



SANTA CLARA VALLEY WATER DISTRICT

NON-AGENDA

November 8, 2019

Board Policy EL-7 Communication and Support to the Board
The BAOs shall inform and support the Board in its work.

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15	Emails from Ok Sun Kim, dated 10/31/19, 11/1/19 and 11/4/19 to Director Santos regarding low income senior parcel tax exemption (C-19-0255).
23	Letter from Sally McElravey received on 11/4/19 to the Board regarding Saratoga Creek encroachment permit process (C-19-0256).
25	Email from Justin Ross dated 11/6/19 to the Board regarding water fluoridation (C-19-0257).
26	Letter from Ben Field, Executive Officer, South Bay Labor Council and David Bini, Executive Director, Santa Clara & San Benito Counties Building & Construction Trades Council regarding Project Labor Agreements overview (C-19-0258).
	<u>OUTGOING BOARD CORRESPONDENCE</u>
29	Email to Walt Hayes from Director Kremen dated 11/3/19 regarding Palo Alto water recycling/purification (C-19-0254).
31	Email to Sharon Root from Director Santos dated 11/4/19 regarding creek campers on Upper Penintencia Creek (C-19-0249 and C-19-0253).
37	Email to Dhruv Khanna from Chair LeZotte dated 11/5/19 regarding groundwater zones, groundwater charges and groundwater availability (C-19-0250).
42	Email to Ok Sun Him from Director Santos dated 11/6/19 regarding low income senior parcel tax exemption (C-19-0255).

Board correspondence has been removed from the on-line posting of the Non-Agenda to protect personal contact information. Lengthy reports/attachments may also be removed due to file size limitations. Copies of board correspondence and/or reports/attachments are available by submitting a public records request to publicrecords@valleywater.org.

CEO BULLETIN



To: Board of Directors
From: Norma J. Camacho, CEO

Week of November 1 – November 7, 2019

Board Executive Limitation Policy EL-7:

The Board Appointed Officers shall inform and support the Board in its work. Further, a BAO shall 1) inform the Board of relevant trends, anticipated adverse media coverage, or material external and internal changes, particularly changes in the assumptions upon which any Board policy has previously been established and 2) report in a timely manner an actual or anticipated noncompliance with any policy of the Board.

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1. 2019 Top 10 Finalist in Partnership in Industry and Education Contest

California Forward (CA Fwd) is a non-profit organization founded in 2008 that advocates for shared prosperity across all the state's regions and for improved government performance and accountability. The organization hosts the California Economic Summit, a year-round bipartisan effort fueled by business, equity, environmental, and civic leaders from across the state's diverse regions. This robust network concentrates on ensuring that all Californians have access to the building blocks of the California dream, including economic opportunity, stable housing, quality jobs and a healthy environment.

The California Economic Summit created the Partnerships for Industry and Education Contest (PIE) to identify and honor innovative partnerships achieving success for students and communities. This year Valley Water was recognized and awarded as a top 10 finalist in the 2019 PIE Contest for its partnership with Gavilan College's Water Resource Management internship program. Valley Water will be profiled in the 2019 PIE publication that will be distributed at the CA Economic Summit.

For further information, please contact Anna Noriega at (408) 630-3089.

2. Correction to Remark at Board Meeting on October 22, 2019

At the conclusion of the Valley Water Board meeting on October 22, 2019, Tina Yoke, Chief Operating Officer, Information Technology & Administrative Services, provided a response to Director Kremen about the Santa Teresa Water Treatment Plant (WTP) and generator use related to ozone treatment. Ms. Yoke stated that information on how generator usage disrupts standard ozone treatment was provided to the Board as part of a recent security and operational presentation. In fact, the information had been provided to one Director of the Board via email as part of a discussion thread resulting from the first PG&E Public Safety Power Shutoff (PSPS) on October 9, 2019.

On October 9, 2019, the Santa Teresa WTP transitioned to generator power in advance of the power shut off. All plant treatment processes remained the same. The ozone treatment system used at the Santa Teresa WTP is not used when generators are in use. Alternatively, there is an upfront chlorination used as a primary disinfectant when generators are in operation. There were no issues during generator usage regarding water quality in terms of safety, taste, or odor.

Director Kremen received the Emergency Operations activation notice and subsequent communications related to the Santa Teresa WTP. He asked why the ozone treatment system can't be used when generators are operating. Valley Water responded that the generators are not sized to accommodate the higher electrical demand from ozone generation. There is a Capital Improvement Program (CIP) project funded in the current fiscal year to look at electrical upgrades at the Santa Teresa WTP, including the upsizing of the generators. Director Kremen had a follow-up inquiry on what is meant in the CIP to "upsize the generators" and to investigate the cost. Valley Water indicated the funded CIP project is \$12.2 million. As with any other CIP project, it will go through the planning study process where the exact scope of the electrical reliability upgrades will be determined. The current scoping assumption is that the generators will be upgraded and upsized.

Please contact Nina Hawk, Chief Operating Officer, Water Utility, for questions related to the CIP project and the oxidation process.

For further information on this update, please contact Tina Yoke at (408) 630-2385.

3. Coyote Creek Flood Protection Project Public Meetings

Valley Water hosted the first of three public meetings for the Coyote Creek Flood Protection Project. The three communities are represented by directors Estremera, Keegan, and Santos.

The first meeting was held on Wednesday, November 6, 2019 at the Golden Wheel Mobile Home Park with Director Santos providing welcoming remarks. Valley Water provided an update on the project and shared details on the proposed alternatives for the Montague Expressway to Mabury Road section of Coyote Creek. Attendees were provided the opportunity to ask questions and give feedback on the alternatives. Valley Water also provided an update on the Anderson Dam Seismic Retrofit Project.

Following a project presentation, attendees were organized into groups with guided discussions to solicit and record input on the project alternatives. Spanish and Vietnamese interpreters were at the meeting. All three public meetings are scheduled to be available via Facebook Live.

The next two meetings are scheduled for:

- November 7, 2019: Franklin McKinley School District, 645 Wool Creek Drive
Focus area: Highway 280 to Tully Road.
- November 13, 2019: Roosevelt Community Center, 901 E Santa Clara Street
Focus area: Mabury Road to Highway 280.

The above meetings will follow a similar format to the November 6, 2019 public meeting.

For further information, please contact Rick Callender at (408) 630-2017.

4. Public Safety Power Shutoff Event

PG&E notified Valley Water on October 24, 2019 of a Public Safety Power Shutoff (PSPS) event scheduled for October 26, 2019, which included Santa Clara County and affected Valley Water facilities. Planning began for this event immediately, which also coincided with after-action meetings and implementation improvements from the previous PSPS on October 9, 2019. The Valley Water Emergency Operations Center (EOC) was activated at 6:00pm on Saturday, October 26, 2019 to support the power outage event. Numerous calls and coordination efforts between Valley Water, the Santa Clara County Operational Area, and PG&E took place prior to EOC activation and throughout EOC operations.

Santa Teresa Water Treatment Plant lost utility power during the event, along with the Almaden Valley Pipeline, Almaden Dam, Stevens Creek Dam, Stevens Creek Turnout, Lexington Reservoir, Chesbro Reservoir, Calero Pipeline, Cross Valley Pipeline and the pipelines around the Coyote Pump Plant. Water supply was not interrupted during this event. Security resources were deployed as appropriate to support the power outage event. The EOC was deactivated at 10:00pm on Monday, October 28, 2019. Valley Water EOC operations took place in the Alternate EOC due to upgrades/construction being performed in the Primary EOC. Many Valley Water personnel worked this event in the field as well as the EOC to support operations and maintain communications. This PSPS event also resulted in multiple jurisdictional EOCs (County and Cities) to be activated, as well as local and state emergency proclamations implemented.

For further information, please contact Tina Yoke at (408) 630-2385.

5. Santa Clara City Place Development

City Place is a planned multi-phased, mixed-use development of up to 9.16 million square feet of office buildings, retail and entertainment facilities, residential units, hotel rooms, surface and structured parking facilities, new open space and roads in the City of Santa Clara. Valley Water has been monitoring this project as the development overlies the All Purpose Landfill, the only landfill in the Bay Area with a known groundwater plume of volatile organic compounds. Since the development will require thousands of deep piles to be pushed through the waste materials, potential impacts on groundwater quality are a concern. To ensure the potential groundwater concerns are addressed, Valley Water has been invited to participate in various meetings with representatives of the San Francisco Bay Regional Water Quality Control Board, the Santa Clara County Department of Environmental Health, and Cal Recycle who are the regulatory agencies for the project. Valley Water will continue to engage in this project as it moves forward.

For further information, please contact Garth Hall at (408) 630-2750.

6. Valley Water Pairs with Joint Venture and Robert Half to Help Underserved Youth.

Established in 1993, Joint Venture Silicon Valley provides analysis and action on issues affecting our region's economy and quality of life. The organization brings together established and emerging leaders—from business, government, academia, labor and the broader community—to spotlight issues and work toward innovative solutions. Valley Water has partnered with Joint Venture's Silicon Valley Talent Partnership (SVTP) to work on expanding the existing internship program.

SVTP matches highly skilled teams from Silicon Valley companies to high-impact, pro bono projects that tackle some of our most pressing community challenges. SVTP has secured a pro bono team of 2 – 4 individuals from Robert Half International who have experience in program development, analysis, strategic thinking, marketing, human resources, internship programs and/or working with young adults, to assist in this endeavor. Robert Half is a widely recognized agency that assists organizations with their temporary and regular staffing needs.

The corporate team will identify the successful elements in the existing internship program and explore what other public sector employers have done to run successful internship programs. They will also develop an expansion plan for Valley Water's internship program, specifically focused on attracting youth and young adults from underserved communities. A report summarizing the team's findings will be presented to Valley Water.

Valley Water interns will learn about the value of providing clean drinking water to the community, working for public service organizations, gain valuable professional work skills, while earning a salary. The project is expected to run approximately eight (8) weeks.

For further information, please contact Anna Noriega at (408) 630-3089.

BOARD MEMBER REQUESTS and Informational Items

Report Name: Board Member Requests

Request	Request Date	Director	BAO/Chief	Staff	Description	20 Days Due Date	Expected Completion Date	Disposition
I-19-0018	10/31/19	Lezotte	Richardson	Gin	Staff to provide a response to Mr. Muirhead's comments made at the 10/25 BPPC meeting on regulatory permitting process.	11/20/19		
I-19-0019	11/04/19	Kremen	Hawk	Yerrapotu	Director Kremen is requesting a list of small community services districts and well owner associations	11/24/19		



MEMORANDUM

FC 14 (02-08-19)

TO: Board of Directors

FROM: Nina Hawk

SUBJECT: Department of Water Resources Notice to Contractors Regarding Use of Facilities Charge

DATE: 11/8/2019


On October 29, 2019, the Department of Water Resources (DWR) issued a Notice to State Water Project Contractors confirming that DWR will not charge additional capital fees for groundwater banking ("Use of Facilities Charge") pending completion of a future contract amendment, and also clarifying DWR's interpretation of contract language which is in dispute related to these charges. The Notice to Contractors provides significant protection to Valley Water against increased costs of roughly \$16 million for groundwater banking in Semitropic, and possibly \$50 million for potential new groundwater banking projects in Southern California in which Valley Water may wish to participate in the future.

In 1995, the State Water Project (SWP) contractors, including Valley Water, entered into an amendment to the SWP contract known as the Monterey Amendment. After the amendment was executed, a list of outstanding concerns and unintended issues with the contractual language were identified and was referred to as "Phase 1 amendments". This included agreement among the SWP contractors that no additional capital fees should be charged for groundwater banking if one of the banking partners already pays for a share of capital costs associated with the SWP conveyance facilities used (Use of Facilities Charge Issue). In 2003, the State Water Contractors, which is an organization comprised of SWP contractors, including Valley Water, sent a letter to DWR requesting that DWR refrain from applying a Use of Facility Charge. DWR agreed pending future Phase 1 contract amendments and in 2004 asked SWP public water agencies to sign a waiver of the Use of Facilities charges. That waiver was signed by all contractors except for Metropolitan, San Luis Obispo County Flood Control and Water Conservation District, and Ventura County Watershed Protection District. Since that time, the Phase 1 amendments have not taken place.

During the SWP contract amendment negotiations in 2018 and recently in 2019, Valley Water requested that the contract language be fixed to address the Use of Facilities Charge issue but was met with strong opposition from several SWP contractors. DWR considered the issue and sent out the attached Notice to Contractors, which states that DWR will continue its practice of not collecting Use of Facilities charges "because doing so is consistent with the intent of the Water Supply Contracts," and clarifying its interpretation of the existing contract language to support that position. This is the first time that DWR has stated so clearly its position, which is consistent with Valley Water's position, and staff's assessment is that the Notice to Contractors significantly reduces Valley Water's vulnerability to future capital charges associated with banking.

For further information, please contact Garth Hall at (408) 630-2750.

Attachment: October 29, 2019, Notice to State Water Project Contractors

NOTICE TO STATE WATER PROJECT CONTRACTORS**Date:** OCT 29 2019**Number:** 19-11**Subject:** Confirmation of the Department's Continued Interpretation of Article 56(c)(6) Use of Facilities Charges**From:** 

Ted Craddock
Acting Deputy Director, State Water Project
Department of Water Resources

In 1995, the Department of Water Resources (Department) entered into an amendment to the Water Supply Contracts known as the Monterey Amendment. As part of this amendment, a list of outstanding items for future resolution was developed and is referred to as Phase 1. Phase 1 of the Water Supply Contract amendment process has not been completed at this time. Furthermore, a number of contract amendments are presently pending that do not resolve the list of items in Phase 1.

The Department is providing this Notice to Contractors to confirm the Water Supply Contract will continue to be interpreted in a manner consistent with the current practice, pending completion of future contract amendments sufficient to cover the list of items known as Phase 1.

The Monterey Amendment added Article 56(c)(6), which reads:

For any project water stored outside its service area pursuant to this subdivision (c)... the contractor shall pay all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the State, which shall not include any administrative or contract preparation charge. Incremental costs shall mean those nonpower costs which would not be incurred if such water were scheduled for or delivered to the contractor's service area instead of to interim storage outside the service area. Only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge for use of a reach for the delivery of water to, or return of water from, interim storage.

In 2003, the State Water Contractors (SWC) sent a letter to the Department in which it requested, on behalf of its members, that “a use of facilities charge for a contractor’s use of project facilities for the delivery of water to, or return of water from, interim storage shall be imposed only if neither the contractor for whom the water is stored nor the contractor storing the water has participated in the repayment of such project facilities.” In 2004, the Department circulated for signature a waiver of use-of-facilities charges pursuant to Article 56(c)(6) related to the ambiguity referenced in the 2003 letter. That waiver was not signed by Metropolitan Water District of Southern California (Metropolitan), San Luis Obispo County Flood Control and Water Conservation District, and Ventura County Watershed Protection District. The waiver correspondence contained the following language:

Even though the Phase 1 amendment has been put aside, at least temporarily, the Department agreed on November 10, 2003, to continue its practice of not collecting Use-of-Facility charges until Phase 1 negotiations can be reinstated *provided* that (1) individual agreements continue to contain hold-harmless and indemnification clauses; (2) individual agreements continue to allow retroactive collection of the Use-of-Facilities charges in the event the contractual amendment does not materialize; and (3) all South-of-Delta contractors sign a waiver of Article 56(c)(6) to limit retroactive claims for Use-of-Facilities charges.

Metropolitan filed a protest over this issue in 2005, and that protest is subject to a tolling and waiver agreement. Subsequent to this protest, the Department discontinued the effort to seek a signed waiver from the remaining parties.

Article 56(c)(6) is phrased in the singular when referencing “a contractor” and “the contractor’s” responsibilities. When applied to situations where two or more contractors are required to partner in the storage of project water outside a contractor’s service area, the language in Article 56(c)(6) does not, at first glance, seem to address the situation. Furthermore, conditions 2 and 3 as stated above have not been met at this time, drawing into question DWR’s billing process. Thus, there are outstanding ambiguities on how the Department intends to interpret Article 56(c)(6) that stem from the language of the Monterey Amendment and the waiver.

Article 56(c)(6) is stated in the singular as mentioned above. However, the article also contains language that describes the intent of the provision, which is to only recover costs “which would not be incurred” absent the storage of project water permitted by the article. The article goes on to state that “only those contractors not participating in the repayment of a reach shall be required to pay a use of facilities charge.” The Department interprets the intent of this language as meaning that use-of-facilities charges are to ensure collection of incremental costs that are not already collected by a contractor involved in the storage. Therefore, when combined with Article 56(f) the term “contractor” and “contractor’s” is read to reflect the singular transaction, inclusive of all the parties involved.

Addressing the waiver, conditions 2 and 3 have not been met. Nonetheless, the Department has continued its practice of not collecting use-of-facilities charges where at least one party in a transaction under Article 56(c)(6) has participated in repayment of the utilized project reaches. The Department continues its billing practice without completion of all the conditions set forth in the waiver, because doing so is consistent with the intent of the Water Supply Contracts.

The Department has included language in storage of water outside of service area agreements stating that if one of the contractors involved in these arrangements is participating in the repayment costs of all aqueduct reaches involved, the Department will not charge a use-of-facilities charge for transportation of water subject to these agreements.

The Department will continue its current interpretation of the Water Supply Contracts until completion of future contract amendments sufficient to cover the list of items known as Phase 1.

If you have any questions or need additional information, please reach me at (916) 653-8043.

INCOMING BOARD CORRESPONDENCE

Report Name: Correspondence (open)

Correspond No	Rec'd By District	Rec'd By COB	Letter To	Letter From	Description	Disposition	BAO/ Chief	Staff	Draft Response Due Date	Draft Response Submitted	Writer Ack. Sent	Final Response Due Date
C-19-0256	11/04/19	11/04/19	All	SALLY MCELRAVEY	Letter from Sally McElravey, Saratoga resident, to the Board regarding Saratoga Creek Encroachment remediation action.	Refer to Staff	Richards on	Tippets	11/12/19		n/a	11/18/19