debilitating illness, injury, or condition.
- Use of catastrophic leave must be approved by the General Manager.

Employees may donate vacation leave on a voluntary basis. The employee making the donation must authorize in writing that a designated portion of their accrued vacation may be transferred from their leave account to the recipient employee's vacation account. Once made, donations are irrevocable.

All donated hours shall be converted to the donor's hourly rate, and the equivalent dollar amount shall be deposited and converted to hours at the recipient's hourly rate. Donors must retain a minimum of eighty (80) hours of their own vacation leave.

## ***Family Leave***

The California Family Rights Act (CFRA) and Family Medical Leave Act (FMLA) entitle eligible employees of covered employers to take unpaid, job-protected leave for certain specified reasons. While EBDA is a covered employer under the CFRA and FMLA, only leave benefits under the CFRA are available for eligible employees. The maximum amount of leave employees may use under this policy is twelve (12) weeks within a 12-month period.

Employees that meet the following conditions are eligible for CFRA leave:

- the employee has worked for EBDA for at least twelve (12) months; and
- the employee worked at least 1,250 hours in the 12 months prior to their leave.

Eligible employees may take CFRA leave for any of the following reasons:

- For the employee's own serious health condition.
- To care for or bond with a newborn child.
- To care for or bond with a child placed with the employee and/or the employee's registered domestic partner for adoption or foster care.
- To care for an immediate family member (spouse, parent, parent-in-law, registered domestic partner, child or registered domestic partner's child of any age, sibling, grandparent, grandchild, or designated person) with a serious health condition. A "designated person" under CFRA means any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave.
- 

## ***Time Off to Vote***

An employee may take time off to vote at the beginning or the end of the shift, whichever provides the most time to vote. The employee may take off no more than two (2) hours without loss of pay, providing that reasonable notice is given to their supervisor.

## ***Jury and Witness Duty***

Leave is provided for employees who are called to serve jury duty or who are summoned to appear as a witness in a judicial proceeding, pursuant to a subpoena or other court order. Employees must notify the Authority as soon as practicable of the need for leave under this policy. Employees will receive time off with regular base pay for the length of service. If an employee does not have to attend court, the employee is expected to report to work. Any jury fees received by an employee shall be remitted to the Authority. Reimbursements for mileage or food may be retained by the employee.

## ***Military Leave***

Any employee who is a member of the Reserve Corps of the Armed Forces of the United States, the National Guard or the National Militia is entitled to a temporary leave while

engaged in military duty ordered for purposes of military training, drills, encampment, naval cruises, and special duty or like activity. Such temporary leave does not have to exceed seventeen (17) calendar days including travel time and does not have to be compensated. Military leave shall be granted in accordance with the provisions of State law. All employees entitled to military leave shall give the General Manager an opportunity, within the limits of military requirements, to determine when such leave shall be taken. Military leave may be granted with pay provided employees reimburse the Authority for the amount of compensation, excluding travel and sustenance, which may be earned during the leave period.

### ***Time Off To Appear At School When Required By the School***

All employers must allow a parent or guardian of a pupil to appear at the school when the school has given advance notice. It is not a requirement that the employee be compensated for the time. The employee is required to give reasonable notice to the employer. An employee may take vacation or personal leave.

### ***Disability Leave***

For employee injury or disability falling within the provision of the State Workers' Compensation Disability Act, disability compensation at the rate allowed under said Act shall be basic remuneration during the employee's period of disability. In the case of full-time employees, additional compensation equal to the difference between said employee's regular pay and disability compensation allowance shall be granted not to exceed one year for any one period of incapacity. In the event a waiting period is required before an employee's disability compensation allowance is payable, the employee's regular pay shall be provided during said waiting period.

Compensation for short- and long-term disability leave resulting from employee injury or disability not related to Workers' Compensation is addressed in the Compensation Plan. Authority employees do not pay into the California State Disability Insurance (SDI) Program.

### ***Voluntary Leave of Absence***

The Commission, upon written request of a full-time regular employee (i.e. excludes temporary, probational, and part-time employees), may grant a voluntary leave of absence, without pay, for a period up to six (6) months. Upon written request of the employee, accompanied by justification and assurance of intent to return to duty, such leave of absence may be extended by the Commission another six (6) months, for a total continuous leave not to exceed a period of one (1) year. Leaves hereby authorized shall include educational leave, maternity leave, and leave for any other purpose promoting the good of the service. Upon expiration of such a leave, the employee shall be reinstated to the position held at the time leave was granted. Failure of the employee to report promptly at its expiration, or within 24 hours after notice to return to duty, shall terminate their right to be reinstated. During such leave an employee shall not earn sick leave or vacation leave, but shall maintain seniority at the time leave was first granted.



If the employee elects to maintain benefits during a voluntary leave of absence, prior to the start of the leave period, the employee shall pay to the Authority an amount equal to 100% of medical, dental, vision and disability insurance premium costs that are due and payable during the scheduled leave period. If the employee elects to suspend or discontinue benefits during a voluntary leave of absence, they may re-enroll during the Open Enrollment period upon return to work.

## **SECTION XIV – EMPLOYEE EDUCATION OR TRAINING**

An employee may be authorized to attend special training courses, seminars or conferences which are determined to be job-related or will enhance the employee's work performance. In addition to receiving leave with pay, the employee may be reimbursed for the cost of registration, tuition, books, supplies or other expenses incurred in attending special training courses, seminars or conferences which are job-related or will enhance work performance.

## **SECTION XV – EMPLOYEE HEALTH AND SAFETY**

### ***Accident Reports***

Any employee involved in an accident (whether involving injury or not) while on the job, must notify their supervisor and complete the required accident report forms within 24 hours of occurrence.

### ***Work Injury or Illness***

If an employee is unable to work as a result of what is believed to be an injury or illness arising out of or in the course of employment, the employee must visit a doctor for examination and the necessary forms shall be prepared for compliance with State laws and compensation insurance. If it is determined that the injury or illness is job-related, no deduction will be made from the employee's sick leave.

Filing a false or fraudulent workers' compensation claim is a violation of Authority policy, and will result in disciplinary action, up to and including immediate termination.

### ***Employee Health***

When, in the judgment of the General Manager, an employee's health or physical condition may have an adverse effect on the performance of the employee's duties, or affect safety or health of fellow employees, the employee may be required to undergo a medical or psychological examination at the expense of the Authority.

On the basis of authoritative medical advice, the General Manager shall determine whether an employee is physically and psychologically incapacitated for the duties of their position and may take whatever action deemed appropriate.

### ***Safety Rules***

All employees shall be expected to comply with all safety rules which may be adopted by the Authority as an integral part of their job duties. Failure to comply with adopted safety rules shall be grounds for disciplinary action.

### ***Safety Equipment***

The Authority shall determine the need for protective clothing and safety equipment for all employees and shall require its use where necessary for the protection of the employee. The Authority will furnish, at no expense to the employee, all protective clothing and safety equipment required for the employee's performance of duties.

## **SECTION XVI – ANTI-HARASSMENT POLICY**

The Authority does not tolerate harassment of any of our employees, customers or clients. Any form of harassment which violates federal, state or local law, including, but not limited to the items listed in the [Non-Discrimination](#) section of the General Provisions in Section II is a violation of this policy and will be treated as a disciplinary matter. For these purposes the term harassment includes slurs and any other offensive remarks or jokes, and other verbal, graphic, or physical conduct. Harassment also includes sexual advances, requests for sexual favors, unwelcome or offensive touching and other verbal, graphic or physical conduct of a sexual nature.

Questions about what constitutes harassing behavior shall be directed to the General Manager or to the Commission Chair.

Harassment shall be immediately reported to the General Manager or to the Commission Chair. The Authority strictly prohibits retaliation of any kind and will not tolerate employees' attempts to hinder internal investigations and/or corrective actions. All complaints of harassment that are reported to management will be looked into as promptly as possible and may be investigated. All complaints of harassment that are reported to management will be treated to the extent allowable by law.

Harassment of our employees in connection with their work by non-employees is also strictly prohibited. Any employee who experiences harassment by a non-employee or who observes harassment of an employee by a non-employee should report such harassment to the General Manager or Commission Chair. Harassment of our customers or clients by our employees is also strictly prohibited. Any violation of this policy will result in appropriate disciplinary action, up to and including termination.

Authority employees are required to complete sexual harassment prevention training and education that meet all requirements outlined by Government Code §12950.1.

## **SECTION XVII – LACTATION ACCOMODATION POLICY**

Per California Senate Bill (SB) 142, the Authority will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. The employer shall make reasonable efforts to provide the employee with the use of a room, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room may include the place where the employee normally works.

Employees requesting an accommodation under this policy are responsible for communicating their needs to the General Manager. The General Manager will work with the employee to make the appropriate accommodations needed, including allowing for flexible break periods if necessary.

Management will not discriminate or retaliate against any employee for exercising or attempting to exercise their rights under this policy.

If an employee feels that their rights, as described in this Policy, have been violated, they may file a complaint with the California Labor Commissioner.

## **SECTION XVIII – GRIEVANCES**

### ***Definition***

A grievance is any dispute between the Authority and an employee or employees with respect to the meaning, interpretation, application or enforcement of Authority rules and regulations or other terms or conditions of employment. Grievance shall not include actions taken by the Authority in accordance with [Section X](#), Discipline and General Rules of Conduct, hereof.

### ***Policy***

It is the intent of the Authority to anticipate and diminish causes of grievances and to settle any which arise, at the lowest practicable level of supervision and as fairly and promptly as possible. Therefore, time limits have been established between initiation of a grievance and its occurrence and between steps of the procedure. Any grievance not initiated or pursued within these limits will be considered settled on the basis of the last timely demand or answer, unless the time is extended to a definite date by agreement of the Authority and the employee.

Any regular employee (i.e. excludes temporary, probationary, and part-time employees) shall have the right to use this grievance procedure free from restraint, discrimination, pressure or reprisal from any other employee or officer of the Authority. Each employee shall have the right to present the grievance individually or through a designated representative at any step of the procedure. Employees shall have the right to withdraw the grievance at any step in the procedure

## ***Procedure***

If an employee has a grievance which cannot be settled by informal discussion with their immediate supervisor, the employee shall proceed in the following manner:

- Step 1. Present the grievance, in writing, to the General Manager, within ten (10) working days following occurrence of the event on which the grievance is based. The General Manager shall make a thorough investigation of the reported grievance and circumstances surrounding it and render a decision, in writing, to the employee within three (3) working days.
- Step 2. If the employee is not satisfied with the decision in Step 1, they may appeal to the Personnel Committee. Such appeal must be made within five (5) working days after the General Manager's decision is received. The Personnel Committee shall make a thorough investigation and shall arrange for a hearing of the grievance at which both the employee and the Authority shall have the right to call witnesses. The Personnel Committee shall render its decision in writing within five (5) days after close of the hearing.
- Step 3. If the employee is not satisfied with the decision of the Personnel Committee in Step 2, they may appeal to the Commission. Such appeal must be made within five (5) working days after the Personnel Committee's decision is given. The Commission or its appointed representative shall conduct an investigation and hearing within twenty (20) days and shall render a decision in writing. The decision of the Commission shall be final in all grievance proceedings.

## **SECTION XIX – PERSONNEL RECORDS**

Personnel records are maintained in accordance with State and Federal guidelines. The personnel file shall contain, but not be limited to, performance evaluations, as well as other forms, letters, and memoranda addressed to or pertaining to an employee. If an employee refuses to sign a form, letter, or document, the supervisor shall indicate "REFUSED TO SIGN" on the document and shall sign their name as witness to the fact, and the document shall then be placed in the employee's personnel file.

The personnel employment records are confidential. Only administrative staff specifically designated by the General Manager and those persons who are in a supervisory capacity to an employee may review an employee's file. Employees may review their own file upon request by scheduling an appointment with the administrative staff.

## **SECTION XX – WHAT THE AUTHORITY EXPECTS OF YOU**

### ***Attitude***

Every employee should display a positive attitude toward their job. A negative attitude creates a difficult working environment and prevents the Authority from providing quality service.

### ***Business Ethics and Conflict Of Interest***

The Authority requires its personnel to conduct Authority business with integrity and to maintain a high standard of personal conduct in outside activities.

Employees are expected to recognize and avoid activities or investments which involve, or might appear to involve, a conflict of interest. While it is impossible to list in this policy statement every circumstance which may suggest a possibility of conflict of interest, the standards for evaluating such activities or investments set forth in the paragraph below are suggested for use by employees in deciding whether a conflict may exist.

No employee may engage in any outside business activity, pursuit, action or investment which could by its nature or scope (with or without personal gain): be objectively construed as preventing or potentially preventing an impartial discharge of duties; or interfere with the satisfactory performance of assigned duties within the Authority; or reflect a compromise or misuse of Authority information; or adversely affect the interests or reputation of the Authority.

Commissioners and the General Manager are required to attend ethics training classes that meet all requirements outlined by Government Code Section 53234-53235.

### ***Electronic Systems and Media***

East Bay Dischargers Authority's electronic media is provided for employees to perform job functions. Electronic media includes but is not limited to: computers, software, laptops, telephones, cellular phones, electronic mail (e-mail) and internet access. Personal use of the Authority's electronic media shall be kept to a minimum. The Authority reserves the right to access these items at any time with or without prior notice, and the employees should have no expectation of privacy when storing or exchanging information on these devices or system.

All files and records stored on Authority computers are the property of the Authority. Authority computers are for business purposes only. No personal information or personal advertising or soliciting is permitted on our computer system. Use of Authority computers for unauthorized purposes is prohibited.

Authority e-mail is to be used for business purposes only and is considered Authority property. The Authority maintains the right to access these items at any time with or without prior notice, and the employees should not assume that such messages are

confidential. Inappropriate or offensive messages are prohibited. Passwords are assigned in complete confidence. Employees are not to share their passwords with anyone. Upon suspecting that someone has learned their password, the employee shall contact the General Manager immediately.

Employees shall conduct Authority business only on their Authority e-mail account, not on personal e-mail accounts.

### ***Telephone, Voice Mail, and Cell Phone Use***

The Authority has a limited number of telephone lines. It is essential that we keep those lines open for business calls. Therefore, employees are to minimize use of the Authority's telephone lines for personal calls. Use of the Authority's voice mail system for personal reasons shall also be kept to a minimum.

The Authority may provide managers with cellular phones to facilitate Authority business. Personal use of the employer-provided cell phone is excludable from the employee's income as a working condition de minimus fringe benefit.

Employees who prefer to use their personal cell phones for business reasons shall be entitled to a tax-free reimbursement in an amount equal to the monthly cost per line for Authority provided cell phones, or the employee's actual cost for their cell phone plan, whichever is lower. The reimbursement shall be paid with the first payroll of every month. The reimbursement amount shall be reviewed every January and updated as needed, to reflect the then in-effect monthly cost per line under the Authority's cellular service plan. The Authority's cellular service plan will also be reviewed periodically to ensure that it is the most cost-effective available.

Employees must comply with submitting data from personal cell phones used for Authority business in the event of a public records request for such information.

### ***Confidentiality***

All records and files of the Authority are property of the Authority and considered confidential. No employee is authorized to copy or disclose any file or record.

Notwithstanding the confidentiality provision, requests for information are subject to the California Public Records Act, Government Code §7920, et seq., and shall be responded to in the manner permitted by law.

### ***Copy Machines and Facsimile***

The facsimile and copy machines are for legitimate business purposes only and should not be used for personal use. Employees are prohibited from using these machines for the purpose of transmitting, receiving or copying materials which may be deemed offensive or insulting. Any employee who receives such materials via facsimile

transmission, the mail, or from any other source, should report the transmission immediately to the General Manager.

### ***Gambling***

Gambling is prohibited on Authority property.

### ***Personal Mail***

Employees shall minimize personal mail deliveries to the Authority premises. Mail sent to an employee at the Authority will be opened by office personnel.

Authority postage meters and letterhead may not be used for personal correspondence.

### ***Searches and Inspections***

Employees do not hold any privacy rights in any Authority property. The Authority reserves the right, at all times and without prior notice, to inspect and search any and all of its property for the purpose of determining whether any policy, rule, or directive has been violated, or when the Authority determines an inspection is necessary for purposes of promoting safety in the workplace or compliance with state and federal laws. These inspections may be conducted during or after business hours and in the presence or absence of the employee. These searches may include, without limitation, workspaces, desks, electronic devices and equipment, cabinets, motor vehicles, and where appropriate non-Authority belongings that are brought onto District property.

All files and records stored on Authority computers are the property of the Authority and may be inspected at any time. Electronic mail and voice mail messages are to be used for business purposes only and are considered Authority property. The Authority may access these items at any time with or without prior notice, and the employee should not assume that such messages are confidential.

### ***Unauthorized Interviews***

From time to time, Authority employees may be contacted by outside parties to discuss Authority business. As a means of protecting employees and the Authority, no unauthorized interviews are permitted to be conducted by individuals representing themselves as attorneys, peace officers, investigators, reporters, or someone who wants to *ask a few questions* regarding Authority business. If an employee is asked questions about the Authority or its current or former employees, the employee is to refer that individual(s) to their supervisor. A decision will then be made as to whether that individual may conduct any interview. Similarly, an employee becomes aware of an unauthorized interview occurring at the Authority, they must immediately notify the General Manager.

This provision is not intended to, nor does it interfere with any employee's ability to speak on matters of public concern; to report suspected harassment, discrimination, retaliation,

fraud, misuse of public funds/resources and/or suspected criminal activity; or to engage in any lawful whistleblowing activities.

### ***Whistleblowing***

Notwithstanding the provisions of unauthorized interviews, the Authority will not prevent an employee from disclosing information to a government agency or law enforcement agency when the employee has reasonable cause to believe the information discloses a violation of a state or federal statute or a violation or noncompliance with a state or federal rule or regulation. Furthermore, the Authority will not retaliate against an employee for making such a disclosure or for refusing to participate in an activity that would result in a violation of state or federal statute, or violation or noncompliance with a state or federal rule or regulation. Employees who believe they have been retaliated against shall promptly report such retaliation to the General Manager or Commission Chair.



# Personnel Policy

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## SECTION I – DEFINITIONS

Allocation	The assignment of a position to an appropriate class on the basis of the nature, difficulty and responsibility of duties actually performed.
Applicant	Any person who has made application for a position.
Authority	The East Bay Dischargers Authority.
Candidate	A qualified applicant who has been selected to participate in the selection process.
Class or Classification	A position or group of positions, the duties and responsibilities of which are sufficiently similar so that the same descriptive title, examples of duties and tests for fitness may apply.
Class Specification	A written description of duties, responsibilities and desirable qualifications for employment in a classification.
Commission	The East Bay Dischargers Authority Commission, the legislative and governing body of the Authority.
Compensation	The salary, wage, allowances and all forms of valuable consideration paid to any employee by reason of service in any position.
Demotion	A change of an employee from one position to any other position having a lower maximum salary.
Eligible	A person whose name is on an active employment list.
Employment List	A list of persons who may be considered for appointment to a specific position with the Authority.
Employee	A person officially appointed to a position in the adopted Classification Plan.
Examination	The selection procedure used to measure the relative fitness of persons applying for positions with the Authority.
Full-Time Schedule	The Authority considers full-time employment to be forty (40) hours per week.
General Manager	The General Manager of the Authority, as appointed by the Commission or their duly designated representative.
Job Description	A written description of duties, responsibilities and desirable qualifications for employment in a specific position.
Part-time Position	A position to which an employee shall be assigned for less than forty hours per week.

Personnel Committee	A panel advisory to the Commission on personnel matters consisting of two members of the Commission.
Position	A group of current duties and responsibilities designated by the Commission as requiring the employment of one person.
Probationary Appointment	A working test period during which an employee selected from an employment list is required, by actual performance, to demonstrate fitness for the duties of the position to which appointed.
Promotion	A change of an employee from one position to another position that has a higher maximum salary.
Provisional Appointment	Appointment for a period not to exceed six months to a position for which no employment list exists.
Reallocation	Change in the assignment of a position from one existing class to a new class resulting from a change in the Classification Plan.
Regular Appointment	The type of status granted to an employee who has successfully completed a probationary period.
Seniority	The total length of satisfactory service of an employee within each specific class.
Suspension	Temporary separation of employment with or without pay.
Temporary Appointment	Assignment of an employee to a position for a limited duration.
Termination	Permanent separation of an employee from Authority service.
Unclassified Position	Certain management, professional or confidential positions designated by the Commission to fall outside the classified service and to be exempted from certain provisions of these Rules.

## **SECTION II – GENERAL PROVISIONS**

### ***Purpose***

The Personnel Policy is established to provide a comprehensive personnel system and procedure for its administration whereby the Authority may:

1. Establish consistent employment practices.
2. Provide guidelines for recruiting and selection of the best candidates.
3. Establish a fair and equitable compensation system.
4. Provide for the welfare of all employees.
5. Establish guidelines for separation of employment.

Employment under this Personnel Policy shall not constitute an employment contract, and the General Manager may interpret and implement the provisions included in this document as deemed appropriate. Any changes to this document must be in writing and must be adopted by the Commission. Copies shall be provided to employees so that they are aware of all changes to the Personnel Policy. No oral statements shall in any way change or alter the provisions of this Personnel Policy.

### ***Applicability***

This Personnel Policy shall apply to all employees of the Authority. In the case of conflicting language, an employment agreement shall supersede this Personnel Policy. The following list of persons are exempt from this document:

1. Commissioners of the Authority
2. Members of Committees advisory to the Commission
3. Persons engaged under contract to supply expert, professional, technical or other services
4. Volunteer personnel

### ***Administration***

The Commission shall appoint, and may remove, a General Manager who shall have responsibility for and control of the affairs of the Authority and who shall, among other duties, administer the personnel system set forth herein, including preparation and maintenance of the Classification and Compensation Plans, all essential records required for maintenance of the system and application of the rules, and shall enforce the provisions herein and all other pertinent regulations, directives and policies.

The Commission shall appoint a Personnel Committee consisting of two members of the Commission, the function of which is to review and make recommendations on all personnel matters coming before the Commission for action, including revision to the Classification or Compensation Plans and these Rules, and to hear appeals as indicated herein. Action by the Committee with respect to grievances (Section XVIII) shall be final



and shall not require further action by the Commission unless appealed to the full Commission.

### ***Non-Discrimination (Equal Employment Opportunity)***

No person within the service of the Authority, or seeking entry thereto, shall be employed, promoted, demoted, suspended, discharged, in any way favored or discriminated against, or retaliated against for charging acts of discrimination in accordance with Federal Equal Employment Opportunity Laws (EEO) and State of California Department of Fair Employment and Housing Act. This includes but is not limited to the following protected classes and activities:

- Age (40 and over)
- Ancestry
- Citizenship
- Color
- Disability (mental and physical) including HIV and Aids
- Equal Compensation
- Denial of Family and Medical Care Leave
- Gender, Gender Identity, Transgender and Gender Expression
- Genetic Characteristics and Genetic Information
- Marital Status
- Medical Condition
- Military or Veteran Status
- National Origin
- Political Affiliation
- Race
- Religion
- Religious Creed
- Sex (which includes pregnancy, childbirth and medical conditions related to pregnancy or childbirth)
- Sexual Orientation
- Whistleblowing

The Authority is an equal opportunity employer and its personnel policies shall be administered in accordance with applicable state and federal law.

### ***Incompatible Activities***

No officer or employee of the Authority shall:

1. Participate in any political activity during working hours on the Authority premises.
2. Use for private gain or advantage the influence of an Authority position or the facilities, equipment or supplies of the Authority.
3. Solicit or accept any favors or gifts from persons, concerns or corporations who have, or seek to have, business contacts with the Authority.

4. Divulge confidential information to anyone to whom issuance of such information has not been authorized by the General Manager.
5. Participate in any employment or other activity which, will prevent the employee from completing assigned duties in an efficient and capable manner, which brings discredit upon the Authority, or which might result in a conflict of interests between the employee's private interest and official duties and responsibilities, or in any event which has not been approved by the General Manager.
6. Provide information or services to contractors or other persons, which would give a competitive advantage over others dealing with the Authority.

### ***Violation***

Violation of these rules shall be grounds for rejection of application, removal from an eligible list, suspension, demotion, discharge or other discipline of employees deemed appropriate under the circumstances.

### ***Severability***

If any section, subsection, sentence, clause or phrase herein or any application thereof to any person or circumstance, is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Policy.

## **SECTION III – CLASSIFICATION PLAN**

### ***Preparation***

The General Manager may review the duties and responsibilities of all positions within the Authority service. All positions shall be grouped into classes and each class shall include those positions sufficiently similar in respect to their duties and responsibilities that similar requirements as to training, experience, knowledge, skills, personal qualities, and the same salary range may be made to apply with equity to all positions in the same class.

### ***Content***

The Classification Plan shall have written class specifications, which shall include concise descriptive titles, physical requirements and working conditions as required by the Americans with Disabilities Act, general descriptions of the essential duties and responsibilities of the class including job definitions, and statements of the required and desirable qualifications.

Each class specification outlines the main characteristics and qualification requirements of positions allocated to the class and gives examples of duties which employees holding such positions may properly be required to perform. The class specification is descriptive and explanatory, but not restrictive. The listing of particular examples of duties does not preclude the assignment of other tasks and duties of related kind or character or of lesser skills. The statement of desirable qualifications in a class specification is intended to be

used as a guide in selecting candidates for employment as an aid in the preparation of competitive examination, and for use in determining the relative value of positions in one class with positions in other classes. Such personal characteristics as honesty, sobriety and industry are deemed to be included in all class requirements and need not be specifically mentioned.

Nothing in the class specifications is to be interpreted as restricting a supervisor in assigning an employee of one class to perform the duties of a higher class for limited relief periods. Such assignment to perform the work of a higher class for a limited period comes within the requirements of work in all classes.

### ***Adoption***

Before the Classification Plan or any part thereof shall become effective, it shall be adopted by the Commission upon recommendation of the Personnel Committee.

### ***Revisions***

Each basic revision in the Classification Plan shall be made in the same manner as the Plan was originally established.

The General Manager may review duties of positions and prepare recommendations to the Personnel Committee for action by the Commission to ensure that the Plan is kept current and those changes in existing classes, the establishment of new classes or the abolition of classes is properly reflected in the Classification Plan.

The General Manager may reallocate a position to a different class whenever its duties change materially. Any proposed reallocation to be made shall be made with the knowledge of the employee concerned.

Whenever a new position is proposed, the General Manager shall prepare a comprehensive statement of the circumstances and description of the proposed duties and responsibilities and recommend allocation of the position to an appropriate class in the Classification Plan. No new position shall be filled by an individual until the position has been created by the Commission and until there is an approved class specification describing the work to be performed which has been adopted under the Classification Plan.

Reclassification of a position may not be used to circumvent the procedures concerning demotion, promotion, or compensation.

### ***Incumbents of Reclassified Positions***

When a position is reclassified from one class to another, the employee occupying the position may be retained in the position without further competitive examination provided that:

1. It is determined by the General Manager that the reclassification results from a change in duties and responsibilities that have already occurred.

2. The performance of the duties and responsibilities of the incumbent have been satisfactory.
3. The General Manager certifies that the incumbent possesses the knowledge, skills and abilities necessary to perform the duties of the new class.

The incumbent has regular status in the class to which the position was formerly allocated.

## **SECTION IV – COMPENSATION PLAN**

### ***Content***

The Compensation Plan shall consist of a schedule of monthly salary ranges, the method of computing hourly equivalents of actual salaries, and a summary list of additional benefits provided by the Authority.

### ***Preparation***

At least once annually, prior to the beginning of the fiscal year, the General Manager shall prepare a tentative Compensation Plan and shall present it to the Personnel Committee for review and recommendation to the Commission.

In preparing the tentative plan, the General Manager shall take into consideration class-by-class salary comparisons with Member Agencies and other comparable agencies to be designated by the Personnel Committee and across-the-board compensation adjustments received by Member Agencies since the last EBDA adjustment. Appropriate consideration shall be given to adjustments of the cost of living as measured by the Consumer Price Index for All Urban Consumers (CPI-U), the base figure for comparison shall be the San Francisco-Oakland-Hayward, CA for the period of January 1 through December 30 of the previous year. Adjustments in the cost of living shall be considered once a year as the General Manager prepares the Compensation Plan. The cost-of-living adjustment (COLA) shall be based on the above index within a floor-to ceiling-range of 2% - 5%. The COLA range shall be reviewed every three years. In adopting a COLA, the Commission may also consider the short- and long-term financial status of the Authority. Effective July 1, by adoption of an amended Compensation Plan, adjustments shall be applied to the salary range of each position to reflect the COLA.

### ***Adoption***

The Compensation Plan for all employees shall be established by the Commission upon recommendation of the Personnel Committee prior to the effective date of any amendments thereto.

### ***Administration***

The Compensation Plan shall be administered by the General Manager. The General Manager, after review by the Personnel Committee and approval by the full Commission, shall determine the actual salary of individual employees, within the ranges established

in the compensation plan, based on an evaluation of the employee's qualifications, performance and merit.

Salary step increases shall be earned, shall be subject to satisfactory service, and shall not be considered a right of the employee. After an employee completes twelve (12) months of continuous service in the same position, the employee may be advanced to the next higher rate of compensation as set forth in the Compensation Plan upon approval of the General Manager. Subsequent step increases shall be effective annually on the anniversary of the employee's hire date until the employee reaches the top step of the range. After reaching step 5, the employee shall remain at the same rate provided for at step 5 while continuing to serve in the same position, subject to satisfactory service.

A written performance evaluation shall accompany a recommendation for salary advancement. Performance standards are based on satisfactory achievement of the qualifications outlined in the classification plan in addition to customary employment standards, such as knowledge of the position; quality of work; ability to handle responsibility; acceptable rate of productivity; demonstrated initiative; and an acceptable attendance record. Performance evaluations, which may include employee comments or rebuttals, shall be maintained in the employee's personnel file. A copy shall be provided to the employee.

## **SECTION V – RECRUITMENT AND APPLICATION**

### ***Recruiting***

Public announcement of all employment opportunities shall be made at least three weeks prior to the final filing date of the announcement. The General Manager shall prepare an official announcement for posting in appropriate public places and its publication in appropriate news media or trade journals. The announcement shall contain all information of importance for potential applicants. Suitable and effective methods of distributing information concerning employment opportunities and securing the most qualified candidates available for competition shall be practiced.

### ***Application***

Applications for employment shall be made readily available to potential applicants. Applications filed with the Authority shall be filed at the time, place, and manner prescribed in the job announcement and, once filed, shall become the property of the Authority.

### ***Disqualification of Applicants***

The Authority may reject an application, may disqualify an applicant in an examination, may refuse to place a name on an eligibility list, or may remove a name from an eligibility list for any legitimate reason, including but not limited to the following:

1. Substantive failure to fulfill any of the qualifications for the class or position for which the application is made.

2. Failure to pass written examinations required by the Authority.
3. Failure to pass the appraisal board interview.
4. Failure to pass a pre-offer background check and/or post-offer physical examination.
5. Failure to furnish true statements of material facts.
6. Practice or attempted practice of fraud or deception in connection with filing an application or during examination.
7. Previous dismissal from any public service for cause.
8. Previous resignation from the Authority or a Member Agency without adequate notice or under other prejudicial circumstances.
9. Being under the influence of intoxicant(s) that would impair the applicant's ability to perform in a safe and competent manner.
10. Previous conviction of a crime against person or property of a violent nature.
11. Failure of an applicant, after notification, to present themselves promptly at the time and place designated for any portion of the examination.
12. Obtaining either directly or indirectly, information about an examination that, as an applicant or competitor, would give applicant an unfair advantage or to which applicant was not entitled.
13. Failure to respond to communications concerning the applicant's availability for employment.
14. Request by the applicant that their name be withheld from consideration.

### ***Confidentiality***

The names of applicants and information contained on applications for employment shall not be made public.

### ***Verification***

Information presented on applications may, during the course of the hiring process, be verified, and applicants may be subject to a background check by the Authority. The Authority has the right to conduct a complete and exhaustive background investigation of all applicants seeking employment.

### ***Exemption***

All at-will positions shall be exempted from the foregoing recruitment and application procedure. Recruitment and application for at-will positions shall be conducted in a manner established by the Commission as vacancies occur.

## **SECTION VI – SELECTION PROCEDURE**

The selection procedure shall be impartial, of a practical nature, and shall indicate a good faith effort to fairly measure and evaluate capacities of the applicants to execute the

essential duties and responsibilities of the position to which they seek to be appointed. Applicants participating in the recruitment shall compete in the same process and follow the same selection methodology. The selection procedure may include any one or a combination of the following:

- A. Information extracted from the application form, resume and other pertinent documentation submitted;
- B. Written, practical (hands-on), or physical tests or examinations, or any combination thereof;
- C. Oral interview with an appraisal board and/or one-on-one interview with Authority staff; and/or,
- D. Other appropriate means.

Applications shall be screened and evaluated. The most qualified candidates will be selected to participate in the selection process.

The Authority shall notify each applicant in writing of their standing as important steps in the selection process are completed. Once a candidate is selected and a job offer is made, the other candidates on the eligibility list shall be notified of the fact, and informed that their names will remain on the eligibility list for that position for a period of one year.

### ***Medical Examination***

Before any appointment may be made to a regular position, the individual shall be required to satisfactorily pass a medical examination given by a regularly licensed physician designated by the Authority and made at the Authority's expense. No person shall be given a probationary or regular appointment that, at the time of such appointment, is physically unable to satisfactorily fulfill the duties of the position. An eligible candidate may be accepted conditionally when it is the opinion of the examining physician that the individual's physical disqualification may be temporary or when it is deemed that treatment may satisfactorily correct any impairment. Such impairment shall be corrected no later than one month prior to the completion of the employee's probationary period. Regular employees being appointed to positions involving increased physical effort may also be required to satisfactorily pass an appropriate physical examination.

## **SECTION VII – EMPLOYMENT LISTS**

### ***Establishment***

At the completion of the examination process, an employment list containing the names of all persons who have successfully passed all parts of the selection process shall be prepared by the General Manager.

### ***Order of Names***

The names of successful candidates shall be placed on the employment list in the order of their final ratings. If two or more candidates have final scores that are identical, these candidates shall occupy an identical position on the employment list.

### ***Duration of List***

Each employment list shall normally remain in force for one year from the date of its establishment, except that the General Manager, may extend the list for an additional period of time up to one year.

### ***Removal of Names***

The name of any eligible candidate may be removed or withheld from an employment list for any of the reasons specified in Section V.

### ***Restoration of Names***

An eligible candidate's name shall be reinstated to an employment list in the same relative position as originally held upon showing cause satisfactory to the General Manager.

### ***Termination of List***

An employment list may be terminated prior to its usual expiration date upon recommendation of the General Manager and approval of the Commission when it is considered to be in the best of interest of the Authority.

## **SECTION VIII – APPOINTMENT**

The power to appoint, discipline and dismiss employees of the classified service shall be vested in the General Manager or designee.

The successful candidate will be required to provide proof of identity and authorization to work in the United States. Documentation of eligibility to work in the United States will be required as a condition of employment.

### ***Oath***

In accordance with California Constitution Article 20, Section 3, and as mandated by California Government Code Sections 3100-3109, all public employees are declared to be disaster service workers, and must take and subscribe to an oath of loyalty as a condition of employment.

### ***Regular Appointments***

Regular appointments shall be made by the General Manager or designee from established eligibility lists. Candidates appointed to regular positions shall be considered in a probationary status until successfully completing the probationary period. For employees who are not classified as at-will, regular appointments shall be made upon successful completion of the probationary period.



### ***Provisional Appointments***

The General Manager may make a provisional appointment to a position if there is no eligibility list for the class, and if the needs of the service require that the position be filled before a selection process can be completed. A provisional appointee shall:

- Meet the requirements of training and experience established for the position;
- Not be continued for more than thirty (30) days after an eligibility list for the position has been established, unless there are no candidates on such eligibility list who are available or wish to be considered for appointment to the position;
- Not serve under provisional appointment for longer than a 12-month period except when employed for a specific contract undertaken by the Authority.

### ***Temporary Appointments***

If an employee is needed for a temporary period, certification shall be made from the names of those eligible candidates, if any are available, that have indicated willingness to accept temporary employment and appointment shall be made by the General Manager. The duration of the temporary appointment shall be limited to the period of the need.

The acceptance or refusal of a temporary appointment shall not affect an eligible candidate's standing on an employment list and the period of temporary service shall not constitute a part of a probationary period. Successive temporary appointments to the same position shall not be made nor shall an individual receive continued temporary appointments. If an appropriate employment list does not exist, an offer of temporary appointment may be made to a person who has not qualified under provision of these rules, but through a comparable process.

### ***Part-Time Appointments***

If an employee is needed for less than a total of 40 hours per week, a part-time appointment shall be made by the General Manager from eligible candidates that have indicated willingness to accept part-time employment. The Authority is responsible for following the same recruitment/selection process for part-time employees as for regular, full-time employees.

## **SECTION IX – EMPLOYMENT STATUS**

### ***Probationary Status***

The first six (6) months of employment is a period of evaluation for all regular employees and is called a Probationary Period. This is a time to monitor both work performance and work habits of the newly appointed employee. The probationary period may be extended for an additional period, not to exceed six (6) additional months, if an employee requires additional evaluation. If an employee successfully completes the probationary period, the employee moves from probationary status to regular status.

If, at the sole determination of the Authority, the newly appointed employee is unsuccessful in completing the probationary period, the employee shall be terminated with no right of appeal or hearing.

Regular full-time employees occupying management or supervisory positions are not subject to probationary periods and serve as at-will employees at the pleasure of the Authority; they can be terminated anytime, with or without cause.

### ***Regular Full-Time Status***

Regular full-time employees are not in a temporary status and are regularly scheduled to work the Authority's full-time schedule. Generally, they are eligible for the full benefits package, subject to the terms, conditions and limitations of each benefit program.

Employees in this employment status have completed the probationary period and work a forty (40) hour work week on a regular basis.

### ***At-Will Status***

An at-will employee is one whose employment may be terminated at the discretion of the Commission and/or General Manager at any time with or without cause. At-will positions include managerial employees whose terms of employment are stipulated in a written employment agreement signed by both parties. At-will status also applies to any probationary, provisional, and/or temporary employee.

At-will employees shall enjoy the same statutory protections of regular employees, including laws that prohibit discrimination or harassment based on protected classes such as those listed in the [Non-Discrimination section](#) of the General Provisions in Section II. At-will employees shall also be entitled to engage in protected activities without fear of retaliation, such as filing a charge of discrimination, whistleblowing or participating in an investigation.

Rules providing pre-discipline meeting rights and post-discipline appeal rights for discipline or separation for cause do not apply to at-will employees.

### ***Part-Time Employment***

Part-time positions are those that are required on a long-term basis and are scheduled to work less than 40 hours per week. Part-time employees do not serve a probationary period. At the end of each 2080 hours worked, the part-time employee is eligible for a salary step increase based on satisfactory performance. Such employees serve at the discretion of the General Manager, are at-will, and can be terminated any time, with or without cause. The General Manager shall periodically review the part-time positions to determine that there are appropriate staffing levels to meet the needs and requirements of the Authority and make adjustments as necessary.

Part-time employees shall be entitled to participate in the Authority's benefit programs as specified in the Compensation Plan. The Authority's payment toward these insurance programs shall be proportionate to the employee's scheduled work hours.

### ***Temporary Employment***

Temporary employees are hired as interim replacements if regular staff are unavailable, to temporarily supplement the workforce, or to assist in the completion of a specific project or set of projects for a limited duration. Employment beyond any initially-stated period does not in any way imply a change in employment status.

Temporary full-time employees are scheduled to work the Authority's full-time schedule. Temporary part-time employees are scheduled to work less than 40 hours per week. Employees in temporary classes are not eligible for benefits or accrued leaves, with the exception of sick leave.

### ***Resignation***

An employee who resigns shall present notice in writing to the Authority at least 14 calendar days prior to the effective date of the resignation.

### ***Reduction in Force***

The Commission may separate any employee, without prejudice, because of lack of work or funds, or because of material change in duties or organization. No regular employee, however, shall be separated while there are provisional, probationary or temporary employees serving in the same class; provided, however, a regular employee otherwise subject to separation under this Policy may elect voluntary demotion to a lower class if vacancies exist. The order of separation due to reduction in force shall be based upon seniority. All employees subject to separation under these provisions shall receive written notice at least 14 calendar days prior to the effective date.

A summary of employment types and relevant status and benefits is provided in the following table:

	<b>Status</b>	<b>Benefits</b>
Temporary Part-time	At-will	Sick leave only
Temporary Full-time	At-will	Sick leave only
Regular Part-time	At-will	All proportionate to scheduled work hours
Probationary Full-time	At-will	All
Regular Full-time	Subject to discipline procedures	All

## **SECTION X – DISCIPLINE AND GENERAL RULES OF CONDUCT**

It is expected that all employees shall render the best possible service and reflect credit on the Authority. Therefore, the highest standards of professional conduct are essential and expected of all employees. This Section does not apply to temporary, probationary, and provisional employees, though the Authority holds these employees to the same high

standards of professional conduct. Discipline for at-will employees is at the discretion of the General Manager.

### Disciplinary Actions

The Authority may invoke the following types of disciplinary actions:

- a) Verbal Warning
- b) Written Reprimand
- c) Suspension With or Without Pay
- d) Reduction in Pay
- e) Demotion
- f) Disciplinary Probation
- g) Discharge/Termination

### ***Grounds for Discipline***

Disciplinary measures may be taken for any good and sufficient cause. Authority employees who are employed at-will, including temporary, provisional, and probationary employees, are not subject to the requirement of good cause, and are not entitled to pre-discipline procedures or appeals under these policies and may be separated with or without advance notice.

Good cause exists not only when there has been an improper act or omission by an employee in the employee's official capacity, but when any conduct by an employee brings discredit to the Authority, affects the employee's ability to perform their duties, causes other employees to be unable to perform their duties, or involves any improper use of the employee's position for personal advantage or the advantage of others. Rules requiring good cause do not apply to at-will employees. The type of disciplinary action shall depend on the seriousness of the offense and the relevant employment history of the employee. Causes for disciplinary action against an employee may include, but shall not be limited to, the following:

- a) Misstatements or omissions of fact in completion of the employment application or to secure appointment to a position with the Authority.
- b) Furnishing knowingly false information in the course of the employee's duties and responsibilities.
- c) Inefficiency, incompetence, carelessness or negligence in the performance of duties.
- d) Violation of safety rules.
- e) Violation of any of the provisions of these personnel rules and regulations or Authority policies.
- f) Inattention to duty.
- g) Tardiness, or overstaying lunch periods.

- h) Being under the influence of an intoxicating beverage or non-prescription drug, or prescription drugs not authorized by the employee's physician, while on duty or on Authority property, or when called in for emergency duty.
- i) Disobedience to proper authority, refusal or failure to perform assigned work, to comply with a lawful order, or to accept a reasonable and proper assignment from an authorized supervisor.
- j) Any violation of the Authority's No Harassment Policy.
- k) Unauthorized soliciting on Authority property.
- l) Unauthorized absence without leave; failure to report after leave of absence has expired or after a requested leave of absence has been disapproved, revoked or canceled; or any other unauthorized absence from work.
- m) Conviction of a felony, or a misdemeanor involving moral turpitude, or a violation of a federal, state or local law which negatively impacts the employee's ability to effectively perform assigned job or brings discredit to the Authority.
- n) Offensive treatment of the public or other employees.
- o) Falsifying any Authority document or record.
- p) Misuse of Authority property; improper or unauthorized use of Authority equipment or supplies, damage to or negligence in the care and handling of Authority property.
- q) Fighting, assault, and/or battery.
- r) Theft or sabotage of Authority property.
- s) Sleeping on the job, except as specifically authorized for 24-hour duty personnel.
- t) Accepting bribes or kickbacks.
- u) Intimidation or interference with the rights of any employee.
- v) Outside work or any other activity or conduct which creates a conflict of interest with Authority work, which causes discredit to the Authority, negatively impacts the effective performance of Authority functions or is not compatible with good public service.
- w) Failure to maintain the minimum qualifications, including necessary licenses or certifications specified for the position.
- x) Abusive or intemperate language toward or in the presence of others in the workplace.
- y) Any other conduct of equal gravity to the reasons enumerated above as determined by the Authority.

### ***Procedure for Disciplinary Action***

Regular employees covered by this policy shall be governed by the following provisions:

#### Written Notice

The General Manager shall issue a written notice of discipline, describing the intended discipline, the basis for the discipline, and attaching any documents upon which the discipline is based. The affected employee may respond by submitting a rebuttal to be lodged in the employee's personnel file, and in the case of a suspension of one to four days, shall have the ability to present their side of the story by responding orally or in writing before the discipline becomes final within five working days of the notice being issued. Any such response to a proposed suspension of one to four days shall be considered before a final decision is made. For minor discipline—any action up to and including a suspension of four (4) working days—no further appeal shall be permitted. For disciplinary actions of suspensions of more than four (4) working days, a reduction in pay resulting in loss of pay equal to or exceeding a suspension of more than four (4) days, demotion or termination (serious discipline), employees shall retain pre-discipline meeting and post-discipline appeal rights as described below.

### Pre-Discipline Meeting

For serious discipline, the employee shall receive written notice of the charges upon which the disciplinary action is based, the materials upon which the charges are based, and the employee's rights under *Skelly vs. State Personnel Board*, 15 Cal.3d 194 (1975.) The employee then has an opportunity to respond, either orally or in writing.

The General Manager shall designate an individual to convene a meeting to review the employee's response and position before imposing discipline. As soon as practical following the meeting, the designated individual shall present their written opinion for consideration by the General Manager. If the General Manager is not the direct supervisor of the employee, the General Manager may convene the meeting.

The employee shall be entitled to a representative of their choice; provided, however, that the inability of a particular representative to attend the meeting shall not cause a continuance of the meeting. At the meeting, the employee shall be provided the opportunity to respond to the charges and to present any new information for consideration by the General Manager or their designee.

### Final Action

After the employee responds to the charges, they shall be given by the General Manager a final notice of discipline to be imposed and an opportunity to appeal the discipline after it is imposed, in accordance with the rules contained herein. The notice shall include the final decision, the effective date of the discipline, and the facts upon which the discipline is based.

### Appeal

For serious discipline, employees shall have the right to appeal the final decision. The notice of appeal must be received within seven (7) calendar days from the date of the final notice of discipline, or the right to appeal is waived and the discipline shall become final.

The appeal shall be heard by an independent hearing officer from the Office of Administrative Hearings of the State of California; a neutral mediator from another recognized organization; or a neutral mediator selected by mutual agreement of the employee and the Authority.

The costs of the hearing officer shall be borne by the Authority. Either party may request that the matter be transcribed. The requesting party shall bear the expense of the transcript.

The hearing officer shall have the authority to convene the hearing, receive evidence through testimony and documents, and to make findings of fact and conclusions about the discipline. The hearing officer may recommend an outcome, but the final authority rests with the Commission. The hearing officer shall serve a recommended decision on the Authority and the employee. The Commission shall issue a final decision. The Commission's decision is reviewable by administrative writ of mandamus.

## **SECTION XI – HOURS OF WORK**

### ***Hours of Work***

A full-time employee shall be scheduled to work a forty (40) hour work week within a seven (7) day work period. Employees may vary their starting and ending times with management approval, and provided there is sufficient coverage during the hours the Authority is open to the public.

The General Manager may vary the working hours of any employee within the limits of State Law or other labor regulations should the need arise. Daily attendance records shall be kept and certified for payroll purposes. Any employee absent without leave, who fails to return to work within 24 hours after notice to return, shall be subject to disciplinary action.

### ***Overtime***

Authorized or required work performed by non-exempt employees in excess of forty (40) hours per week shall be deemed overtime.

### ***Overtime Rate***

Overtime shall be paid at the rate of one and one-half (1.5) times the straight-time hourly rate. Overtime hours may be paid on the next regular pay check. With the approval of the General Manager prior to performance of the overtime work, employees may choose to receive compensatory time off rather than overtime pay. Compensatory time shall be used or paid to the employee within a 12-month period from the date earned.

### ***Call Back***

When an employee is required to return to work following a lapse of at least one hour after their normal working hours, a minimum of two hours shall be recorded.

### ***Exception***

Exempt positions shall not accrue overtime but may adjust their working hours in lieu thereof as approved by the General Manager.

## **SECTION XII – HOLIDAYS**

### ***Authority Holidays***

The following days shall be holidays for all full-time Authority employees:

New Year's Eve	December 31
New Year's Day	January 1
Martin Luther King's Birthday	3 <sup>rd</sup> Monday in January
President's Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	4th Friday in November
Christmas Eve	December 24
Christmas Day	December 25

If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday. A part-time employee's holiday leave shall be proportionate to their scheduled work hours.

### ***Floating Holidays***

Full-time employees are allotted twenty-eight (28) hours of floating holiday to be used within the fiscal year, July 1 – June 30. Use of the allotted hours shall be approved by the General Manager. Floating holiday leave hours do not accrue and employees will not be compensated for unused hours.

A person hired after July 1, or a temporary full-time employee hired to work for less than 12 months, shall be provided the pro rata share of floating holiday hours for the number of months of work in the fiscal year compared to the annual allotment of twenty-eight (28) floating holiday hours per year.

Floating holiday hours shall be reconciled upon an employee's permanent separation from the Authority. Hours used in excess of those earned shall be deducted from the employee's final pay.



### ***Compensation for Holidays Worked***

Holidays shall be worked only on order and authorization of the General Manager. Work performed by a non-exempt employee on a holiday shall be compensated at the rate of one and one-half (1.5) times the straight-time hourly rate.

## **SECTION XIII – LEAVES AND VACATIONS**

### ***Vacation Leave***

Vacation leave is an earned benefit of eligible employees and its use shall be approved by the General Manager. Employees shall take vacation leave in increments of one (1) hour. Leave begins to accrue upon date of hire, but shall not be granted to the employee for use during the first six (6) months of employment. Vacation is accrued for all regular hours worked and shall continue to be earned during other authorized leaves with pay.

### ***Vacation Leave Allowance***

All full-time employees, shall earn vacation leave at the rate of 80 working hours per year from the date of employment. Full-time employees shall earn an additional eight (8) hours vacation leave allowance for each full year of continuous employment thereafter, up to a maximum of 200 working hours per year. With the exception of the General Manager, whose maximum annual accrual is governed by their agreement, all full-time employees that were earning the maximum vacation leave prior to January 18, 2024, shall receive the maximum of 200 working hours per year. Part-time employees shall earn vacation leave proportionate to their scheduled work hours.

All eligible employees shall be permitted to accumulate unused vacation at a rate of 2-1/2 times their annual vacation allowance. Vacation accruals will be reviewed at the end of each fiscal year. If the accrual exceeds 2-1/2 times the annual allowance, the value of the excess accrual shall be paid to the employee at the end of that fiscal year and those hours shall be subtracted from the balance.

### ***Computing and Recording Vacation Leave***

Vacation leave credits shall be computed and recorded in increments of one hour. When periods of less than one full month have been worked, vacation leave credits shall be based on service computed to the nearest half month.

On July 1st of each year, employees who have completed at least six months of satisfactory full-time continuous service shall be credited in advance with vacation leave allowance for the entire fiscal year. Vacation leave shall be earned during authorized leave with pay. When a holiday falls during an employee's absence on vacation leave, it shall not be deducted from the employee's accrued leave.

Vacation leave shall be reconciled upon an employee's permanent separation from the Authority. Unused vacation leave is not transferable to retirement service credit. Leave used in excess of earned leave shall be deducted from the employee's final pay. Leave

that is earned but unused at the time of separation shall be added to employee's final pay.

### ***Administrative Leave***

Exempt employees are expected to observe their regular work schedules and perform any further hours needed to satisfactorily execute the duties and responsibilities of their positions without receiving overtime pay. In recognition of the additional time they spend, all full-time exempt employees shall be granted ten (10) days at the start of each fiscal year. Any unused hours shall expire at the end of the fiscal year.

### ***Sick Leave***

The Authority's sick leave policy complies with the Healthy Workplaces/Healthy Families Act of 2014. Sick leave shall be allowed in case of actual sickness of the employee. Sick leave shall be granted only on approval of the General Manager in increments of not less than one hour. If an employee will not be at work as scheduled, they must notify the supervisor within one-half hour of the time to report for work or at the first practical opportunity.

An employee may use a maximum of five (5) days of sick leave each fiscal year for absences caused by the illness or injury of a *family member*. A family member is defined as a child, parent, spouse or registered domestic partner, grandparent, grandchild, sibling, or designated person. A "designated person" under the Healthy Workplaces/Healthy Families Act means a person identified by the employee at the time the employee requests paid sick leave. This definition does not require the person be related by blood, or even a family-equivalent relationship. Use of sick leave for this purpose is intended to apply in serious and unforeseen conditions where the presence of the employee in the home or hospital is required for the care, legal requirement, or health of the family member. Authorization to use additional sick leave beyond the five-day maximum may be granted by the General Manager when exceptional circumstances warrant.

### ***Sick Leave Accrual***

Employees who work thirty (30) days or more within a year shall receive sick leave in accordance with the Healthy Workplace, Healthy Families Act of 2014.

Regular and Temporary Full-time employees accrue sick leave at the rate of four (4) hours per payroll period, up to 96 hours per calendar year. Part-time employees shall accrue sick leave proportionate to their scheduled work hours, with a minimum of 40 hours per year. Sick leave shall be cumulative without limit.

### ***Computing and Recording Sick Leave***

Initial crediting of sick leave shall be based on service computed to the nearest half month. Sick leave records shall be maintained on an hourly basis. On July 1st each year, an employee shall be credited in advance with the annual allowance. After an absence is approved as sick leave, it shall be deducted from the employee's leave balance. If at time

of separation an employee owes the Authority for unearned sick leave, the actual time shall be deducted from their final pay.

### *Medical and Dental Appointments*

Sick leave may be used for medical, dental, therapy or similar purposes for a minimum period of one (1) hour and should not exceed four (4) hours except in unusual circumstances. A maximum of forty (40) hours of sick leave per year may be used for medical, dental or therapy appointments for a family member when the employee's presence is required.

### *Payment for Unused Sick Leave*

CalPERS' sick leave credit benefit is included in the Authority's pension contract. An employee whose effective date of retirement is within four months of separation from employment shall be credited with 0.004 year of service credit for each unused day of sick leave.

Upon the death of an employee prior to separation from employment, the employee's heir(s) or beneficiary(ies) shall receive compensation for sick leave earned but unused by the employee equal to 0.167% of the number of hours of sick leave, times the number of whole months of continuous employment, times the employee's hourly rate of pay at the time of death.

### ***Bereavement Leave***

Full-time regular employees shall be granted bereavement leave with pay not to exceed twenty-four (24) hours, as necessary, upon the occasion of the death of a family member. A family member is defined as a spouse, domestic partner, child, parent, parent-in-law, sibling, grandparent, or grandchild. An employee may also use other available paid time off such as vacation pay, personal leave, sick leave, or compensatory time off during their leave. The General Manager may grant bereavement leave for other relatives on a case-by-case basis. Additional leave for travel purposes not to exceed five (5) calendar days may be granted by the General Manager when circumstances warrant.

### ***Catastrophic Leave***

Full-time regular employees (i.e., excludes temporary, probational, and part-time employees), are eligible to receive catastrophic leave donations in the following circumstances:

- The employee must have exhausted all available leave (i.e., vacation and sick leave, floating holidays).
- The absence must be due to the employee's or their spouse, domestic partner, or child's life threatening or debilitating illness, injury, or condition.
- Use of catastrophic leave must be approved by the General Manager.

Employees may donate vacation leave on a voluntary basis. The employee making the donation must authorize in writing that a designated portion of their accrued vacation may

be transferred from their leave account to the recipient employee's vacation account. Once made, donations are irrevocable.

All donated hours shall be converted to the donor's hourly rate, and the equivalent dollar amount shall be deposited and converted to hours at the recipient's hourly rate. Donors must retain a minimum of eighty (80) hours of their own vacation leave.

### ***Family Leave***

The California Family Rights Act (CFRA) and Family Medical Leave Act (FMLA) entitle eligible employees of covered employers to take unpaid, job-protected leave for certain specified reasons. While EBDA is a covered employer under the CFRA and FMLA, only leave benefits under the CFRA are available for eligible employees. The maximum amount of leave employees may use under this policy is twelve (12) weeks within a 12-month period.

Employees that meet the following conditions are eligible for CFRA leave:

- the employee has worked for EBDA for at least twelve (12) months; and
- the employee worked at least 1,250 hours in the 12 months prior to their leave.

Eligible employees may take CFRA leave for any of the following reasons:

- For the employee's own serious health condition.
- To care for or bond with a newborn child.
- To care for or bond with a child placed with the employee and/or the employee's registered domestic partner for adoption or foster care.
- To care for an immediate family member (spouse, parent, parent-in-law, registered domestic partner, child or registered domestic partner's child of any age, sibling, grandparent, grandchild, or designated person) with a serious health condition. A "designated person" under CFRA means any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave.

### ***Time Off to Vote***

An employee may take time off to vote at the beginning or the end of the shift, whichever provides the most time to vote. The employee may take off no more than two (2) hours without loss of pay, providing that reasonable notice is given to their supervisor.

### ***Jury and Witness Duty***

Leave is provided for employees who are called to serve jury duty or who are summoned to appear as a witness in a judicial proceeding, pursuant to a subpoena or other court order. Employees must notify the Authority as soon as practicable of the need for leave under this policy. Employees will receive time off with regular base pay for the length of service. If an employee does not have to attend court, the employee is expected to report to work. Any jury fees received by an employee shall be remitted to the Authority. Reimbursements for mileage or food may be retained by the employee.

### ***Military Leave***

Any employee who is a member of the Reserve Corps of the Armed Forces of the United States, the National Guard or the National Militia is entitled to a temporary leave while engaged in military duty ordered for purposes of military training, drills, encampment, naval cruises, and special duty or like activity. Such temporary leave does not have to exceed seventeen (17) calendar days including travel time and does not have to be compensated. Military leave shall be granted in accordance with the provisions of State law. All employees entitled to military leave shall give the General Manager an opportunity, within the limits of military requirements, to determine when such leave shall be taken. Military leave may be granted with pay provided employees reimburse the Authority for the amount of compensation, excluding travel and sustenance, which may be earned during the leave period.

### ***Time Off To Appear At School When Required By the School***

All employers must allow a parent or guardian of a pupil to appear at the school when the school has given advance notice. It is not a requirement that the employee be compensated for the time. The employee is required to give reasonable notice to the employer. An employee may take vacation or personal leave.

### ***Disability Leave***

For employee injury or disability falling within the provision of the State Workers' Compensation Disability Act, disability compensation at the rate allowed under said Act shall be basic remuneration during the employee's period of disability. In the case of full-time employees, additional compensation equal to the difference between said employee's regular pay and disability compensation allowance shall be granted not to exceed one year for any one period of incapacity. In the event a waiting period is required before an employee's disability compensation allowance is payable, the employee's regular pay shall be provided during said waiting period.

Compensation for short- and long-term disability leave resulting from employee injury or disability not related to Workers' Compensation is addressed in the Compensation Plan. Authority employees do not pay into the California State Disability Insurance (SDI) Program.

### ***Voluntary Leave of Absence***

The Commission, upon written request of a full-time regular employee (i.e. excludes temporary, probational, and part-time employees), may grant a voluntary leave of absence, without pay, for a period up to six (6) months. Upon written request of the employee, accompanied by justification and assurance of intent to return to duty, such leave of absence may be extended by the Commission another six (6) months, for a total continuous leave not to exceed a period of one (1) year. Leaves hereby authorized shall include educational leave, maternity leave, and leave for any other purpose promoting the good of the service. Upon expiration of such a leave, the employee shall be reinstated to the position held at the time leave was granted. Failure of the employee to report promptly at its expiration, or within 24 hours after notice to return to duty, shall terminate

their right to be reinstated. During such leave an employee shall not earn sick leave or vacation leave, but shall maintain seniority at the time leave was first granted.

If the employee elects to maintain benefits during a voluntary leave of absence, prior to the start of the leave period, the employee shall pay to the Authority an amount equal to 100% of medical, dental, vision and disability insurance premium costs that are due and payable during the scheduled leave period. If the employee elects to suspend or discontinue benefits during a voluntary leave of absence, they may re-enroll during the Open Enrollment period upon return to work.

## **SECTION XIV – EMPLOYEE EDUCATION OR TRAINING**

An employee may be authorized to attend special training courses, seminars or conferences which are determined to be job-related or will enhance the employee's work performance. In addition to receiving leave with pay, the employee may be reimbursed for the cost of registration, tuition, books, supplies or other expenses incurred in attending special training courses, seminars or conferences which are job-related or will enhance work performance.

## **SECTION XV – EMPLOYEE HEALTH AND SAFETY**

### ***Accident Reports***

Any employee involved in an accident (whether involving injury or not) while on the job, must notify their supervisor and complete the required accident report forms within 24 hours of occurrence.

### ***Work Injury or Illness***

If an employee is unable to work as a result of what is believed to be an injury or illness arising out of or in the course of employment, the employee must visit a doctor for examination and the necessary forms shall be prepared for compliance with State laws and compensation insurance. If it is determined that the injury or illness is job-related, no deduction will be made from the employee's sick leave.

Filing a false or fraudulent workers' compensation claim is a violation of Authority policy, and will result in disciplinary action, up to and including immediate termination.

### ***Employee Health***

When, in the judgment of the General Manager, an employee's health or physical condition may have an adverse effect on the performance of the employee's duties, or affect safety or health of fellow employees, the employee may be required to undergo a medical or psychological examination at the expense of the Authority.

On the basis of authoritative medical advice, the General Manager shall determine whether an employee is physically and psychologically incapacitated for the duties of their position and may take whatever action deemed appropriate.

## ***Safety Rules***

All employees shall be expected to comply with all safety rules which may be adopted by the Authority as an integral part of their job duties. Failure to comply with adopted safety rules shall be grounds for disciplinary action.

## ***Safety Equipment***

The Authority shall determine the need for protective clothing and safety equipment for all employees and shall require its use where necessary for the protection of the employee. The Authority will furnish, at no expense to the employee, all protective clothing and safety equipment required for the employee's performance of duties.

## **SECTION XVI – ANTI-HARASSMENT POLICY**

The Authority does not tolerate harassment of any of our employees, customers or clients. Any form of harassment which violates federal, state or local law, including, but not limited to the items listed in the [Non-Discrimination](#) section of the General Provisions in Section II is a violation of this policy and will be treated as a disciplinary matter. For these purposes the term harassment includes slurs and any other offensive remarks or jokes, and other verbal, graphic, or physical conduct. Harassment also includes sexual advances, requests for sexual favors, unwelcome or offensive touching and other verbal, graphic or physical conduct of a sexual nature.

Questions about what constitutes harassing behavior shall be directed to the General Manager or to the Commission Chair.

Harassment shall be immediately reported to the General Manager or to the Commission Chair. The Authority strictly prohibits retaliation of any kind and will not tolerate employees' attempts to hinder internal investigations and/or corrective actions. All complaints of harassment that are reported to management will be looked into as promptly as possible and may be investigated. All complaints of harassment that are reported to management will be treated to the extent allowable by law.

Harassment of our employees in connection with their work by non-employees is also strictly prohibited. Any employee who experiences harassment by a non-employee or who observes harassment of an employee by a non-employee should report such harassment to the General Manager or Commission Chair. Harassment of our customers or clients by our employees is also strictly prohibited. Any violation of this policy will result in appropriate disciplinary action, up to and including termination.

Authority employees are required to complete sexual harassment prevention training and education that meet all requirements outlined by Government Code §12950.1.

## **SECTION XVII – LACTATION ACCOMODATION POLICY**

Per California Senate Bill (SB) 142, the Authority will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break

time already provided to the employee. The employer shall make reasonable efforts to provide the employee with the use of a room, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room may include the place where the employee normally works.

Employees requesting an accommodation under this policy are responsible for communicating their needs to the General Manager. The General Manager will work with the employee to make the appropriate accommodations needed, including allowing for flexible break periods if necessary.

Management will not discriminate or retaliate against any employee for exercising or attempting to exercise their rights under this policy.

If an employee feels that their rights, as described in this Policy, have been violated, they may file a complaint with the California Labor Commissioner.

## **SECTION XVIII – GRIEVANCES**

### ***Definition***

A grievance is any dispute between the Authority and an employee or employees with respect to the meaning, interpretation, application or enforcement of Authority rules and regulations or other terms or conditions of employment. Grievance shall not include actions taken by the Authority in accordance with [Section X](#), Discipline and General Rules of Conduct, hereof.

### ***Policy***

It is the intent of the Authority to anticipate and diminish causes of grievances and to settle any which arise, at the lowest practicable level of supervision and as fairly and promptly as possible. Therefore, time limits have been established between initiation of a grievance and its occurrence and between steps of the procedure. Any grievance not initiated or pursued within these limits will be considered settled on the basis of the last timely demand or answer, unless the time is extended to a definite date by agreement of the Authority and the employee.

Any regular employee (i.e. excludes temporary, probationary, and part-time employees) shall have the right to use this grievance procedure free from restraint, discrimination, pressure or reprisal from any other employee or officer of the Authority. Each employee shall have the right to present the grievance individually or through a designated representative at any step of the procedure. Employees shall have the right to withdraw the grievance at any step in the procedure

### ***Procedure***

If an employee has a grievance which cannot be settled by informal discussion with their immediate supervisor, the employee shall proceed in the following manner:



- Step 1. Present the grievance, in writing, to the General Manager, within ten (10) working days following occurrence of the event on which the grievance is based. The General Manager shall make a thorough investigation of the reported grievance and circumstances surrounding it and render a decision, in writing, to the employee within three (3) working days.
- Step 2. If the employee is not satisfied with the decision in Step 1, they may appeal to the Personnel Committee. Such appeal must be made within five (5) working days after the General Manager's decision is received. The Personnel Committee shall make a thorough investigation and shall arrange for a hearing of the grievance at which both the employee and the Authority shall have the right to call witnesses. The Personnel Committee shall render its decision in writing within five (5) days after close of the hearing.
- Step 3. If the employee is not satisfied with the decision of the Personnel Committee in Step 2, they may appeal to the Commission. Such appeal must be made within five (5) working days after the Personnel Committee's decision is given. The Commission or its appointed representative shall conduct an investigation and hearing within twenty (20) days and shall render a decision in writing. The decision of the Commission shall be final in all grievance proceedings.

## **SECTION XIX – PERSONNEL RECORDS**

Personnel records are maintained in accordance with State and Federal guidelines. The personnel file shall contain, but not be limited to, performance evaluations, as well as other forms, letters, and memoranda addressed to or pertaining to an employee. If an employee refuses to sign a form, letter, or document, the supervisor shall indicate "REFUSED TO SIGN" on the document and shall sign their name as witness to the fact, and the document shall then be placed in the employee's personnel file.

The personnel employment records are confidential. Only administrative staff specifically designated by the General Manager and those persons who are in a supervisory capacity to an employee may review an employee's file. Employees may review their own file upon request by scheduling an appointment with the administrative staff.

## **SECTION XX – WHAT THE AUTHORITY EXPECTS OF YOU**

### ***Attitude***

Every employee should display a positive attitude toward their job. A negative attitude creates a difficult working environment and prevents the Authority from providing quality service.

### ***Business Ethics and Conflict Of Interest***

The Authority requires its personnel to conduct Authority business with integrity and to maintain a high standard of personal conduct in outside activities.

Employees are expected to recognize and avoid activities or investments which involve, or might appear to involve, a conflict of interest. While it is impossible to list in this policy statement every circumstance which may suggest a possibility of conflict of interest, the standards for evaluating such activities or investments set forth in the paragraph below are suggested for use by employees in deciding whether a conflict may exist.

No employee may engage in any outside business activity, pursuit, action or investment which could by its nature or scope (with or without personal gain): be objectively construed as preventing or potentially preventing an impartial discharge of duties; or interfere with the satisfactory performance of assigned duties within the Authority; or reflect a compromise or misuse of Authority information; or adversely affect the interests or reputation of the Authority.

Commissioners and the General Manager are required to attend ethics training classes that meet all requirements outlined by Government Code Section 53234-53235.

### ***Electronic Systems and Media***

East Bay Dischargers Authority's electronic media is provided for employees to perform job functions. Electronic media includes but is not limited to: computers, software, laptops, telephones, cellular phones, electronic mail (e-mail) and internet access. Personal use of the Authority's electronic media shall be kept to a minimum. The Authority reserves the right to access these items at any time with or without prior notice, and the employees should have no expectation of privacy when storing or exchanging information on these devices or system.

All files and records stored on Authority computers are the property of the Authority. Authority computers are for business purposes only. No personal information or personal advertising or soliciting is permitted on our computer system. Use of Authority computers for unauthorized purposes is prohibited.

Authority e-mail is to be used for business purposes only and is considered Authority property. The Authority maintains the right to access these items at any time with or without prior notice, and the employees should not assume that such messages are confidential. Inappropriate or offensive messages are prohibited. Passwords are assigned in complete confidence. Employees are not to share their passwords with anyone. Upon suspecting that someone has learned their password, the employee shall contact the General Manager immediately.

Employees shall conduct Authority business only on their Authority e-mail account, not on personal e-mail accounts.

### ***Telephone, Voice Mail, and Cell Phone Use***

The Authority has a limited number of telephone lines. It is essential that we keep those lines open for business calls. Therefore, employees are to minimize use of the Authority's telephone lines for personal calls. Use of the Authority's voice mail system for personal reasons shall also be kept to a minimum.

The Authority may provide managers with cellular phones to facilitate Authority business. Personal use of the employer-provided cell phone is excludable from the employee's income as a working condition de minimus fringe benefit.

Employees who prefer to use their personal cell phones for business reasons shall be entitled to a tax-free reimbursement in an amount equal to the monthly cost per line for Authority provided cell phones, or the employee's actual cost for their cell phone plan, whichever is lower. The reimbursement shall be paid with the first payroll of every month. The reimbursement amount shall be reviewed every January and updated as needed, to reflect the then in-effect monthly cost per line under the Authority's cellular service plan. The Authority's cellular service plan will also be reviewed periodically to ensure that it is the most cost-effective available.

Employees must comply with submitting data from personal cell phones used for Authority business in the event of a public records request for such information.

### ***Confidentiality***

All records and files of the Authority are property of the Authority and considered confidential. No employee is authorized to copy or disclose any file or record.

Notwithstanding the confidentiality provision, requests for information are subject to the California Public Records Act, Government Code §7920, et seq., and shall be responded to in the manner permitted by law.

### ***Copy Machines and Facsimile***

The facsimile and copy machines are for legitimate business purposes only and should not be used for personal use. Employees are prohibited from using these machines for the purpose of transmitting, receiving or copying materials which may be deemed offensive or insulting. Any employee who receives such materials via facsimile transmission, the mail, or from any other source, should report the transmission immediately to the General Manager.

### ***Gambling***

Gambling is prohibited on Authority property.

### ***Personal Mail***

Employees shall minimize personal mail deliveries to the Authority premises. Mail sent to an employee at the Authority will be opened by office personnel.

Authority postage meters and letterhead may not be used for personal correspondence.

### ***Searches and Inspections***

Employees do not hold any privacy rights in any Authority property. The Authority reserves the right, at all times and without prior notice, to inspect and search any and all

of its property for the purpose of determining whether any policy, rule, or directive has been violated, or when the Authority determines an inspection is necessary for purposes of promoting safety in the workplace or compliance with state and federal laws. These inspections may be conducted during or after business hours and in the presence or absence of the employee. These searches may include, without limitation, workspaces, desks, electronic devices and equipment, cabinets, motor vehicles, and where appropriate non-Authority belongings that are brought onto District property.

All files and records stored on Authority computers are the property of the Authority and may be inspected at any time. Electronic mail and voice mail messages are to be used for business purposes only and are considered Authority property. The Authority may access these items at any time with or without prior notice, and the employee should not assume that such messages are confidential.

### ***Unauthorized Interviews***

From time to time, Authority employees may be contacted by outside parties to discuss Authority business. As a means of protecting employees and the Authority, no unauthorized interviews are permitted to be conducted by individuals representing themselves as attorneys, peace officers, investigators, reporters, or someone who wants to *ask a few questions* regarding Authority business. If an employee is asked questions about the Authority or its current or former employees, the employee is to refer that individual(s) to their supervisor. A decision will then be made as to whether that individual may conduct any interview. Similarly, an employee becomes aware of an unauthorized interview occurring at the Authority, they must immediately notify the General Manager.

This provision is not intended to, nor does it interfere with any employee's ability to speak on matters of public concern; to report suspected harassment, discrimination, retaliation, fraud, misuse of public funds/resources and/or suspected criminal activity; or to engage in any lawful whistleblowing activities.

### ***Whistleblowing***

Notwithstanding the provisions of unauthorized interviews, the Authority will not prevent an employee from disclosing information to a government agency or law enforcement agency when the employee has reasonable cause to believe the information discloses a violation of a state or federal statute or a violation or noncompliance with a state or federal rule or regulation. Furthermore, the Authority will not retaliate against an employee for making such a disclosure or for refusing to participate in an activity that would result in a violation of state or federal statute, or violation or noncompliance with a state or federal rule or regulation. Employees who believe they have been retaliated against shall promptly report such retaliation to the General Manager or Commission Chair.



EAST BAY DISCHARGERS AUTHORITY  
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*A Joint Powers Public Agency*

**ITEM NO. 11**

**REGULATORY AFFAIRS COMMITTEE AGENDA**

**Friday, January 12, 2024**

**1:00 P.M.**

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

**This meeting will be teleconferenced from the following location:  
Guest Parking Area Located on Ocaso Camino, West of and Closest to the  
Intersection of Paseo Padre Parkway**

**Teleconference link: <https://us02web.zoom.us/j/83206858844>  
Call-in: 1(669) 900-6833 and enter Meeting ID number: 832 0685 8844**

**Committee Members: Andrews (Chair); Lathi**

- 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 Watershed Permit for Nutrients**  
(The Committee will receive a status update on negotiation of the Nutrients Watershed Permit.)
- RA6. Adoption of Regulations for Direct Potable Reuse**  
(The Committee will discuss the recently adopted regulations governing water recycling.)
- RA7. Regulatory Pathway Priorities for Nature-Based Shoreline Adaptation Projects**  
(The Committee will discuss a recently published White Paper.)
- RA8. 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

Agenda Explanation  
East Bay Dischargers Authority  
Regulatory Affairs Committee  
January 12, 2024

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>

<b>Next Scheduled Regulatory Affairs Committee Meeting</b> <b>March 18, 2024 at 12:00 p.m.</b>
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## ITEM NO. RA5 UPDATE ON WATERSHED PERMIT FOR NUTRIENTS

### Recommendation

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

### Strategic Plan Linkage

1. **Regulatory Compliance:** Proactively meet or exceed regulatory requirements for protection of the environment and public health.
  - a. Represent EBDA and the Member Agencies' interests by preemptively engaging in development of emerging regulations and permits and advocating for reasonable, science-based decisions.
7. **External Collaboration:** Collaborate with external stakeholders to build strong relationships for joint problem-solving and to expand EBDA's and its Member Agencies' reach.
  - b. Partner with regulators to develop and implement permits and programs leading with science and lessons learned.

### Background

While the loads of nutrients such as nitrogen and phosphorus to San Francisco Bay are higher than other estuaries, the Bay has historically been very resilient, and negative impacts of nutrient enrichment such as eutrophication have not occurred. Scientists believe this resilience to stem at least in part from high turbidity (i.e., the Bay is cloudy); which blocks the light that phytoplankton need to grow; presence of filter-feeding clams, which reduce phytoplankton concentrations; and strong tidal mixing, which reduces nutrient concentrations.

Over the last decade, concerning trends caused the scientific and regulatory community to question whether the Bay's resilience is weakening. Dams in upstream watersheds have decreased the Bay's turbidity by trapping sediments, and clam populations have been on the decline. At the same time, climate conditions are changing.

To begin to proactively address these nutrient-related risks, Bay Area wastewater agencies, through the Bay Area Clean Water Agencies (BACWA), have participated since 2012 in a positive collaboration with a wide variety of stakeholders to implement a Nutrient Management Strategy that focuses on conducting scientific research and modeling to determine the effects of nutrients on the Bay ecosystem, and protective levels of nutrient loading going forward.

BACWA worked closely with staff of the San Francisco Bay Regional Water Quality Control Board (Water Board) to negotiate a Watershed Permit for nutrients, which was issued in 2014 and reissued in 2019.

In late July of 2022, public reports started noting discoloration in the Bay, particularly

around the Oakland estuary and Lake Merritt, a tidally influenced impoundment. Scientists identified the cause to be a harmful algae bloom, which ultimately spread throughout the deep channels of the Central Bay and into the South Bay. The algae species was identified as *Heterosigma akashiwo*, which has been observed intermittently in various locations around the Bay over the past 20 years, after first being detected here in 2002. *Heterosigma akashiwo* can be toxic to fish, although the nature of that toxicity is not well understood. In addition, the bloom caused unprecedented decreases in dissolved oxygen in the Bay. These effects combined to cause significant fish kills around the Bay in areas the bloom was observed.

While it is unclear exactly what triggered this bloom, its timing did correspond with a prolonged period of unusually clear skies in the Bay Area, making available more light than usual for photosynthesis. Scientists believe that the bloom was nitrogen limited, meaning that nitrogen loads to the Bay sustained the bloom and likely contributed to its extent and duration. This conclusion, along with the increased media attention garnered by the event, has led to public and political pressure on wastewater agencies and on the regulators, particularly the Water Board, to act quickly to reduce nutrient loads to the Bay, with a goal of preventing or lessening the impact of future blooms. A brief, and thankfully less consequential, recurrence of the bloom last summer amplified that pressure.

### **Discussion**

EBDA and our partners with BACWA are currently negotiating the third Watershed Permit for Nutrients, which is scheduled for adoption in May 2024. The General Manager provided an overview presentation at the September Commission Meeting. The new permit will include effluent load caps for all wastewater dischargers, including EBDA's combined discharge, expressed as dry season (May-September) average total inorganic nitrogen (TIN) loads in kilograms per day. EBDA and Member Agency staff held meetings with Regional Water Board staff regarding EBDA's load allocation on December 20, 2023 and January 9, 2024. Draft permit language is expected in late January. At the January Committee and Commission Meetings, EBDA's General Manager will provide updates on the current status of negotiations and implications for EBDA's member agencies.



## ITEM NO. RA6 ADOPTION OF REGULATIONS FOR DIRECT POTABLE REUSE

### Recommendation

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

### Strategic Plan Linkage

1. **Regulatory Compliance:** Proactively meet or exceed regulatory requirements for protection of the environment and public health.
  - a. Represent EBDA and the Member Agencies' interests by preemptively engaging in development of emerging regulations and permits and advocating for reasonable, science-based decisions.
5. **Resilience:** Champion resilience for communities and the environment through regional leadership and advancing priority programs to support the Member Agencies in achieving their sustainability goals.
  - a. Promote the Member Agencies' interests by furthering regional support for water recycling and "one water."

### Background

EBDA and its Member Agencies have supported and engaged in Water Recycling since 1979, when the Commission first authorized participation in a Regional Water Reuse Study. Currently, EBDA and its members participate in the following recycled water efforts:

- EBDA continues to supply recycled water from Oro Loma to the former Skywest Golf Course property in support of wildlife at the site.
- San Leandro supplies recycled water for irrigation of the Monarch Bay Golf Course.
- Hayward provides recycled water to the Russel City Energy Center for power plant cooling and also supplies a network of irrigation and industrial customers.
- USD is participating in water recycling studies with regional partners including Alameda County Water District, San Francisco Public Utilities Commission, and Dublin-San Ramon Services District (DSRSD).
- The LAVWMA members have long been leaders in water recycling for irrigation. DSRSD has maxed out its supplies during dry season and has been collaborating with Central Contra Costa Sanitary District to augment wastewater supplies in the summer.

EBDA has also been engaging in regional discussions on promoting collaboration between water and wastewater agencies to facilitate water recycling expansion. This includes championing and planning a workshop entitled, "Advancing Water Reuse in the Bay Area: Exploring Opportunities and Challenges for Interagency Collaboration" in September 2023. Staff is also engaging in efforts by the Alameda County Local Agency Formation Commission (LAFCO) to form and facilitate a Countywide Regional Water and Wastewater Committee.

Water recycling to date in EBDA's service area, and largely across California and the nation, has been for non-potable uses such as irrigation, industrial processes (e.g. cooling), or toilet flushing. Advanced treatment required for non-potable uses varies depending on the use, from simple chlorination of secondary effluent for golf course irrigation, to forms of tertiary treatment for indoor uses.

In Southern California, agencies have practiced forms of indirect potable reuse for decades, most notably Orange County Water District's [Groundwater Replenishment System](#) (GWRS). In indirect potable reuse (IPR), advanced treated wastewater is used to augment potable water supply using some type of natural buffer such as a groundwater aquifer or streambank. For example, the GWRS takes effluent from Orange County Sanitation District, treats it to a higher standard, and injects it into the local groundwater basin to enhance supplies. Water is then treated to drinking water standards when it is extracted.

Increasingly, agencies across the state have begun to explore implementing direct potable reuse (DPR) projects, whereby wastewater is treated to drinking water standards and directly combined with drinking water systems without an environmental buffer. Potable reuse projects, whether indirect or direct, have the advantage of not requiring a separate recycled water distribution system. In highly urbanized communities like EBDA's service area, the most expensive part of a non-potable water recycling project is generally the distribution system, and this can limit the cost-effectiveness or even feasibility of recycled water expansion. Potable reuse therefore has significant potential to allow water recycling to advance more quickly at greater scale. However, one limiting factor for potable reuse has been a lack of regulatory clarity for direct potable reuse projects.

## **Discussion**

On December 19, 2023, the State Water Resource Control Board adopted [regulations](#) governing DPR. The adoption was [heralded](#) by leading water associations as a positive step toward the state truly embracing the "one water" concept. The rules are expected to take effect in April, following action from California's Office of Administrative Law. California is the second state to adopt DPR regulations, following Colorado, which adopted similar regulations in late 2022.

The new regulations define a "Direct potable reuse project" or "DPR project" as "a project involving the planned introduction of recycled water that meets the requirements of this Article either directly into a public water system or into a raw water supply immediately upstream of a water treatment plant." The 62-page regulations require a prescriptive set of advanced treatment requirements including ozonation, biologically activated carbon (BAC), reverse osmosis, and advanced oxidation, followed by additional prescriptive steps for disinfection to ensure pathogen control. Water treated through these processes is generally so clean that minerals needed to be added back in for taste. The regulations also require extensive monitoring, as well as enhanced source control to be conducted upstream of the wastewater treatment plant.

## ITEM NO. RA7 REGULATORY PATHWAY PRIORITIES FOR NATURE-BASED SHORELINE ADAPTATION PROJECTS

### Recommendation

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

### Strategic Plan Linkage

5. **Resilience:** Champion resilience for communities and the environment through regional leadership and advancing priority programs to support the Member Agencies in achieving their sustainability goals.
  - b. Advance concepts for shoreline adaptation and climate resilience.
6. **External Collaboration:** Collaborate with external stakeholders to build strong relationships for joint problem-solving and to expand EBDA's and its Member Agencies' reach.
  - c. Partner with regulators to develop and implement permits and programs leading with science and lessons learned.

### Background

Wetlands, horizontal levees, and other "Nature-based Solutions" (NbS) have the potential to provide water quality improvement through reduction of nutrients and contaminants of emerging concern, creation or restoration of habitat, and protection from sea level rise. As outlined in a November 2023 Regulatory Affairs Committee [Staff Report](#), the Authority has been engaged in several parallel projects that seek to advance NbS concepts along the East Bay shoreline.

One of the most significant challenges to implementation of these innovative approaches to shoreline resilience is permitting. Many of the state and federal regulations governing activity on the Bay shoreline were put in place to protect conditions and habitat that exist today; they are not well-suited to preparing our shoreline for future conditions impacted by climate change and sea level rise.

### Discussion

As part of the same EPA grant that is funding the Authority's work on the [First Mile Horizontal Levee Project](#), a team led by the San Francisco Estuary Partnership (SFEP) has been working to develop regulatory pathways to facilitate permitting and implementation of nature-based shoreline projects. This effort has involved numerous meetings with project proponents and regulatory agency managers to think through where there are road blocks and how to resolve them in a way that ensures environmental protection while allowing for adaptive management. The initial work product from this effort is the attached White Paper: "Highlighting Regulatory Pathway Priorities for Nature-Based Shoreline Adaptation Projects in the San Francisco Bay Area."

The White Paper lays out key drivers for NbS in the San Francisco Bay Area, identifies key advancements and outstanding challenges, and proposes pathways for the regulatory landscape. The White Paper highlights the following messages:

- NbS represent a suite of innovative solutions for communities grappling with complex challenges at the shoreline – climate change adaptation, flood protection, water quality improvements, infrastructure management, habitat protection, enhancement, and restoration.
- Nature-based shoreline adaptation is increasing in pace and scale across the Bay Area, driven by increasing urgency to adapt to climate change and, in response, by the issuance of policy and planning directives at the national, state, and local levels.
- Regulatory agencies are adapting and responding to this new innovative project type. Recent progress includes development of permitting tools, use of programmatic approaches, interagency coordination, and information exchange.
- Challenges still exist within the regulatory landscape, particularly as multiple regulatory agencies must collaborate to achieve shared permitting standards and objectives around NbS, as well as due to the uncertainty associated with innovative NbS projects and the changing climate future they are designed to address.
- Regulations were not written for a changing climate future in which fill into wetland habitats might be necessary and beneficial.
- Further action will be required for NbS projects to advance and to address the many regulatory challenges associated with these project types.
- NbS represent a paradigm shift, and regulatory agencies must be supported to embrace new ways of approaching how project effects are evaluated.

EBDA staff is continuing to participate in the advisory group for this effort, which is now working on developing two additional documents that flow from the White Paper – a Memo that summarizes key messages, and an action-oriented Work Plan that will lay out specific next steps for moving priority initiatives forward.

# Highlighting Regulatory Pathway Priorities for Nature-Based Shoreline Adaptation Projects in the San Francisco Bay Area

## About This Document

Thank you to our funder—the U.S. Environmental Protection Agency, Region 9, San Francisco Bay Water Quality Improvement Fund. This document was developed as part of the Transforming Urban Water Initiative, an interagency initiative led by the San Francisco Estuary Partnership that works to advance on-the-ground implementation of nature-based solutions (NbS) projects. Special thanks to document reviewers and contributors Xavier Fernandez, San Francisco Bay Regional Water Quality Control Board; Jackie Zipkin, East Bay Dischargers Authority; Ethan Lavine and Dominic Maccormack, San Francisco Bay Conservation and Development Commission; Jeremy Lowe, San Francisco Estuary Institute; Jim Mazza, U.S. Army Corps of Engineers; Caitlin Sweeney and Heidi Nutters, San Francisco Estuary Partnership; and Jennifer Siu and Luisa Valiela, U.S. Environmental Protection Agency. The lead consultant on this project was Environmental Science Associates.

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## Purpose and Use of This White Paper

This white paper is intended for use by organizations working toward sea level rise (SLR) solutions and regulatory agencies, to promote discussion and elevate opportunities to advance NbS projects in the San Francisco Bay Area (Bay Area).

Key objectives of this white paper are to:

- Identify the drivers for NbS in the Bay Area.
- Identify key advancements and outstanding challenges related to permitting NbS projects, such as ecotone slopes, horizontal levees, and tidal marsh migration projects.
- Propose pathways for a regulatory landscape that accommodate and are adaptable to NbS projects.

## Background

As summarized in Harris-Lovett et al. (2021), the Bay Area is especially vulnerable to SLR challenges. Mean water levels at the Golden Gate Bridge were 7 inches (18 centimeters) higher in 2018 than in 1900 (OEHHA 2018). Experts expect an additional range of 29–122 inches (73–310 centimeters) of SLR by 2100 (CNRA and OPC 2018).

At the national level, presidential executive orders have been issued to emphasize the need to take actions to address climate change effects, including SLR. Among these orders are the following:

- Executive Order (EO) 13653, “Preparing the United States for the Impacts of Climate Change,” issued November 6, 2013.

- EO 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” issued January 20, 2021.
- EO 14008, “Tackling the Climate Crisis at Home and Abroad,” issued January 27, 2021.
- EO 14057, “Catalyzing Clean Energy Industries and Jobs through Federal Sustainability,” issued December 8, 2021.
- EO 14072, “Strengthening the Nation’s Forests, Communities, and Local Economies,” issued April 22, 2022.
- EO 14096, “Revitalizing Our Nation’s Commitment to Environmental Justice for All,” issued April 21, 2023.

In November 2022, the White House issued a report to the National Climate Task Force encouraging the acceleration of NbS (White House Council on Environmental Quality et al. 2022). Additionally, on October 7, 2020, California Governor Gavin Newsom issued EO N-82-20, which launched the “30x30 initiative” with the goal of conserving 30 percent of California’s land and coastal waters by 2030.

The Bay Area must respond at the speed and scale required to meet the increasingly urgent need to resolve complex challenges at the shoreline—climate change adaptation, water quality improvements, infrastructure management, habitat protection, enhancement, and restoration. To respond effectively, the Bay Area must simultaneously reduce contaminants in treated wastewater and stormwater, restore ecological health to aquatic and coastal ecosystems, and include underrepresented communities in planning and implementation. The region must also secure reliable potable water resources, mitigate SLR, and replace aging infrastructure. A key approach to addressing these challenges is nature-based solutions or NbS (defined below under “Glossary of Terms”). The benefits of NbS include habitat improvement, public access to open space, protection of infrastructure or habitat in the face of rising sea levels, access for traditional cultural uses, and water quality improvement.

Regional initiatives, support, and study of climate change resiliency and nature-based SLR solutions have increased in the past 10 years:

- The *Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California* clarifies the scale of habitat restoration necessary to support endangered marsh species (USFWS 2013).
- The Estuary Blueprint, led by San Francisco Estuary Partnership, maps out the regional actions needed for the San Francisco Estuary, including measures on water, climate change, habitat, and stewardship (San Francisco Estuary Partnership 2022).
- The Adaptation Atlas develops a science-based framework for adaptation strategies at the scale of operational landscape units, utilizing natural processes (SFEI and SPUR 2019).
- The *Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region: Management Plan 2001* (USACE et al. 2001) and various ongoing technical studies have analyzed the efficacy of beneficial reuse of dredged sediment to rebuild wetlands as a critical climate resiliency action.

- BayAdapt convened collaborators to delineate a roadmap for adaptation to SLR. The Bay Adapt Joint Platform focuses on people, information, plans, projects, and progress to catalyze shoreline protection (BCDC 2021).
- The U.S. Army Corps of Engineers (USACE) San Francisco District was named as an Engineering with Nature “Proving Ground” in 2023 (<https://ewn.erdc.dren.mil/proving-grounds/region/san-francisco/>). (NOTE: This is a Civil Works planning and projects initiative, not Regulatory.)
- The San Francisco Bay Regional Water Quality Control Board has amended its basin plan to better reflect the permitting challenges/opportunities for habitat restoration and nature-based shoreline resilience projects (San Francisco Bay RWQCB 2023).
- The San Francisco Bay Joint Venture’s Implementation Strategy identifies habitat needs for fish and wildlife species, identifies projects that will address those needs, and helps identify and achieve funding for those projects, some of which are NbS.
- Various community-based groups are organizing and taking actions. There is importance in building trust and engagement with the community, as highlighted in Harris-Lovett et al. (2021).
- Bay Area wastewater agencies have an interest in shoreline transformation because many of their treatment plants are located in areas vulnerable to SLR. It is also important to utilize NbS for infrastructure to reduce nutrient discharge; reduce discharges of constituents of emerging concern, such as pharmaceuticals; protect wastewater infrastructure and nearby communities from flooding; and potentially employ wastewater effluent as a freshwater source for vegetated habitat.

Funding opportunities for NbS have also expanded in recent years. The Bay Area’s Measure AA, a 2016 voter-approved property tax, provides \$500 million for shoreline protection and restoration projects over 20 years. Since 2008, Region 9 of the U.S. Environmental Protection Agency (EPA) has funded \$71.4 million in grant awards, and in 2023 it invested an additional \$50 million to protect San Francisco Bay watersheds and build climate resilience: the San Francisco Bay Water Quality Improvement Fund. The Federal Emergency Management Agency (FEMA) allocated \$919 million to fund climate hazard mitigation in 2021. The State of California has designated \$3.7 billion to climate resilience projects in the next three years, with \$1.37 billion specifically earmarked for “multi-benefit and nature-based solutions.”

This white paper builds on action items identified in [\*Nature-Based Solutions for Coastal Resilience, Habitat Enhancement, and Water Quality Improvement at the San Francisco Bay Shoreline: Challenges, Solutions, and Next Steps\*](#)<sup>1</sup> published by the San Francisco Estuary Partnership and Bay Area One Water Network (Harris-Lovett et al. 2021). That report synthesizes the input received during a three-day roundtable workshop conducted with representatives from regulatory agencies, community-based organizations, wastewater agencies, academic institutions, and shoreline planning groups. The report identifies the following key challenges for NbS projects:

- Current pathways to permitting NbS projects are complex, expensive, and time-consuming. Regulatory agencies must collaborate to increase transparency, streamline cross-agency planning, and incentivize multi-benefit NbS.

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<sup>1</sup> [https://www.sfestuary.org/wp-content/uploads/2022/07/SFEP\\_NBS\\_Report.070722.pdf](https://www.sfestuary.org/wp-content/uploads/2022/07/SFEP_NBS_Report.070722.pdf)

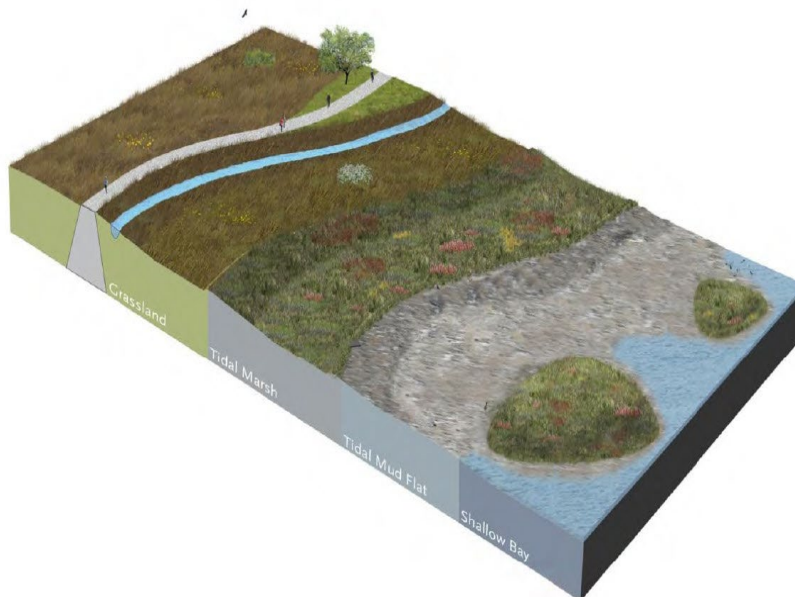
- The voices and lived experience of communities and Tribes have historically been excluded from the planning process, including for NbS. Developing meaningful partnerships and a formalized, capacity-building system for community and tribal engagement will create a sustainable route to improved and expedited project implementation.
- Funding for NbS, especially for implementation, is dispersed and difficult to access. Opportunities for collaborative funding for partnerships, innovations, and pilot projects should be explored and encouraged.
- Working with landowners, multiple agencies, and businesses and involving community members in the process is often slow and cumbersome. Public-private partnerships or new entities (such as joint powers authorities) may be critical mechanisms for addressing the development of multi-benefit solutions, given the complex landscape of land ownership, land use, and infrastructure on the San Francisco Bay shoreline.

### **Case Study: Horizontal Levees—Why Innovation is Hard to Implement**

A horizontal levee (shown graphically here) is one innovative NbS project type being explored in the Bay Area. The first horizontal levee was built in 2018, at the Oro Loma Sanitary District as a proof of concept. Although every project type is different, horizontal levees can include flood protection (that meets current levee standards or not), an ecotone slope, and the use of treated wastewater for subsurface water treatment and irrigation of vegetation.

The ecotone slope for a horizontal levee is often located between the uplands along the levee core and the adjacent tidal marsh habitat. Slopes should be generally flatter than 15:1 to 20:1 (H:V) but may be as steep as 10H:1V, depending on the location and constraints. Shallow surface/subsurface irrigation may occur with treated wastewater, reverse osmosis concentrate, or stormwater. The subsurface treatment zone, consisting of permeable gravels and a labile carbon source, can significantly reduce nutrient loads (primarily nitrogen), as well as contaminants of emerging concern including trace pharmaceuticals and possibly per-and polyfluoroalkyl substances or PFAS.

As an innovative concept with high potential for benefits for people and nature, horizontal levees are an example of a strong and proven project concept that is incredibly difficult to implement in practice. Horizontal levee projects located within existing fringing tidal marsh habitat present unique permitting



**Oblique section through horizontal levee transition zone**  
(ESA PWA, 2013)



complexities and benefits. Permitting complexities arise from the placement of fill materials in waters of the United States or state (e.g., wetland fill) to create the ecotone slope and flood control levee; the range of created and enhanced habitat types including upland, freshwater marsh, tidal marsh, and open water; and the intentional design to enable evolving habitat types in conjunction with SLR. As discussed below, the present regulatory environment does not easily support the permanent loss of existing wetlands, regardless of whether those wetlands will become open water as sea levels rise.

The benefits of horizontal levees are wide-ranging and long-term. Among these benefits are carbon sequestration, environmental justice and equity (disadvantaged communities are disproportionately more vulnerable in low-lying areas and commonly the most in need of SLR protection), recreation opportunities (trails and wildlife viewing overlooks incorporated into flood protection levee designs), protection of wildlife and aquatic resources, and improvement of water quality. The horizontal levee concept has been pilot tested at the Oro Loma Wastewater Treatment Facility in San Lorenzo and the Palo Alto Horizontal Levee will be built in 2024 in partnership with the City of Palo Alto and San Francisco Estuary Partnership. However, a large-scale horizontal levee in a fully tidal environment has yet to be permitted. To advance horizontal levees, additional evaluation is required, involving identification of net benefits to habitat functions and values and community benefits of habitat type conversions that would result from horizontal levee and similar nature-based shoreline projects. The benefits and tradeoffs need to be determined.

## **Navigating Complexities in Project Types and Permitting Landscapes**

The Bay Area's regulatory landscape has always been dynamic and innovative. The call for multi-benefit projects that respond to multiple needs, including SLR adaptation and climate change resiliency, have led to increasingly complex and innovative projects. As communities and project sponsors bring these projects forward, the environmental documentation and permitting landscape have become increasingly complex for all parties.

### ***From Regulatory Coordination to Implementation***

The permitting process for restoration projects in the Bay Area has improved since establishment of the San Francisco Bay Restoration and Regulatory Integration Team (BRRIT) in 2019, in association with the San Francisco Bay Restoration Authority and Measure AA parcel tax funds. This multi-agency coordination effort has successfully approved five restoration projects to date (BRRIT 2022). However, challenges remain for the BRRIT in its efforts to effectively expedite and innovate the permitting process to enable the advancement of complex, multi-benefit habitat restoration and enhancement projects within a reasonable time frame and level of effort.

At the state level, California's 2020 Cutting Green Tape (CGT) Initiative has produced a statewide regulatory compliance pathway for restoration projects to advance in a clearer, more consistent manner. In 2022, this initiative established a statewide programmatic permitting and approval process for eligible restoration projects reviewed by the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), State Water Resources Control Board (State Water Board), and California Department of Fish and Wildlife (CDFW). Multi-benefit projects that result in a net gain of restored or enhanced habitat may be covered by most of the CGT permits listed in the inset box below; however, in

the Bay Area, complex NbS projects are not likely eligible to utilize the CGT permit pathways because the permits have established limits on special-status species impacts (e.g., low species take limits) or due to the nature of the project's multi-beneficial goals.

**California Cutting Green Tape Accelerated Restoration Permits:**

- State Water Board—401 Certification for Small Habitat Restoration Projects and Statewide Restoration General Order
- CDFW—Habitat Restoration and Enhancement Act (Lake and Streambed Alteration Agreement and California Endangered Species Act for small projects), Restoration Consistency Determinations, Restoration Management Species Take Permits
- USFWS—Statewide Restoration Programmatic Consultation
- NMFS—Restoration Biological Opinions (North Coast, Central Coast, Central Valley, South Coast)
- California Coastal Commission—National Oceanic and Atmospheric Administration (NOAA) Federal Consistency Determinations (North, Central, South Coast)
- USACE—Nationwide Permits 27, 33, 54: Aquatic Habitat Restoration, Temporary Construction, Living Shorelines, respectively

Further, although the CGT permits are coordinated as a statewide effort, the project-specific applicability of CGT permits is evaluated by regional regulatory representatives of regional water quality control boards (RWQCBs), NMFS, USFWS, and CDFW; as a result, some projects may not be approved to use the CGT permits. The headquarters offices for each CGT agency are monitoring regional application of the CGT permits, but it is yet to be seen whether and how consistent application of the CGT permits will be implemented at the regional level. For example, species take limits in the USFWS Restoration Programmatic Biological Opinion (PBO) (USFWS 2022) are established as statewide take limits per year, not per-project take limits, so USFWS headquarters is tracking take occurrences authorized by the Restoration PBO statewide but has not made the information publicly accessible. Locally, the San Francisco Bay-Delta USFWS office has declined use of the Restoration PBO because of the statewide take limit and other conditions. Additionally, the BRRIT is actively tracking which projects are utilizing the CGT permits.

***Placement of Fill for Net Benefit Nature-Based Solutions Projects***

Lack of a clear pathway for regulatory implementation of NbS projects requiring substantial fill into wetland and special-status species habitat is a real challenge. These regulations were not written for a changing climate future during which fill into habitat might be necessary and beneficial. By the nature of their innovative design and placement, NbS projects such as horizontal levee projects will directly affect (both positively and negatively) wetland and special-status species habitats to fulfill long-term project objectives. These projects can conflict with regulatory mandates to avoid impacts on wetlands and special-status species. In many cases, when assessing whether NbS projects are appropriate and permissible, existing regulatory analysis does not consider the permanent loss of existing aquatic

habitats from future SLR elevations (i.e., the no project scenario), especially in land constrained by urban-shoreline interfaces:

- The Clean Water Act (CWA) regulations provide a basic structure for appropriate analysis of project impacts, no matter the complexity and scale, via the CWA 404(b)(1) Guidelines. In the absence of specific NbS guidance, regional regulatory offices have discretion in how they interpret the guidelines. This is a challenging assessment because regulators must make determinations on risk and uncertainty with limited experience and information on NbS projects and future aquatic resources. In addition to project-specific information, regulators should use outcomes from pilot projects, and analogues from other regions to inform permitting assessments.
- Although federal regulatory agencies must consider cumulative and reasonably foreseeable future impacts (Code of Federal Regulations Title 40, Part 230, Section 404(b)(1)), there is no unified regional guidance to consider future wetlands that will develop because of SLR as a sole offset for the project under permit review.
- In preparation for future SLR conditions, the state regulatory agencies, the San Francisco Bay RWQCB and San Francisco Bay Conservation and Development Commission (BCDC), have confirmed that existing policies can accommodate fill for habitat in future inundated areas where determined to be appropriate. *Fill placed in waters of the state that results in the conversion of wetlands to uplands will not require mitigation if these areas are inundated by 2050 and are converted back to waters of the state again* (BRRIT 2021). Further, Jim Mazza (USACE San Francisco District) notes: *Regionally, regulatory agencies governing impacts to open waters and wetlands subject to SLR, should agree on a single SLR prediction model so that we're all using the same timeline when evaluating temporal loss impacts. There will be challenges in extending monitoring timeframes to see if the SLR predictions do follow model guidance.*
- As implemented by USACE and the San Francisco Bay RWQCB, the CWA Section 404(b)(1) Guidelines require that the final project alternative chosen be the Least Environmentally Damaging Practicable Alternative (LEDPA). This presents another challenge for NbS projects, which are typically location dependent. Engineering design alternatives can reduce aquatic impacts; for example, building a smaller footprint floodwall would be the LEDPA when compared to a horizontal levee that would fill more existing tidal marsh. However, complex NbS with substantial fill into habitats might not be considered the LEDPA when compared against alternatives with less fill (i.e., the floodwall example). However, the overall purpose and need for an NbS project likely has more than one objective. The LEDPA requirement presents an opportunity to consider a range of project benefits, such as habitat resiliency, equity, flood protection, and other considerations for overall benefit. Agencies must consider reasonably foreseeable conditions; some conditions such as SLR are more difficult to nail down. Future conditions must be compared to existing conditions and net future benefits must be evaluated fairly, despite uncertainty in the analysis.
- In both federal and state regulations (e.g., the CWA regulations, California's State Water Board Procedures), there is a required sequence for determining whether fill can be permitted. First, impacts must be avoided; then measures must be taken to minimize impacts, and finally compensatory mitigation is provided for any unavoidable resource impacts. A robust project purpose and need statement and a design integrating avoidance and minimization measures are necessary and result in better environmental outcomes. Ideally, this can result in more practical and cost-efficient projects. However, in many proposed projects, elements of the compensatory

mitigation package are developed before determination of a complete purpose and need and subsequent alternatives analysis. Landscape site analysis for NbS projects is a key aspect of assessing appropriate alternatives.

- Compensatory mitigation for wetland loss is costly and options in the Bay Area are limited. Although regulatory agencies have discretion on accepting mitigation options, compensatory mitigation is often driven by the CWA regulations' preference hierarchy, which prioritizes mitigation banks over other options, such as in-lieu fees (ILF) and CDFW-sponsored Regional Conservation Investment Strategy programs and mitigation credit agreements. The challenge in the Bay Area is that federally and state-approved wetland mitigation banks with available credits are limited, thus requiring project sponsors and regulatory agencies to explore other opportunities and concur on a solution, which takes time.
- Regulatory project review requires extensive information about project design, goals, impacts, and outcomes. Innovative NbS projects are being asked to provide additional design, risk, and impact analysis information that can be costly and premature for project sponsors to address. Multiple agency requests often lack coordination among the agencies for consistency or standardization, and a clear explanation of the concern and direct link to the approval requirements. Further, regulators sometimes suggest tools like the *Aquatic Resource Type Conversion Framework*, Version 2.0 (ARTC framework) (Stein et al. 2022) and California Rapid Assessment Method (CRAM) assessments to support their decision-making on multi-benefit projects. However, completing these assessments requires additional budget and planning effort for the project sponsor, which is feasible, but no clarity is provided regarding whether the assessment outcomes will be used and address the regulatory agencies' concerns.<sup>2</sup>
- Grant funding budgets for NbS and other restoration projects are typically developed well in advance of regulatory agency engagement; thus, the permitting phases of grant-funded projects do not include the level of effort needed to complete these types of evaluations. By the time pre-application meetings with regulatory agency representatives are held, the project budgets have been solidified; as a result, when project sponsors are pressed to respond to agency requests for additional project analysis or surveys, the sponsor's ability to respond is often limited by funding, which can result in project delays. If additional analysis and documentation, such as conducting the ARTC framework analysis, is necessary to complete regulatory agency review of NbS project effects and benefits, the application process should be clarified so that project sponsors can adequately plan and procure funding in advance of the project permitting phase. Further, regulatory agencies could consider providing time to agency staff to conduct in-house evaluations using innovative tools based on the standard application requirements to support the project sponsor's efforts and ensure that public grant funds are spent effectively. For example, the ARTC framework suggests that either the project sponsor or reviewing agency can complete the analysis.

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<sup>2</sup> The ARTC framework provides an analytical structure to assess functions at the site-specific, landscape, and regional levels to determine overall impacts and benefits of anticipated wetland conversion, while the CRAM assessment is used primarily to evaluate existing overall wetland condition. Both tools provide semi-quantitative information. The ARTC framework requires additional analysis but can utilize existing data (i.e., no field sampling required); additional analysis time to run the ARTC framework can be anywhere from 15 to 40 hours of staff time. The CRAM assessment procedure is a field-based assessment that can be conducted by two people in one day; the procedure requires specialized training to conduct the surveys.

### ***The Challenge for Implementers—Feasibility and Risk***

Project sponsors must find a cost/benefit balance. They must determine whether these projects are feasible, considering the complex challenges and unclear pathways for implementing the projects. Further, clear funding for construction is not in place for many projects.

As alluded to previously, baseline information needs for these innovative projects will be higher than for traditional hardscape approaches, so NbS will need more permitting guidance, design flexibility, and upfront adaptation planning. Perhaps this could include incentives for avoidance and minimization of impacts (and thus a lower compensatory mitigation burden) and for a project that results in an overall beneficial outcome. Funding for nature-based shoreline projects from federal, state, and local grants could be jeopardized by substantially high compensatory mitigation requirements. (Grant funding may be repealed if the project's mitigation requirements disqualify the project from receiving those funds.)

### ***Monitoring***

Adaptive monitoring can be a critical feedback mechanism for innovative projects and is often required by regulators. Monitoring can assist in reducing the risk and uncertainty associated with NbS construction and long-term maintenance and management. Monitoring can be costly and project sponsors are generally unsure how much monitoring is warranted to ensure the correct level of data directly applicable to project performance criteria. Determining the appropriate monitoring indicators, scale, frequency of occurrence, and parameters for regional monitoring versus project-specific monitoring is necessary for both project sponsors and regulators. The Wetland Regional Monitoring Program, currently under development, is working to address this need in tidal wetlands through an interagency programmatic approach, bringing together both regulators and project sponsors. Then there is the issue of whether the intended outcome that is being monitored is successful, and whether the project may need adaptive management actions, which may be highly variable and unplanned for, and require regulatory agency approval and additional capital investment.

## **Future Opportunities to Advance Nature-Based Solutions**

In order to address the challenges described here, a range of strategic actions will be required. The opportunities described here are informed by a [Transforming Shorelines Collaborative](#) meeting dedicated to this topic in March 2023, as well as continued discussion and coordination with partners. Potential opportunities to advance NbS projects include:

- Clearly identify regulatory and technical issues and provide support to agencies for problem-solving and innovative decision-making:
  - Provide responsive technical assistance to regulatory and resource agencies (EPA, USACE, the San Francisco Estuary Partnership, CDFW, the State Water Board and San Francisco Bay RWQCB, BCDC, USFWS, NOAA-NMFS, and others) and streamline technical requests to project sponsors through the BRRIT and other interagency bodies.
  - Leverage agency-wide successes for better cross-agency permit streamlining. For example, the USFWS 2023 PBO for restoration projects will expedite the federal Endangered Species Act Section 7 consultation process for USACE permits in California.

- Encourage pilot projects in the Bay Area. Research relevant regulatory and technical analogues in other parts of the nation, and actively seek collaboration with USACE’s Engineering with Nature initiative on NbS effectiveness research.
- Increase the capacity of regulatory agency staff. Provide regulatory agencies with more staff, effective training, and empowerment to efficiently advance evolving needs in the project review process.
- Explore successes from other states, such as Virginia, which requires living shoreline approaches to address shoreline erosion management (Virginia Code Section 28.2-104.1) and enables expedited permitting for living shorelines as an incentive. Further, Virginia Code Section 28.2-1301 establishes guidelines for tidal wetlands permits that take SLR into account—the only state in the country with this authority—and in 2020, the state mandated that projects up to 100 feet upland and adjacent to tidal wetlands must address coastal resilience and adaptation to SLR and climate change (Virginia Code Section 62.1-44.15:72).
- Explore permitting pathways at various scales, such as the operational landscape unit (OLU) or sub-regional scale. Certain permitting considerations related to net-benefit projects and tradeoffs may be better suited at this scale. For example, project proponents might consider a permitting strategy for an entire OLU that considers the balance between open water and wetland fill and establishment of new multi-beneficial habitat.
- Find the right forums to advance permitting conversations:
  - Convene a regulatory working group to foster a proactive, solution-oriented dialogue about where there is space to shift the regulatory landscape. Possible partners: California Natural Resources Agency, others.
  - Identify and engage regulatory agency staff with both interest/expertise and decision-making capacity to champion and advance permit problem-solving for NbS actions, both internally within their agencies and externally with other agencies. Example: BCDP’s new climate adaptation specialists.
  - Engage a broad range of contributors in these discussions, including project proponents.
- Apply an analytical approach to evaluate net-benefit projects:
  - Ensure that purpose and need statements fully elucidate the “why” of projects: Why does the project need to be built in wetlands? Why can it not be built landward? Where is the most appropriate location and what are the project benefits in areas with rising marsh elevation and constrained marsh migration? Clearly tie in the project’s needs with regional plans (e.g., Adaptation Atlas, shoreline plans, Bay Habitat Goals) that identify priority areas for NbS projects based on elevation and other relevant factors.
  - Understand the time horizon for establishing an impact-to-benefit balance and advancing/spotlighting different projects for development.
  - Explore the right scale at which to advance permitting for NbS projects. Integrate existing and developing regional shoreline plans into watershed-based or OLU considerations.
  - Leverage USACE Civil Works, FEMA, and NOAA approaches to comprehensive benefit analyses that could be evaluated for application to NbS projects like horizontal levees. Evaluate

regionally specific carbon sequestration benefits, such as the Dutch Slough Restoration Project.

- Use innovative approaches to address near-term and long-term regulatory constraints:
  - Establish regional- or sub-regional-scale permits, such as a focused CGT program for the Bay Area. Example outcomes: USACE 404 Regional General Permit (RGP) and corresponding 401 General Order for projects identified in OLU or similar sub-regional scale plans, PBOs for bay-specific species/habitats modeled from the statewide PBOs, BCDC Regionwide Permit, and establishment of a one-stop permit application form. The goal is to streamline the permit process for similar nature-based shoreline horizontal levee/ecotone slope projects.
    - Identify local sponsor(s) and funding to establish San Francisco regionwide permits. For example, USACE could initiate an RGP itself or an entity or group of participants could apply for an RGP, and the RGP would trigger collaboration with other federal and state agencies.
  - Request the development of a joint USACE/EPA 404 guidance document reinforcing consideration of future climatic conditions (like SLR) in the 404(b)(1)/LEDPA process, as well as innovative avoidance and minimization measures to reduce mitigation requirements. The goal is to overcome unnecessary regulatory hurdles to allow nature-based shoreline SLR adaptation projects to proceed in an environmentally sound and cost-effective manner.
    - Convey awareness and highlight key issues to USACE and EPA headquarters, as well as appropriate members of California’s congressional delegation and the U.S. Congress as a whole, and other policy change advocates.
  - Explore modification of the USACE Nationwide Permit Program. Although this is an effective program that streamlines the permitting process for many project types, the current suite of nationwide permit options does not cover horizontal levee projects. For example, the current Nationwide Permit Number 27 (Aquatic Habitat Restoration, Enhancement, and Establishment Activities) does not authorize conversion of wetlands to uplands, nor does it authorize the conversion or relocation of tidal waters or wetlands to other aquatic uses. The next round of updates to the Nationwide Permit Program will be in 2026 and a wider range of NbS project types should be considered.
- Implement broader approaches for compensatory mitigation.
  - Support local ILF programs, such as the future San Francisco Bay ILF program in progress by Ducks Unlimited.
  - Support the application of mitigation credit agreements.
  - Explore the potential for regional mitigation banks.

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## Glossary of Terms

This white paper uses the following terms:

- **Adaptation (climate change)**—Adjustment in natural or human systems to a new or changing environment. Adaptation to climate change refers to adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities (EPA 2016).
- **Adaptive management**—A process of iteratively planning, implementing, and modifying strategies for managing resources in the face of uncertainty and change. Adaptive management involves adjusting approaches in response to observations of their effect and changes in the system brought on by resulting feedback effects and other variables (IPCC 2014).
- **Ecotone slope**—A wide, gently sloped or ramped vegetated terrace on the bay side of a levee above the tidal marsh. Ecotone slopes stretch from the levee crest to the marsh surface and can provide wetland/upland transition zone habitat when properly vegetated with native clonal grasses, rushes, and sedges. They can attenuate waves, provide high-tide refuge for marsh wildlife, and allow room for marshes to migrate upslope with SLR (Oro Loma Sanitary District 2015).
- **Horizontal levee**—An engineered sloped subsurface treatment wetland built between coastal levees and tidal marshes; essentially an ecotone levee that incorporates nature-based treatment of wastewater effluent (Harris-Lovett et al. 2021).
- **Multi-benefit projects**—“Planned, designed, implemented, and maintained with the intended purpose of providing two or more benefits or of meeting two or more objectives... these benefits can include: flood reduction, water supply, water quality, water treatment, habitat enhancement, aesthetics, and recreation.” SLR adaptation is another important potential benefit (North Bay Watershed Association 2008).
- **Nature-based solutions (NbS)**—As defined by the International Union for Conservation of Nature, “actions to protect, sustainably manage and restore natural or modified ecosystems that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits” (IUCN 2016).

This white paper uses the following acronyms and other abbreviations:

Acronym or Abbreviation	Definition
ARTC framework	<i>Aquatic Resource Type Conversion Framework</i> , Version 2.0
Bay Area	San Francisco Bay Area
BCDC	San Francisco Bay Conservation and Development Commission
BRRIT	San Francisco Bay Restoration and Regulatory Integration Team
CDFW	California Department of Fish and Wildlife
CGT	Cutting Green Tape
CRAM	California Rapid Assessment Method
CWA	Clean Water Act
EO	Executive Order
EPA	U.S. Environmental Protection Agency
FEMA	Federal Emergency Management Agency
ILF	in-lieu fee(s)
LEDPA	Least Environmentally Damaging Practicable Alternative
NbS	nature-based solutions
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
OLU	operational landscape unit
PBO	Programmatic Biological Opinion
RGP	Regional General Permit
RWQCB	Regional Water Quality Control Board
SLR	sea level rise
State Water Board	State Water Resources Control Board
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service

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EAST BAY DISCHARGERS AUTHORITY  
2651 Grant Avenue  
San Lorenzo, CA 94580-1841  
(510) 278-5910  
FAX (510) 278-6547

*A Joint Powers Public Agency*

## **ITEM NO. 12**

### **FINANCIAL MANAGEMENT COMMITTEE AGENDA**

**Wednesday, January 17, 2024**

**8:00 A.M.**

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

**This meeting will be teleconferenced from the following location:  
Hyatt House Lobby, 2719 K Street, Sacramento, CA**

**Teleconference link: <https://us02web.zoom.us/j/81102525303>  
Call-in: 1(669) 900-6833 and enter Meeting ID number: 811 0252 5303**

**Committee Members: Simon (Chair); Andrews**

- FM1. Call to Order**
- FM2. Roll Call**
- FM3. Public Forum**
- FM4. Disbursements for December 2023**  
(The Committee will review the Lists of Disbursements.)
- FM5. Treasurer's Report for December 2023**  
(The Committee will review the Treasurer's Report.)
- FM6. FY 2024/2025 Budget Schedule**  
(The Committee will review the schedule for development of the Authority's annual budget.)
- FM7. Motion Approving Revisions to the Authority's Electronic Signature Policy**  
(The Committee will consider the motion.)
- FM8. 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

Agenda Explanation  
East Bay Dischargers Authority  
Financial Management Committee  
January 17, 2024

alternative format, please contact the Juanita Villasenor at [juanita@ebda.org](mailto:juanita@ebda.org) or (510) 278-5910. 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>.

<b>Next Scheduled Financial Management Committee is Wednesday, February 14, 2024 at 8:00 a.m.</b>
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**ITEM NO. FM4 DISBURSEMENTS FOR DECEMBER 2023**

Disbursements for the month of December totaled \$1,529,173.77.

Reviewed and Approved by:

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Fred Simon, Chair	Date
Financial Management Committee	

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Jacqueline T. Zipkin	Date
Treasurer	

# EAST BAY DISCHARGERS AUTHORITY

## List of Disbursements

December 2023

Check #	Payment Date	Invoice #	Vendor Name	Description	Invoice Amount	Disbursement Amount
26331	12/15/2023	WD-0230198	STATE WATER RESOURCES CONTROL BOARD	ANNUAL PERMIT FEES FOR EBDA COMMON OUTFALL	685,195.00	685,195.00
26342	12/27/2023	041818	PUMP REPAIR SERVICE	HEPS EFFLUENT PUMP REPLACEMENT	373,362.50	373,362.50
26344	12/27/2023	003047	UNION SANITARY DISTRICT	O&M - OCT	52,696.05	104,093.19
26344	12/27/2023	003045	UNION SANITARY DISTRICT	O&M - SEP	51,397.14	
26319	12/15/2023	351859	CITY OF HAYWARD	O&M - QUARTERLY JUL-SEP	91,951.69	91,951.69
26337	12/27/2023	20007	DW NICHOLSON	OLEPS EMERGENCY OUTFALL WEIR	46,034.15	48,532.00
26337	12/27/2023	20018	DW NICHOLSON	OLEPS EMERGENCY OUTFALL WEIR	2,497.85	
26320	12/15/2023	394175	CITY OF SAN LEANDRO	O&M - OCT	22,933.69	22,933.69
26340	12/27/2023	2667	HORSPOOL & ROMINE MFG CO INC	OLEPS WET WELL GATE REPAIR	13,615.88	16,537.51
26340	12/27/2023	2666	HORSPOOL & ROMINE MFG CO INC	OLEPS WET WELL GATE REPAIR	2,921.63	
26323	12/15/2023	191207	ENVIRONMENTAL SCIENCE ASSOCIATES	FIRST MILE PROJECT WORK ORDER NO. 3	15,701.25	15,701.25
26338	12/27/2023	Sep-23	DEBORAH QUINN	ACCOUNTING SERVICES - SEP	12,363.31	12,363.31
26326	12/15/2023	19421	PACIFIC ECORISK	NPDES TOXICITY TESTING	5,523.00	5,523.00
26325	12/15/2023	211229	MEYERS NAVE	LEGAL SERVICES - OCT	4,150.30	4,881.70
26325	12/15/2023	211230	MEYERS NAVE	LEGAL SERVICES - BRINE PROJECT	731.40	
26335	12/27/2023	55429	CALCON	MDF SERVICES	2,772.02	4,166.32
26335	12/27/2023	55430	CALCON	SCADA SERVICES	1,394.30	
26327	12/15/2023	SW240193985	PETERSON POWER SYSTEMS	OLEPS GENERATOR SERVICE	3,937.58	3,937.58
26332	12/15/2023	4246-0445-5568-7627	US BANK	PURCHASING CARD EXPENSES	2,082.64	2,082.64
26334	12/27/2023	1219-23	AFFORDABLE PAINTING SERVICE INC	SKYWEST PAINTING	2,000.00	2,000.00
26322	12/15/2023	2580	CROPPER ACCOUNTANCY	AUDITING SERVICES	1,750.00	1,925.00
26322	12/15/2023	2584	CROPPER ACCOUNTANCY	AUDITING SERVICES	175.00	
26316	12/15/2023	0000332004	BLACKBAUD	ACCOUNTING SOFTWARE SUBSCRIPTION AMENDMENT	1,641.25	1,641.25
26343	12/27/2023	16040	REGIONAL GOVERNMENT SERVICES	MANAGEMENT AND ADMINISTRATIVE SERVICES	1,480.00	1,480.00
26318	12/15/2023	8418	CAYUGA INFORMATION SYSTEMS	IT SERVICES	1,050.00	1,050.00
26317	12/15/2023	714702	CALTEST	LAB TESTING SERVICES	889.70	889.70
26330	12/15/2023	1001649288	STATE COMPENSATION INSURANCE FUND	WORKERS COMPENSATION	878.00	878.00
26341	12/27/2023	00013.11-19	LARRY WALKER ASSOCIATES	PROFESSIONAL SERVICES - WORK ORDER NO. 2	305.00	305.00
26339	12/27/2023	10110000001	EBMUD	WATER & SEWER SERVICE, MDF	247.98	247.98
26329	12/15/2023	CD_000707049	RINGCENTRAL INC	DIGITAL PHONE SERVICE	212.60	212.60
26328	12/15/2023	3106414215	PITNEY BOWES INC	QUARTERLY LEASING CHARGE FOR DIGITAL MAILING SYSTEM	150.55	150.55
26321	12/15/2023	54792	COMPUTER COURAGE	WEBSITE HOSTING	150.00	150.00
26324	12/15/2023	9987	MBC CUSTODIAL SERVICES INC	JANITORIAL SERVICES	130.00	130.00
26333	12/15/2023	9950626562	VERIZON WIRELESS	WIRELESS PHONE SERVICES	88.38	88.38



**EAST BAY DISCHARGERS AUTHORITY**  
**List of Disbursements**  
**December 2023**

Check #	Payment Date	Invoice #	Vendor Name	Description	Invoice Amount	Disbursement Amount
26336	12/27/2023	3954631	CALTRONICS	COPIER USAGE AND MAINTENANCE	73.91	73.91
<b>TOTAL CHECK PAYMENTS</b>					<b>1,402,483.75</b>	<b>1,402,483.75</b>
<b>ELECTRONIC PAYMENTS</b>						
	12/04/2023	5105948980-0	PG&E	GAS & ELECTRIC SERVICE	33,096.14	33,096.14
	12/29/2023	51708649	UNIVAR SOLUTIONS USA, INC	SODIUM BISULFITE	9,899.54	9,899.54
	12/29/2023	51680756	UNIVAR SOLUTIONS USA, INC	SODIUM BISULFITE	9,640.01	9,640.01
	12/06/2023	100000017353970	CALPERS	HEALTH PREMIUMS - DEC	7,630.03	7,630.03
	12/04/2023	100000017320815	CALPERS	PENSION CONTRIBUTION, CLASSIC 11/16 - 30/2023	5,710.87	5,710.87
	12/19/2023	100000017350648	CALPERS	PENSION CONTRIBUTION, CLASSIC 12/01 - 15/2023	5,710.87	5,710.87
	12/04/2023	6243382	MISSION SQUARE	DEFERRED COMPENSATION 11/30/2023	2,134.47	2,134.47
	12/19/2023	6728101	MISSION SQUARE	DEFERRED COMPENSATION 12/15/2023	2,134.47	2,134.47
	12/06/2023	2312223878	INTERMEDIA.NET	EMAIL EXCHANGE HOSTING SERVICE	99.40	99.40
<b>TOTAL ELECTRONIC PAYMENTS</b>					<b>76,055.80</b>	<b>76,055.80</b>
<b>PAYROLL</b>						
			ADP, LLC	PAYROLL PERIOD: 12/01-15/2023	23,802.75	23,802.75
			ADP, LLC	PAYROLL PERIOD: 12/16-31/2023	26,661.55	26,661.55
			ADP, LLC	PAYROLL FEES, 11/16-30/2023	92.06	92.06
			ADP, LLC	PAYROLL FEES, 12/01-15/2023	77.86	77.86
<b>TOTAL PAYROLL</b>					<b>50,634.22</b>	<b>50,634.22</b>
<b>TOTAL DISBURSEMENTS</b>					<b>1,529,173.77</b>	<b>1,529,173.77</b>

**ITEM NO. FM5 TREASURER'S REPORT FOR DECEMBER 2023**

The cash balance as of December 31, 2023 is \$3,461,594.15. EBDA's LAIF balance is \$1,662,936.88, and the average monthly effective yield for December is 3.929%. EBDA's CAMP balance is \$1,526,189.59, and CAMP's 7-day yield is 5.55%.

**Approval is recommended.**

**EAST BAY DISCHARGERS AUTHORITY  
TREASURER'S REPORT  
December 31, 2023**

FUND	DESCRIPTION	BEGINNING CASH BALANCE	DEBITS (INCREASE)	CREDITS (DECREASE)	ENDING CASH BALANCE
12	OPERATIONS & MAINTENANCE	1,371,189.05	-	384,469.81	986,719.24
13	PLANNING & SPECIAL STUDIES	735,506.33	-	700,896.25	34,610.08
14	RECLAMATION O & M (SKYWEST)	66,506.99	-	2,250.00	64,256.99
15	BRINE ACCEPTANCE	99,114.14	66,365.59	1,036.40	164,443.33
31	RENEWAL & REPLACEMENT	2,645,117.54	6,968.28	440,521.31	2,211,564.51
TOTALS		4,917,434.05	73,333.87	1,529,173.77	3,461,594.15

Dec-23  
1/2/2024

SUPPLEMENTAL TREASURER'S REPORT

DATE	TRANSACTION	RECEIPT	DISBURSEMENT CHECKING	DISBURSEMENT PAYROLL	PAYROLL TRANSFER	LAIF	CAMP	WELLS FARGO CHECKING BALANCE	WELLS FARGO PAYROLL BALANCE	LAIF BALANCE	CAMP BALANCE	TOTAL CASH
11/30/23	BALANCE							959,174.76	76,101.10	2,362,936.88	1,519,221.31	4,917,434.05
12/01/23	DIVIDENDS	6,968.28					6,968.28	959,174.76	76,101.10	2,362,936.88	1,526,189.59	4,924,402.33
12/04/23	ELECTRONIC BILL PAY		2,134.47					957,040.29	76,101.10	2,362,936.88	1,526,189.59	4,922,267.86
12/04/23	ELECTRONIC BILL PAY		5,710.87					951,329.42	76,101.10	2,362,936.88	1,526,189.59	4,916,556.99
12/04/23	ELECTRONIC BILL PAY		33,096.14					918,233.28	76,101.10	2,362,936.88	1,526,189.59	4,883,460.85
12/06/23	ELECTRONIC BILL PAY		7,630.03					910,603.25	76,101.10	2,362,936.88	1,526,189.59	4,875,830.82
12/06/23	ELECTRONIC BILL PAY		99.40					910,503.85	76,101.10	2,362,936.88	1,526,189.59	4,875,731.42
12/08/23	PAYROLL FEES			92.06				910,503.85	76,009.04	2,362,936.88	1,526,189.59	4,875,639.36
12/12/23	TRANSFER					(700,000.00)		1,610,503.85	76,009.04	1,662,936.88	1,526,189.59	4,875,639.36
12/12/23	DEPOSIT - CARGILL	66,365.59						1,676,869.44	76,009.04	1,662,936.88	1,526,189.59	4,942,004.95
12/14/23	PAYROLL			23,802.75				1,676,869.44	52,206.29	1,662,936.88	1,526,189.59	4,918,202.20
12/15/23	DISBURSEMENT		839,322.03					837,547.41	52,206.29	1,662,936.88	1,526,189.59	4,078,880.17
12/19/23	ELECTRONIC BILL PAY		5,710.87					831,836.54	52,206.29	1,662,936.88	1,526,189.59	4,073,169.30
12/19/23	ELECTRONIC BILL PAY		2,134.47					829,702.07	52,206.29	1,662,936.88	1,526,189.59	4,071,034.83
12/22/23	PAYROLL FEES			77.86				829,702.07	52,128.43	1,662,936.88	1,526,189.59	4,070,956.97
12/27/23	DISBURSEMENT		563,161.72					266,540.35	52,128.43	1,662,936.88	1,526,189.59	3,507,795.25
12/28/23	PAYROLL			26,661.55				266,540.35	25,466.88	1,662,936.88	1,526,189.59	3,481,133.70
12/29/23	ELECTRONIC BILL PAY		9,899.54					256,640.81	25,466.88	1,662,936.88	1,526,189.59	3,471,234.16
12/29/23	ELECTRONIC BILL PAY		9,640.01					247,000.80	25,466.88	1,662,936.88	1,526,189.59	3,461,594.15

TOTAL	73,333.87	1,478,539.55	50,634.22	-	(700,000.00)	6,968.28						
CURRENT BALANCE								247,000.80	25,466.88	1,662,936.88	1,526,189.59	3,461,594.15
								①	②	③	④	

Reconciliation - 12/31/2023

① Bank Statement Balance	\$ 913,795.46
Less: Outstanding Checks	666,794.66
	\$ 247,000.80
② Payroll Bank Statement	\$ 25,466.88
③ LAIF Statement	\$ 1,662,936.88
④ CAMP Statement	\$ 1,533,386.34
Less: Accrual Income Dividend	7,196.75
	\$ 1,526,189.59

The Supplemental Treasurer's Report is prepared monthly by the General Manager. It also serves as EBDA's cash and investments reconciliation.

**ITEM NO. FM6 FY 2024/2025 BUDGET SCHEDULE**

**Recommendation**

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

**Strategic Plan Linkage**

3. **Financial:** Develop financial strategies and practice sound fiscal management to ensure wise use of ratepayers' resources.
  - b. Proactively manage expenditures to stay within adopted budget.

**Background**

The Authority adopts an annual budget on a July-June Fiscal Year basis. This report provides the Committee with a proposed schedule for development and review of the Authority's next budget.

**Discussion**

Staff proposes the following schedule for budget development:

<b>Month</b>	<b>Topic</b>	<b>Committee</b>
February	Salary and Benefits Assumptions	Personnel
March	Preliminary Budget Considerations and Options	Financial Management
	OPEB and Pension Fund Status	
April	Draft Budget	Financial Management
May	Budget Approval	Financial Management and Commission
	Draft Renewal & Replacement Fund (RRF) Project List	Operations & Maintenance
June	RRF Project List Approval	Operations & Maintenance and Commission

**ITEM NO. FM7 MOTION APPROVING REVISIONS TO THE AUTHORITY'S ELECTRONIC SIGNATURE POLICY**

**Recommendation**

Approve updates to the Authority's Electronic Signature Policy.

**Strategic Plan Linkage**

3. **Financial:** Develop financial strategies and practice sound fiscal management to ensure wise use of ratepayers' resources.
  - a. Operate EBDA's system efficiently.

**Background**

The COVID-19 pandemic necessitated new ways of working and accelerated trends that had already begun, with more people working remotely and conducting business digitally. In order for the Authority to conduct business efficiently in a remote-work environment while still ensuring legal requirements are consistently met, the Authority adopted an Electronic Signature Policy in August 2020.

Staff reviewed legal requirements as well as best practices for issuance and acceptance of electronic signatures. The attached Policy outlines the approach, including a summary of situations where an electronic signature is acceptable, and those where, by code, it is not.

The Financial Management Committee recommended at the time that the Policy reflect the Authority's currently selected electronic signature certification service, to avoid confusion. After reviewing several options, staff recommended implementation of DocuSign eSignature.

**Discussion**

As discussed at the December 2023 Financial Management Committee Meeting, EBDA has successfully been implementing the Policy as electronic signatures have become increasingly preferred. While implementation of DocuSign has been smooth, staff recommends that the Policy be modified to avoid specifying a particular software package. Staff therefore proposed minor modifications to the Policy and Signature Matrix, attached in track changes and clean versions, that allow for greater flexibility in choice of software as tools and preferences change.

The Financial Management Committee reviewed the proposed revisions at its December 2023 meeting and recommended the revised Policy be brought forward for approval.

**POLICY NUMBER:** 3

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**NAME OF POLICY:** Electronic Signature

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**LAST REVISED:** ~~August 20, 2020~~ January 18, 2024

**PREVIOUSLY REVISED:** ~~NA~~ August 20, 2020

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**PURPOSE:** This Policy establishes the acceptable technologies and procedures for the use of electronic signatures in EBDA-related business.

EBDA recognizes the need to increase efficiency, reduce waste, and provide members of the public with convenient access to EBDA services. Advances in technology can assist EBDA in achieving these goals while providing security for document management. This policy balances the need for efficient services against the risks of unauthorized activities by providing the approved electronic signature method and guidelines for certain documents and transactions.

This Policy applies to EBDA's acceptance of electronic signatures from parties outside of EBDA, and the use of electronic signatures on documents executed on behalf of EBDA. It does not increase the scope of authority of EBDA's authorized signatories, rather it provides an alternative means to execute EBDA-related documents. These are minimum standards. Nothing in this policy prohibits an EBDA official or employee, with the consent of the EBDA General Manager, from requiring a wet signature or higher form of secure electronic signature if he or she believes it is prudent or necessary. The General Manager may accept or authorize the acceptance of an electronic signature when the circumstances surrounding the transaction address authentication and security concerns. This Policy does not apply to electronic signatures accepted or utilized before the original effective date, and is intended to provide guidance for electronic signatures accepted thereafter. Any transaction must be analyzed under the facts and circumstances existing at the time a transaction was executed.

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**DEFINITIONS:**

An "**electronic record**" is defined by California's Uniform Electronic Transactions Act ("UETA") (Civil Code section 1633.1, et seq.), as "a record created, generated, sent, communicated, received, or stored by electronic means." An electronic record generally contains information or a data file that was created and stored in digitized form through the use of computers, machines, and software applications. The format of an electronic

record does not change the fact that it is a record subject to applicable public records law, but its electronic form and its dependence on machines for creation and reference do change the way these records must be stored and managed.

An “**electronic signature**” is defined both in the federal Electronic Signatures in Global and National Commerce Act and the UETA. It is defined as “any sound, symbol, or process attached to or associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.” (Civil Code section 1633.2(h).) It is the electronic equivalent of a handwritten, wet, or manual signature on paper, and therefore must have certain characteristics for evidentiary purposes. EBDA divides this broad scope of electronic signatures into categories of documents based upon the level of security needed both to ensure the proper person is conducting the transaction and that the technology for transmission of the signature is adequate.

Under California law, a “**digital signature**” is defined as “an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.” Government Code section 16.5 states a digital signature shall have the same force and effect as a manual signature if and only if:

1. It is unique to the person using it.
2. It is capable of verification.
3. It is under the sole control of the person using it.
4. It is linked to data in such a manner that if the data are changed, the digital signature is invalidated, and
5. It conforms to regulations adopted by the Secretary of State.

Government Code section 16.5 also states that the use or acceptance of a digital signature is at the option of the parties to the transaction and nothing in the law requires a public entity to use or accept the submission of a document containing a digital signature.

For the purpose of this policy, “digital signature” and “electronic signature” shall have the same meaning.

An “**electronically signed record**” is a record, file, or document that has been electronically signed by means of an electronic signature and that is related to the conduct of the EBDA’s official business.

## POLICY:

### Requirements for Electronic Signatures

EBDA staff shall establish and maintain a software system to be used by EBDA staff for the purposes of requesting, collecting, and executing digital signatures and electronic records, consistent with the encryption standards established by, and selected from the “Approved List” of digital signature providers, authorized by the State of California. Staff



~~has selected DocuSign eSignature as EBDA's current Digital Signature System. EBDA may change Digital Signature System vendors in the future via Commission approval of changes to this Policy.~~

For electronic signatures and records created and executed using EBDA's Digital Signature System, the criteria below shall be considered met:

1. **Intent to Sign**

Electronic signatures, i.e. not traditional wet ink signatures, are only valid and legally binding if both parties intend to sign and execute the agreement electronically.

2. **Consent of the Signing Party**

EBDA will accept electronic signatures when the parties:

- consent to the transaction,
- consent that the transaction be completed electronically, and
- consent to receive disclosures electronically.

3. **Documentation of Effect of Signature**

The Administrative Assistant will maintain the security procedure and audit trails for various electronic signature technologies.

Routing of Electronically Signed Documents

Use of electronic signatures will not change who within EBDA must approve or execute a transaction, nor will it change the routing process for the transaction. Agreements and contracts will continue to require the attestation of the General Manager.

Signed Copies Provided to All Parties

When a document is electronically signed by all parties, EBDA will provide a copy of the electronically signed document to the other parties in an electronic format that is capable of being retained and printed by the other parties.

Storage and Archiving of Electronically Signed Documents

EBDA staff primarily responsible for execution of a transaction shall ensure that a fixed version of the final electronic document, and any supporting documentation, is executed and collected in a manner determined by the General Manager. EBDA staff is responsible for filing and maintaining electronic records in a manner that complies with EBDA's document retention schedule and policies.

For example, the following methods of electronically securing the final version of a document are acceptable, starting with the more secure methods: creating a final PDF that includes an encrypted signature which "breaks" if the document is modified; or saving

a native file (Word Document) that is locked to prevent future changes. Storage and archive locations may include EBDA's electronic filing system, a networked drive, or other electronic system, as may be determined by the General Manager.

**Classes of Documents Permitted by the General Manager**

The security requirements for electronic signatures range from simple to complex, depending on the transaction. A list of the documents for which electronic signatures are approved by the General Manager is available below. This list is not intended to be an exhaustive list, nor does it impose electronic signature as a requirement for any particular transaction.

EBDA staff should work with the General Manager to determine if EBDA's Digital Signature System can be used for specific documents and with EBDA Legal Counsel to determine where applicable law permits an electronic signature be used. Any other document that, by law, requires a wet signature shall not be signed electronically.

A digital signature may be used or accepted on the following documents:

- i. Requests for proposals
- ii. Certificates and Permits (if permitted by law)
- iii. HR-related items, such as Employee Reviews and Personnel Action Forms
- iv. Commission/committee applications
- v. Legal filings such as Declarations
- vi. Service Agreements for Consulting & Professional Services
- vii. Financial Documents (if allowed by law)
- viii. Non-Professional Services Agreements
- ix. Internal and External Memoranda
- x. Letters and other correspondence

EBDA may accept an electronic signature form, and utilize the electronic signature software for the execution of documents for any other public entity, regulatory body, or non-profit public benefit corporation that has adopted electronic signature protocols acceptable to EBDA. Further, EBDA may accept any signature and execute any document using the digital signature technology with a certificate authority as approved by the California Secretary of State.

**Classes of Documents for which Electronic Signatures are Prohibited**

Civil Code section 1633.3 contains a list of transactions for which electronic signatures are not available. Any other document that, by law, requires a wet signature shall not be signed electronically.

A digital signature may not be used or accepted on the following documents:

- i. Documents or transactions that require a handwritten signature, including but not limited to transfers of interest in real property
- ii. Documents or transactions requiring a signature to be notarized or acknowledged
- iii. Unless the County Recorder issues an order or directive that otherwise permits electronic signatures, documents that are to be recorded with the County Recorder (including but not limited to Deeds, Conditional Use Permits, and Regulatory Agreements)
- iv. Initiative petitions
- v. Authority Resolutions
- vi. Authority Minutes

## Electronic Signature Policy

Document	Signer	Email Approval	DocuSign/Adobe	Wet Signature Required
Bank Statements	GM			x
Cash Disbursement PrePymnt Rprt	GM	x		
Cash Receipts	ALL		x	*
Certificates/Permits if allowable	O&M/GM		x	
Checks	O&M/GM			x
Commissioner Timesheets	Commissioners	x		
Contracts	GM/Contrctr/Legal		x	*
Employee Benefit Forms/Applictns	ALL		x	*
Employee Expense Report	GM/Staff		x	
Employee Reviews/ PAF's	GM/Staff		x	*
GM Expense Report	Finance Chair		x	
GM Timesheet	Finance Chair		x	
Journal Entries	GM/Acct		x	
Legal Filings/Forms Excluding Recorder	ALL		x	*
Letters & Memos	ALL	x	x	*
List of Disbursements	Finance Chair/GM		x	
Minutes	GM			x
Misc Financial Documents	GM/Staff		x	*
Purchase Orders	Staff/GM		x	
Quotes	O&M/GM		x	
Request for Proposals	GM		x	
Resolutions	Comm Chair/GM			x
Small O&M Contracts	GM/O&M		x	*
Staff Timesheets	GM/Staff		x	
Vendor Maintenance Worksheet (VMW)	Admin/GM/Acct		x	*
Vendor Payment Worksheet (VPW) (checks)	ALL		x	*
<del>VPW (EFT)</del>	<del>ALL</del>			*

**POLICY NUMBER:** 3

---

**NAME OF POLICY:** Electronic Signature

---

**LAST REVISED:** August 20, 2020

**PREVIOUSLY REVISED:** NA

---

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- ii. Certificates and Permits (if permitted by law)
- iii. HR-related items, such as Employee Reviews and Personnel Action Forms
- iv. Commission/committee applications
- v. Legal filings such as Declarations
- vi. Service Agreements for Consulting & Professional Services
- vii. Financial Documents (if allowed by law)
- viii. Non-Professional Services Agreements
- ix. Internal and External Memoranda
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- ii. Documents or transactions requiring a signature to be notarized or acknowledged
- iii. Unless the County Recorder issues an order or directive that otherwise permits electronic signatures, documents that are to be recorded with the County Recorder (including but not limited to Deeds, Conditional Use Permits, and Regulatory Agreements)
- iv. Initiative petitions
- v. Authority Resolutions
- vi. Authority Minutes

## Electronic Signature Policy

Document	Signer	Email Approval	DocuSign/Adobe	Wet Signature Required
Bank Statements	GM			x
Cash Disbursement PrePymnt Rprt	GM	x		
Cash Receipts	ALL		x	
Certificates/Permits if allowable	O&M/GM		x	
Checks	O&M/GM			x
Commissioner Timesheets	Commissioners	x		
Contracts	GM/Contrctr/Legal		x	
Employee Benefit Forms/Applictns	ALL		x	
Employee Expense Report	GM/Staff		x	
Employee Reviews/ PAF's	GM/Staff		x	
GM Expense Report	Finance Chair		x	
GM Timesheet	Finance Chair		x	
Journal Entries	GM/Acct		x	
Legal Filings/Forms Excluding Recorder	ALL		x	
Letters & Memos	ALL	x	x	
List of Disbursements	Finance Chair/GM		x	
Minutes	GM			x
Misc Financial Documents	GM/Staff		x	
Purchase Orders	Staff/GM		x	
Quotes	O&M/GM		x	
Request for Proposals	GM		x	
Resolutions	Comm Chair/GM			x
Small O&M Contracts	GM/O&M		x	
Staff Timesheets	GM/Staff		x	
Vendor Maintenance Worksheet (VMW)	Admin/GM/Acct		x	
Vendor Payment Worksheet (VPW)	ALL		x	

Revised: January 18, 2024



EAST BAY DISCHARGERS AUTHORITY  
2651 Grant Avenue  
San Lorenzo, CA 94580-1841  
(510) 278-5910  
FAX (510) 278-6547

*A Joint Powers Public Agency*

## **ITEM NO. 14**

### **OPERATIONS & MAINTENANCE COMMITTEE AGENDA**

**Tuesday, January 16, 2024**

**2:00 P.M.**

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

**This meeting will be teleconferenced from the following location:  
Guest Parking Area Located on Ocaso Camino, West of and Closest to the  
Intersection of Paseo Padre Parkway**

**Teleconference link: <https://us02web.zoom.us/j/88293365682>  
Call-in: 1(669) 900-6833 and enter Meeting ID number: 882 9336 5682**

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

**OM1. Call to Order**

**OM2. Roll Call**

**OM3. Public Forum**

**OM4. EBDA Permit Compliance**

(The Committee will be updated on EBDA's NPDES compliance.)

**OM5. Status Report**

(The Committee will be updated on EBDA's O&M activities.)

**OM6. Renewal and Replacement Fund Recap**

(The Committee will review the current status of the Authority's Renewal and Replacement Fund projects.)

**OM7. Draft Public Access Policy**

(The Committee will review a draft of a new policy governing public access to Authority facilities.)

**OM8. Adjournment**

Any member of the public may address the Commission at the commencement of the meeting on any matter within the jurisdiction of the Commission. This should not relate to any item on the agenda. It is the policy of the Authority that each person addressing the Commission 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 Commission on an agenda item should do so at the time the item is considered. It is the policy of the Authority that oral comments be limited to three minutes per individual or

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ten minutes for an organization. Speaker's cards will be available in the Boardroom 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, contact Juanita Villasenor at [juanita@ebda.org](mailto:juanita@ebda.org) or (510) 278-5910. 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 posted on the East Bay Dischargers Authority website located at <http://www.ebda.org>.

**Next Scheduled Operations and Maintenance Committee is  
Tuesday, February 13, 2024, at 2:00 p.m.**

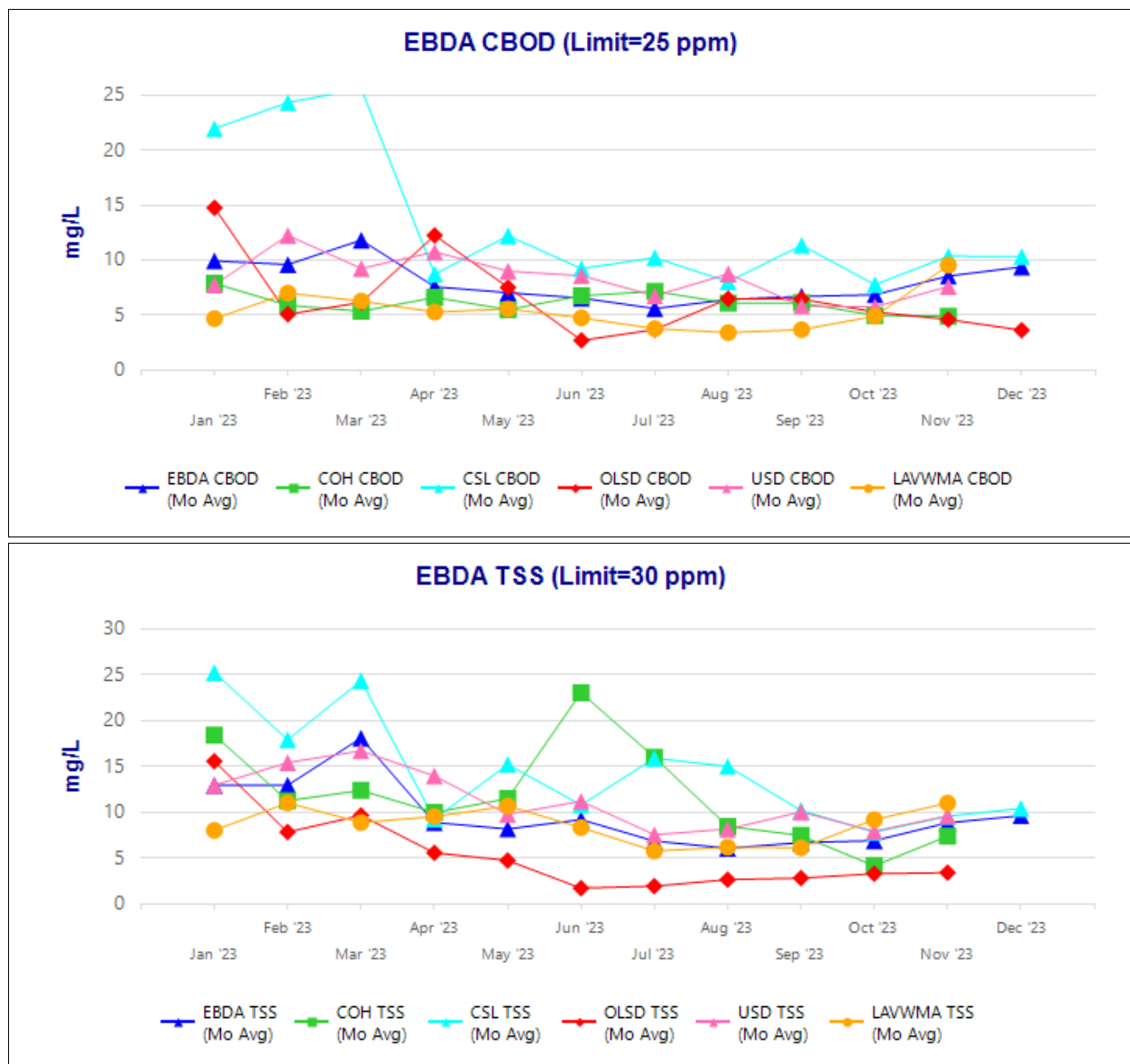
## ITEM NO. OM4 EBDA PERMIT COMPLIANCE

### Recommendation

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

### Discussion

There were no NPDES permit violations in November, and preliminary data from December are also free of permit exceedances. Member Agency CBOD and TSS performance are shown below. A table with bacterial indicators is also included.



## EBDA Bacterial Indicators

Date	FECAL	ENTERO
	MPN/ 100mL	MPN/ 100mL
Limit (90th Percentile)	1100	1100
Limit (Geomean)	500	280
<b>January 2023 Geomean</b>	<b>12</b>	<b>14</b>
<b>February 2023 Geomean</b>	<b>4</b>	<b>2</b>
<b>March 2023 Geomean</b>	<b>3</b>	<b>2</b>
<b>April 2023 Geomean</b>	<b>10</b>	<b>7</b>
<b>May 2023 Geomean</b>	<b>15</b>	<b>122</b>
<b>June 2023 Geomean</b>	<b>8</b>	<b>83</b>
<b>July 2023 Geomean</b>	<b>7</b>	<b>18</b>
<b>August 2023 Geomean</b>	<b>17</b>	<b>5</b>
<b>September 2023 Geomean</b>	<b>47</b>	<b>4</b>
<b>October 2023 Geomean</b>	<b>18</b>	<b>3</b>
11/1/2023	NA	69
11/6/2023	33	< 2
11/7/2023	2	4
11/8/2023	NA	19
11/13/2023	11	6
11/14/2023	8	10
11/20/2023	2	26
11/21/2023	4	6
11/27/2023	23	8
11/28/2023	11	2
<b>November 2023 Geomean</b>	<b>8</b>	<b>8</b>
12/4/2023	4	8
12/5/2023	13	< 2
12/6/2023	NA	6
12/11/2023	23	15
12/12/2023	13	8
12/13/2023	NA	6
12/18/2023	11	14
12/19/2023	8	2
12/25/2023	2	2
12/26/2023	2	2
<b>December 2023 Geomean</b>	<b>7</b>	<b>5</b>

## **ITEM NO. OM5 STATUS REPORT**

### **Union Effluent Pump Station (UEPS)**

No change; all equipment is operational.

### **Hayward Effluent Pump Station (HEPS)**

#### **Effluent Pump Replacement Project**

The new HEPS Effluent Pump motors and pumps were delivered on December 1 and December 7, respectively. The new pumps and motors are being stored at the Hayward Water Pollution Control Facility until they are installed. On December 8, a coordination and scheduling meeting was held at HEPS. The concrete subcontractor is planning to start work in mid-January on the new concrete base for Effluent Pump No. 4. Because Effluent Pump No. 4 had previously been removed, starting this work during wet weather will not decrease the current capacity of the pump station. This work will involve demolishing the old concrete pump base, coring holes in the pump station to install new threaded rod pump anchors, installing new rebar, and pouring the new concrete pump base. The work also includes coating of the metal sleeve around the hole in the pump station that the pump sits in. Depending on the condition of the metal sleeve, it may need to be replaced with a new stainless-steel sleeve. Once the new Effluent Pump No. 4 is installed, it will be put in service and tested for several weeks before work is started on the next pump.

### **Oro Loma Effluent Pump Station (OLEPS)**

#### **Automatic Transfer Switch Upgrade**

On January 12, a site visit and meeting are scheduled with Todd Beecher, EBDA's contract electrical engineer, to kick off this project. In February, Mr. Beecher will begin the design of two new automatic transfer switches (ATSs) at OLEPS. The two new ATSs will improve reliability of the pump station in the event of a power outage. If the PG&E power fails, the OLEPS emergency generator is the primary source of backup power. Currently, if the emergency generator fails to start, operators can manually switch to the secondary source of backup power from OLSD. The installation of two new ATSs will allow the switch from primary to secondary backup to occur automatically. This ATS work is being completed as part of Phase Two of the OLEPS Electrical Upgrades. Replacement of the breakers and refurbishment of the Main Switchboard was completed in Phase One of the OLEPS Electrical Upgrades last year.

### **Skywest Pump Station**

#### **Recycled Water Production**

During the month of December 2023, the Skywest Recycled Water System operated for two days and produced 1.0 million gallons of recycled water. The total recycled water produced during 2023 was 8.75 MG. The peak day of recycled water production in 2023

was 567,200 gallons. A summary of the monthly recycled water produced for the last eight years is shown below:

Skywest Total Recycled Water								
	2023 Total Flow MG	2022 Total Flow MG	2021 Total Flow MG	2020 Total Flow MG	2019 Total Flow MG	2018 Total Flow MG	2017 Total Flow MG	2016 Total Flow MG
January	0.00	0.00	0.89	0.00	0.00	0.00	0.00	0.00
February	0.00	1.08	0.00	1.65	0.00	2.37	0.00	0.41
March	0.00	0.00	0.00	0.53	0.00	0.73	0.25	0.00
April	0.00	1.10	1.06	2.64	3.91	1.86	1.80	6.51
May	1.67	1.00	1.12	2.53	5.77	9.38	12.00	12.71
June	1.66	1.12	2.64	2.00	9.57	12.50	10.97	16.73
July	1.10	1.10	2.10	1.10	11.40	12.12	11.98	16.42
August	1.08	1.52	2.16	1.09	10.34	10.59	10.41	13.81
September	1.12	1.00	1.60	1.37	8.30	7.45	8.12	11.29
October	1.12	1.03	0.49	1.10	6.22	6.14	5.58	3.60
November	0.00	1.01	0.00	1.43	1.64	2.24	0.00	2.02
December	1.00	0.00	0.00	0.00	0.00	0.00	1.24	0.00
Total	8.75	9.96	12.06	15.44	57.15	65.38	62.35	83.50

### **Marina Dechlorination Facility (MDF)**

#### **Total Residual Chlorine (TRC) Effluent Limit Implementation and Automation Upgrades**

As discussed previously, on November 8, the Regional Water Quality Control Board adopted a blanket permit amendment revising the TRC effluent limits for all wastewater dischargers to San Francisco Bay. The permit amendment raises EBDA's TRC effluent limit from 0.0 mg/L at all times to 0.98 mg/L measured as a one-hour average. The new limit took effect on January 1, 2024. On January 2, 2024, at 8:30 am, the Sodium Bisulfite (SBS) at MDF was turned off. The reduction in SBS usage is estimated to result in a cost savings of approximately \$250,000 annually.

### **Force Main**

No change; all equipment is operational.

### **Operations Center**

#### **Office Health & Safety Improvements**

EBDA staff is in the process of procuring quotes for the installation of additional vents and an automatic fan controlled with a moisture sensor for the crawl space of the EBDA Administration Building.



## **Miscellaneous Items**

### **Underground Service Alerts**

EBDA received fourteen (14) Underground Service Alert (USA) tickets during the month of December 2023. All 14 tickets were renewals.

## **Special Projects**

### **Roof Replacement Projects**

The Administration Building, the MDF Sodium Bisulfite (SBS) Building, and the OLEPS roofs are all complete. The roofing contractor is currently working on punch list items, and a final inspection will be scheduled once the items are completed.

### **Cargill Brine Project**

As discussed at previous Commission Meetings, following certification of the Final Environmental Impact Report (EIR) for the proposed project, Cargill informed EBDA staff that they have made the decision to re-evaluate the “Bayside” pipeline route. Cargill is continuing to refine the route and expects it to be very similar to the Bayside alternative outlined in the EIR.

Since Cargill is entirely re-engineering the pipeline and route, EBDA staff has requested they take another look at connecting at or after MDF instead of OLEPS, which would alleviate EBDA’s concerns about corrosion. Cargill expects to make a decision on this extension in Spring 2024.

Cargill’s preliminary schedule shows revised CEQA analysis in 2025, and construction beginning sometime between 2027 and 2029 depending on permitting, with operation commencing between 2031 and 2033. Staff may bring an interim agreement between EBDA and Cargill to the Commission for consideration in 2024, as the parties continue to negotiate the final operating agreement.

### **Advanced Quantitative Precipitation Information (AQPI) Project**

The regional AQPI project continues to move forward with a goal of improving prediction of rainfall events in the Bay Area. Following a series of delays, the East Bay radar was installed at [Rocky Ridge](#) in Las Trampas Regional Wilderness Park in December 2022. Data from the Rocky Ridge site finally became available in early December 2023, and can be viewed and downloaded from the [NOAA](#) or [Colorado State](#) websites. Program Management of AQPI is shifting from Colorado State University to the Center for Western Weather and Water Extremes (CW3E) at Scripps Institution of Oceanography, UC San Diego. CW3E will be developing an updated website and data management tools, which they expect to make available before the 2024-2025 wet season. Sonoma Water and the AQPI team will also be seeking local funding to install a C-Band radar to complete the regional system. More information on the cost-share proposal will be provided in the coming months. Staff will also be planning a site visit to Rocky Ridge for interested Commissioners and other parties.

## **ITEM NO. OM6 RENEWAL AND REPLACEMENT FUND RECAP**

In June 2023, as part of adopting the Authority's budget, the Commission authorized an annual contribution to the Renewal and Replacement Fund (RRF) for Fiscal Year (FY) 2023/2024 in the amount of \$750,000. This amount is consistent with the Authority's Asset Management Plan and has been fixed at this level for the past 4 years. In June 2023, the Commission authorized a list of RRF projects totaling \$1,080,000 for FY 2023/2024, including \$100,000 in contingency funds to be used for unplanned projects.

The attached table provides a summary of the funds expended this fiscal year-to-date on these projects, as well as a recap of projects approved in FY 2022/2023 and prior years that remain active or were recently completed. A total of \$1,068,133 was spent in FY 2022/2023, and \$1,012,510 has been spent this fiscal year-to-date. A description of noteworthy projects is as follows:

### **Union Effluent Pump Station (UEPS, formerly AEPS) – Payments #3 & #4 of 10 per the JPA – \$420,000 Each Fiscal Year**

The Amended and Restated Joint Powers Agreement (JPA) states that "in fiscal years from 2020/21 through 2029/30, the Authority will pay Union a total of Four Million, Two-Hundred Thousand dollars (\$4,200,000), divided in ten equal and annual installments, as a credit toward their annual budget contribution for Operation and Maintenance Costs, for all Capital Costs associated with the Union Effluent Pump Station during the Term of the Agreement."

### **Hayward Effluent Pump Station (HEPS) – Effluent Pump Replacement Project – \$730,000**

Replacement of the four HEPS Effluent Pumps.

### **Oro Loma Effluent Pump Station (OLEPS), Marina Dechlorination Facility (MDF) & EBDA Administration Building – Roof Replacement Project – \$550,000**

Installation of new roofs on the EBDA Administration Building, the MDF SBS Storage Building, and OLEPS.

### **OLEPS – Electrical Upgrades – \$260,000**

Replacement of the breakers and refurbishment of the Main Switchboard and the installation of two new automatic transfer switches (ATSS). Replacement of the 75 kW generator will be evaluated as part of this project. These upgrades will improve reliability of the station in the event of a power outage. The Main Switchboard work was completed in Phase One of the project. The installation of two new ATSS will be completed as part of Phase Two of this project with design work starting in February 2024.

### **Contingency/Small Projects Fund – \$100,000**

The purpose of the Contingency/Small Projects Fund is to provide additional funding for as yet unidentified projects and/or equipment that may need to be replaced or refurbished during the fiscal year.

## RRF Summary

Updated as of: December 31, 2023

Project Name	FY 2023/2024 YTD Expenditures	FY 2022/2023 Total Expenditures	Prior Years' Expenditures	Total Expenditures through 12/2023	Percent Spent	Percent Complete	Budget Estimate	Projected Completion Date
<b>Prior Years' Scheduled Projects</b>								
FM Manhole Coating & New Valves					0%	0%	\$75,000	Postponed
MDF Analyzer			\$616	\$616	1%	0%	\$75,000	Postponed
OLEPS DE-PLC-SCADA			\$31,471	\$31,471	31%	31%	\$100,000	Postponed
EBDA Office Upgrade	\$37,085		\$6,130	\$43,215	108%	100%	\$40,000	Completed
HEPS Effluent Pump Replacement	\$374,822	\$23,417	\$17,463	\$415,702	57%	50%	\$730,000	June 2024
OLEPS Electrical Upgrades		\$106,408	\$23,595	\$130,004	50%	50%	\$260,000	June 2025
OLEPS Emergency Outfall	\$52,647	\$4,672	\$7,263	\$64,582	76%	100%	\$85,000	Completed
MDF Automation Upgrade	\$969		\$8,445	\$9,414	27%	25%	\$35,000	June 2024
OLEPS Pump Station Bypass Eval.		\$21,747		\$21,747	36%	36%	\$60,000	June 2024
Pickup Truck Replacement	\$29,498			\$29,498	74%	90%	\$40,000	June 2024
MDF Automatic Transfer Switch				\$0	0%	0%	\$20,000	June 2024
<b>Prior Years' Project Subtotal</b>	<b>\$495,020</b>	<b>\$156,245</b>	<b>\$94,983</b>	<b>\$746,248</b>			<b>\$1,520,000</b>	
<b>2022/2023 Scheduled Projects</b>								
UEPS Payment #3 of 10 Per JPA		\$420,000		\$420,000	100%	100%	\$420,000	Completed
OLEPS, MDF & Office Roof Replacement	\$421	\$458,390		\$458,811	83%	90%	\$550,000	June 2024
MDF SBS Building Heating System		\$23,803		\$23,803	95%	100%	\$25,000	Completed
OLEPS Equipment Cleaning & Painting				\$0	0%	0%	\$15,000	Postponed
HEPS Pond #3 Valve Actuator				\$0	0%	0%	\$15,000	June 2024
<b>2022/2023 Scheduled Project Subtotal</b>	<b>\$421</b>	<b>\$902,192</b>		<b>\$902,614</b>			<b>\$1,025,000</b>	
<b>2022/2023 Contingency Projects</b>								
OLEPS Lighting Upgrade		\$9,696		\$9,696	97%	100%	\$10,000	Completed
<b>2022/2023 Contingency Subtotal</b>		<b>\$9,696</b>		<b>\$9,696</b>			<b>\$100,000</b>	
<b>2022/2023 Projects Total</b>	<b>\$421</b>	<b>\$911,888</b>		<b>\$912,310</b>			<b>\$1,125,000</b>	
<b>2023/2024 Scheduled Projects - This list only includes projects with expenditures and is not a comprehensive list.</b>								
UEPS Payment #4 of 10 Per JPA	\$420,000			\$420,000	100%	100%	\$420,000	Completed
OLEPS Wet Well Gate Repair	\$18,592			\$18,592	25%	25%	\$75,000	September 2024
MDF Exterior Painting	\$38,900			\$38,900	86%	100%	\$45,000	Completed
<b>2023/2024 Scheduled Project Subtotal</b>	<b>\$477,492</b>			<b>\$477,492</b>			<b>\$540,000</b>	
<b>2023/2024 Contingency Projects</b>								
OLEPS Diesel Engine #2/Pump #3	\$25,389			\$25,389	102%	100%	\$25,000	Completed
Office Health & Safety Improvements	\$14,188			\$14,188				
<b>2023/2024 Contingency Subtotal</b>	<b>\$39,577</b>			<b>\$39,577</b>			<b>\$100,000</b>	
<b>2023/2024 Projects Total</b>	<b>\$517,069</b>			<b>\$517,069</b>			<b>\$640,000</b>	
<b>Total</b>	<b>\$1,012,510</b>	<b>\$1,068,133</b>		<b>\$2,175,627</b>			<b>\$3,285,000</b>	

## **ITEM NO. OM7 DRAFT PUBLIC ACCESS POLICY**

### **Recommendation**

Review the draft Policy and provide input to staff.

### **Background**

Recently, a trend has emerged of “First Amendment audits.” In a First Amendment audit, one or more individuals film public officials or employees to hold them accountable or “test” their right to film in public spaces like town halls, libraries, police stations, parking lots, or state and local agencies. In some instances auditors seek to incite confrontation or aggression through harassing or argumentative behavior. The auditors then post the footage on YouTube. In some cases, public employees have responded to these auditors with some level of hostility, which increases the entertainment value and therefore profitability for the auditor, in terms of numbers of views.

While the public has a right to be present and even to film in public spaces, not all spaces owned or managed by public agencies have to be open to the public. For example, even though government offices may be publicly accessible to the public, that alone does not automatically render it a public forum. Certain spaces such as permit counters are public by their nature, whereas wastewater facilities and even administrative offices where a municipality conducts the business of the municipality and members of the public do not need to conduct business, do not need to be open to the public.

### **Discussion**

EBDA is committed to protecting the rights of citizens under the First Amendment of the United States Constitution, while implementing policies and procedures that protect the health, safety, welfare, and personal privacy of the Authority’s employees and the general public. In efforts to do so and to provide clarity about where members of the public can be present and/or film, and for protection from potential First Amendment audits, staff is recommending that the Commission adopt a Public Access Policy for the Authority. A draft Policy is attached for review.

Members of the public do not conduct business at EBDA’s administrative offices. EBDA does not have any direct relationships with customers – the Authority does not bill customers or issue permits. Therefore, staff suggests that the Policy designate EBDA’s administrative offices as employee-only with limited public access. Members of the public that have business with EBDA can make an appointment to meet with staff. In conjunction with the proposed Policy, signage designating spaces as employee only would be placed on all outside doors. Signage indicating that areas are for authorized personnel only would also be placed at the Marina Dechlorination Facility. The Policy would not restrict the public’s access to Authority property that is generally open to general public access, including the Authority’s conference room during meetings subject to the Brown Act. EBDA’s other facilities are located on Member Agency sites.

**POLICY NUMBER:** 9

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**NAME OF POLICY:** Public Access to Authority Property

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**LAST REVISED:** January 18, 2024

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**PREVIOUSLY REVISED:** NA

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**POLICY:** It is the policy of East Bay Discharges Authority (the “Authority”) to ensure the rights of citizens under the First Amendment of the United States Constitution are protected, while implementing policies and procedures that protect the health, safety, welfare, and personal privacy of the Authority’s employees and the general public who do business with or use the services of the Authority, as well as ensure the continued safe operation of Authority facilities. This policy (“Policy”) delineates portions of the Authority Property (as defined herein) that are accessible to and observable by the general public from those portions that are accessible on a limited basis, establish rules of conduct that are applicable to all Authority Property, and specify procedures for Authority employees who encounter those who wish to access Authority Property for observational purposes.

**RESPONSIBILITIES:** All general public members entering the Authority property are responsible for adhering to the rules of conduct at all Authority property as stated in this Policy in order to maintain an environment that promotes orderly administrative and business operations, and to take reasonable and prudent actions to protect the health, welfare, safety, and personal privacy of all persons at Authority Property as well as critical Authority facilities and infrastructure.

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**DEFINITIONS:**

**Limited Access Area:** Any designated area on Authority Property that is not generally open to or occupied by the public shall be open to or occupied by the public on a limited, as-needed, or by-invitation basis. Limited Access Areas may be designated by doors, physical barriers, building design features, signage, reception desks or stations, or other visible indications. The lack of visible indications shall not prevent the Authority from considering or treating an area as a Limited Access Area. The Authority shall retain the right to verbally instruct third parties that an area is a Limited Access Area. Without limiting the generality of the foregoing, Limited Access Areas include but are not limited to the following:

- The Authority Administration Building;
- Employee offices;
- Employee workspaces including copy rooms, mailrooms, and break areas;

- Hallways, staircases, restrooms, and other areas by purpose or function restricted to providing access solely to other Limited Access Areas;
- Maintenance, storage, and warehousing facilities; and
- All wastewater treatment facilities.

**Authority Official:** For purposes of this Policy the Authority Official shall be:

- The Authority General Manager, or his or her designee;
- Any person providing security services in any Authority Property pursuant to contract with the Authority or with any person, firm, or corporation managing an Authority Property on the Authority's behalf; and
- With respect to any building, facility, area, or space assigned to an Authority department, division, or agency, the director or manager of such department, division, or agency, or any person that such official specifically designates in writing.

**Authority Property:** Any real property owned or leased by the Authority or in which the Authority has a property interest or property management responsibility.

**Public Area:** Any area on Authority Property that is generally open to general public access and occupancy that is not otherwise designated as a Limited Access Area. The Public Area shall include the Authority's Conference Room when used as a meeting space for a meeting subject to the Ralph M. Brown Act, Government Code Section 54950 et seq.

**RULES OF CONDUCT:** Specific guidelines set forth in this Policy.

## **POLICY:**

### **RULES OF CONDUCT ON AUTHORITY PROPERTY:**

#### **ALL AUTHORITY PROPERTY:**

- (a) No person shall enter, attempt to enter, or remain in any areas of Authority Property for any purpose other than to conduct legitimate business with Authority offices located at Authority Property, or to exercise other constitutionally protected rights. The appropriate Authority Officials may adopt specific policies with respect to Authority Property under their custody and control to manage conditions for use of such Authority Property including without limitation to establish hours and terms of use, reservation protocols, use and user priority, and fees for use.
- (b) No person shall engage in any activity on Authority Property that would constitute a violation of federal, state, or local law or regulation.

- (c) No person shall engage in activity that disrupts or interferes with the normal operation or administration of Authority business at Authority Property, lawful use by Authority employees and authorized users at Authority Property, or Authority-permitted activities.
- (d) No person shall stalk, harass, threaten, intimidate, or otherwise compromise the wellbeing and safety of Authority employees, agents, volunteers or private third parties lawfully using Authority Property. Photography, audio recording, or video recording does not, in and of itself, violate this Rule of Conduct. Likewise, conduct that would otherwise violate this Rule of Conduct shall not be permitted merely because the conduct involves photography, audio recording, or video recording.
- (e) No person shall interfere or obstruct the free passage of any individuals in, on, to or through the Public Area, or Authority employees or authorized third parties in, on, to, or through any Authority Property, including without limitation Limited Access Areas. Interference or obstruction includes, but is not limited to, standing in, blocking access to, or occupying areas for purposes of photography, audio recording, or video recording.
- (f) No person shall photograph, audio record, or video record in such a manner that would allow capture of, access to, or disclosure of private, personal, confidential, sensitive, or privileged information of private third parties and Authority employees.

LIMITED ACCESS AREAS:

- (a) Limited Access Areas shall be accessible only to the following:
  - (i) Employees, elected officials, and appointed officials of the Authority;
  - (ii) Private parties but only on a limited, as-needed, or by-invitation basis, to include those private parties accessing a Limited Access Area for the express purpose of conducting business with Authority employees; and
  - (iii) Any member of the public wishing to access to Limited Access Area for the express purpose of conducting business with Authority employees, must schedule an appointment, by using the online contact form at <https://ebda.org/contact/> or calling (510) 278-5910.
- (b) Photography, audio recording, and video recording is prohibited in Limited Access Areas, except as follows:

- (i) Any Authority Official may authorize audio or video recording or photography in Limited Access Areas, for good cause shown, with the consent of all parties to be recorded or photographed, provided that any Authority Official may impose appropriate and reasonable conditions on the recording or photography to prevent the unauthorized disclosure of confidential information; and
  - (ii) Audio and video recording and photography may be permitted in Limited Access Areas when specifically authorized by applicable law or agreements.
- (c) The restrictions in this section shall not apply to individuals who are filming a Limited Access Area from a publicly accessible location outside of the Limited Access Areas.
- (d) The Authority's Conference Room is located in the Authority's Administration Building. Without limiting the foregoing, if a meeting subject to the Ralph M. Brown Act, Government Code Section 54950 et seq., is noticed to occur in the Authority's Conference Room, any member of the public shall have the right to enter the Conference Room without prior approval, invitation, or accompaniment from an Authority Official. Individuals attending such meetings shall be limited to traveling directly from the Authority's entrance to the Authority's Conference Room. All other areas of the Authority's Administration Building shall remain Limited Access Areas at all times, unless otherwise specifically provided for herein.

**EXCLUSION:** If a person violates these Rules of Conduct while in or upon Authority Property, any Authority Official may eject and direct such person to leave Authority Property. It shall not be necessary for such Authority Official to allege any crime or other violation of applicable law other than these Rules of Conduct in order to support such exclusion; provided that violation of such exclusion may be deemed a trespass under applicable law. Individuals who repeatedly violate these Rules of Conduct may be excluded from Authority Property on a longer-term basis, as determined appropriate by the General Manager.



**ITEM NO. 15 ITEMS FROM THE COMMISSION AND STAFF**

The Commission and staff may comment on items of general interest.

**ITEM NO. 16 ADJOURNMENT**