



**AGENDA**  
**REGULAR MEETING OF THE BOARD OF DIRECTORS**  
**WEDNESDAY, FEBRUARY 3, 2021 - 9:00 AM**  
**1391 Engineer Street, Vista, CA 92081**  
**Phone: (760) 597-3100**

**COVID-19 RESPONSE PROCEDURES FOR MEETING**  
**NOTICE FOR PARTICIPATION**

In light of Governor Newsom's Executive Orders N-29-20 and N-33-20, and guidance from the County of San Diego, State of California, and Centers for Disease Control, please be advised that members of the public will not be able to attend this meeting in person. Executive Order N-33-20 requires persons "stay home or in their place of residence except as needed to maintain continuity of operations..." of critical infrastructure. As welcome as public attendance is at Vista Irrigation District Board of Directors meetings, it does not appear to fit this exception, and Vista Irrigation District encourages compliance with the Governor's Executive Order.

Members of the public may participate through Vista Irrigation District's teleconferencing line. The phone number and applicable pass code for such participation is as follows: Phone (877) 873-8018; Pass Code 474698#.

Vista Irrigation District's teleconferencing line capacity is limited and not all parties who wish to participate through this method may be able to do so. Phone participants are asked to place calls to this line at or before the scheduled start time of the meeting, so the District staff can organize order of speakers and assure the ability of all who wish to participate. Please also note phone or data charges from your carrier may apply to your use of this option.

To maintain orderliness in proceedings, phone participants will be asked to identify themselves, their address, and the item on the agenda they wish to address. Telephone participants are asked to limit background noise during telephonic participation (with muting features, if available) and to maintain proper decorum suitable to the conduct of public meetings at all times. Telephone participants may not speak until the appropriate time on the agenda and only when recognized by the Board President.

Members of the public may also address the Board of Directors by email; however, such email communication must be received at or before the time of the commencement of the meeting. The email address to use for such communications is as follows: [BoardSecretary@vidwater.org](mailto:BoardSecretary@vidwater.org).

Please also be advised that one or more members of the Vista Irrigation District Board of Directors or staff may participate in this meeting by teleconference or other digital means consistent with Executive Order N-29-20.

Vista Irrigation District appreciates your understanding as we all work through the unprecedented challenges posed by COVID-19. In compliance with the Americans with Disabilities Act, if special assistance is needed to participate in the Board meeting telephonically, please contact the Board Secretary during regular business hours at (760) 597-3128. Notification received 48 hours before the meeting will assist Vista Irrigation District in making reasonable accommodations.



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**1. CALL TO ORDER**

**2. ROLL CALL – DETERMINATION OF QUORUM**

**3. PLEDGE OF ALLEGIANCE**

**4. CONSIDER APPROVAL OF AGENDA**

In the case of an emergency, items may be added to the Agenda by a majority vote of the Board of Directors. An emergency is defined as a work stoppage, a crippling disaster, or other activity that severely imperils public health, safety, or both. Also, items that arise after the posting of the Agenda may be added by a 2/3 vote of the Board. Items on the agenda may be taken out of sequential order as their priority is determined by the Board of Directors. The Board may take action on any item appearing on the agenda.

**5. ORAL COMMUNICATIONS**

Members of the public may address the Board on items not appearing on the posted agenda, which are within the subject matter jurisdiction of the Board. Speakers are asked to limit their comments to five (5) minutes; the total time allowable for all public comment on items not appearing on the agenda at any one meeting may be limited. Comments on items listed on the agenda will be taken before or during discussion of the agenda item. Members of the public desiring to address the Board are asked to complete a speaker's slip available on the table near the entrance of the Boardroom and present it to the Board Secretary prior to the meeting.

**6. CONSENT CALENDAR**

Any member of the Board, staff or public may request that items from the Consent Calendar be removed for discussion. Items so removed shall be acted upon separately immediately following approval of items remaining on the Consent Calendar.

**A. Treasurer's Report as of December 31, 2020**

*Recommendation: Informational report concerning the investments of the District.*

**B. Minutes of the Public Affairs Committee meeting on January 19, 2021**

*For information only.*

**C. Minutes of the Board of Directors meeting on January 20, 2021**

*Recommendation: Approval of draft minutes.*

**D. Ratification of check disbursements**

*Recommendation: Adopt a resolution ratifying checks numbered 66032 through 66124 in the amount of \$9,057,815.28 pursuant to the cash disbursement report detailing expenditures.*

**7. DIVISION REPORTS**

*Informational reports by Administration, Engineering Operations and Field Services, and Water Resources Divisions concerning District operations and activities.*

**8. MANAGEMENT AND MITIGATION OF HARMFUL ALGAL BLOOMS IN LAKE HENSHAW AND LAKE WOHLFORD**

*Recommendation: Authorize the General Manager to execute a professional services agreement with Stillwater Sciences to provide services related to the management and mitigation of harmful algal blooms in Lake Henshaw and Lake Wohlford in an amount not to exceed \$440,000.*

**9. EMPLOYEE PERSONNEL POLICIES MANUAL REVISIONS**

*Recommendation: Adopt Resolution No. 21-XX revising Employee Personnel Policies Manual sections 2.2, 2.8 and 9.*

**10. EXTENSION OF FAMILIES FIRST CORONAVIRUS RESPONSE ACT LEAVE PROVISIONS**

*Recommendation: Consider voluntary extension of leave provisions and related benefits contained in the Families First Coronavirus Response Act through March 31, 2021.*

**11. MATTERS PERTAINING TO THE ACTIVITIES OF THE SAN DIEGO COUNTY WATER AUTHORITY**

*Informational report by staff and directors concerning the San Diego County Water Authority.*

**12. MEETINGS AND EVENTS**

*A. Reports on meetings and events attended by Directors*

*B. Schedule of upcoming meetings and events*

**13. ITEMS FOR FUTURE AGENDAS AND/OR PRESS RELEASES**

*This item is placed on the agenda to enable the Board to identify and schedule future items for discussion at upcoming Board meetings and/or identify press release opportunities.*

**14. COMMENTS BY DIRECTORS**

*This item is placed on the agenda to enable individual Board members to convey information to the Board and the public not requiring discussion or action.*

**15. COMMENTS BY GENERAL COUNSEL**

*Informational report by the General Counsel on items not requiring discussion or action.*

**16. COMMENTS BY GENERAL MANAGER**

*Informational report by the General Manager on items not requiring discussion or action.*

**17. ADJOURNMENT**

- *The agenda package and materials related to an agenda item submitted after the packet's distribution to the Board, are available for public review outside the lobby of the District office during normal business hours.*
- *Agendas and minutes are available at [www.vidwater.org](http://www.vidwater.org).*
- *VID Board meetings are generally held on the first and third Wednesday of each month.*

**AFFIDAVIT OF POSTING**

I, Ramea Ogilvie, Assistant Board Secretary of the Vista Irrigation District, hereby certify that I posted a copy of the foregoing agenda outside the lobby of the District office at 1391 Engineer Street, Vista, California at least 72 hours prior to the meeting, in accordance with Govt. Code Sec. 54954.2(a).

Date: January 28, 2021

  
Ramea Ogilvie, Assistant Board Secretary



**Agenda Item: 6**

**STAFF REPORT**

**Board Meeting Date: February 3, 2021**  
**Prepared By: Lisa Soto**

**SUBJECT: CONSENT CALENDAR**

- A. Treasurer's Report as of December 31, 2020
- B. Minutes of the Public Affairs Committee meeting on January 19, 2021
- C. Minutes of the Board of Directors meeting on January 20, 2021
- D. Ratification of check disbursements



**STAFF REPORT**

**Agenda Item: 6.A**

<b>Board Meeting Date:</b>	<b>February 3, 2021</b>
<b>Prepared By:</b>	<b>Shallako Goodrick</b>
<b>Reviewed By:</b>	<b>Marlene Kelleher</b>
<b>Approved By:</b>	<b>Brett Hodgkiss</b>

**SUBJECT:** TREASURER’S REPORT AS OF DECEMBER 31, 2020

**RECOMMENDATION:** Informational report concerning the investments of the District.

**SUMMARY:** Attached for review by the Board of Directors is the Treasurer’s Report as of December 31, 2020. The report is formatted to provide information as required by the California Government Code and Vista Irrigation District Investment Policy. The Treasurer’s Report contains both an investment summary and a detailed security listing. Also attached is a five-year cash flow forecast, which indicates the District’s investments are sufficiently liquid to meet anticipated cash flow needs.

**DETAILED REPORT:** Activity for the quarter included deposits and withdrawals from the District’s cash and cash equivalent accounts: checking, California Asset Management Program (CAMP), and Local Agency Investment Fund (LAIF). During the quarter, \$6.0 million of Treasury bills matured and \$6.0 million of new Treasury bills were purchased.

As of December 31, 2020, the net unrealized gain on the portfolio was as follows:

	<u>Unrealized Gain</u>
Treasury Bills	\$58,536
LAIF	<u>40,877</u>
Net Unrealized Gain/(Loss)	<u>\$99,413</u>

All investment transactions have been made in accordance with the District’s Investment Policy.

The following is a five-year summary of the District’s investment portfolio:

	<u>12/31/16</u>	<u>12/31/17</u>	<u>12/31/18</u>	<u>12/31/19</u>	<u>12/31/20</u>
Total Portfolio	\$33,044,707	\$27,670,600	\$37,386,158	\$51,136,758	\$50,218,039
Unrealized Gain	\$56,255	\$70,754	\$197,113	\$298,243	\$99,413
Weighted Average Maturity	90 Days	96 Days	89 Days	65 Days	77 Days
Portfolio Interest Rate	0.68%	1.19%	2.32%	1.95%	0.34%

**ATTACHMENTS:**

- Treasurer’s Report
- Securities Detail
- Cash Flow Projection

**Vista Irrigation District  
TREASURER'S REPORT  
December 31, 2020**

<u>Category</u>	<u>Maturity Value</u>	<u>Percentage Permitted by Board Policy</u>	<u>Actual Percentage</u>	<u>Weighted Average Maturity (in Days)</u>	<u>Current Interest Rate</u>
<b>Cash and Cash Equivalents</b>					
Checking/Petty Cash	\$ 1,840,770	n/a	3.7%	0	0.00%
California Asset Management Program	10,880,084	40%	21.7%	1	0.12%
Local Agency Investment Fund	17,997,185	40%	35.8%	1	0.49%
	<u>30,718,039</u>		<u>61.2%</u>	<u>1</u>	<u>0.33%</u>
<b>Securities</b>					
U.S. Treasury	19,500,000	100%	38.8%	196	0.35%
<b>Total Portfolio</b>	<u><u>\$ 50,218,039</u></u>		<u><u>100.0%</u></u>	<u><u>77</u></u>	<u><u>0.34%</u></u>

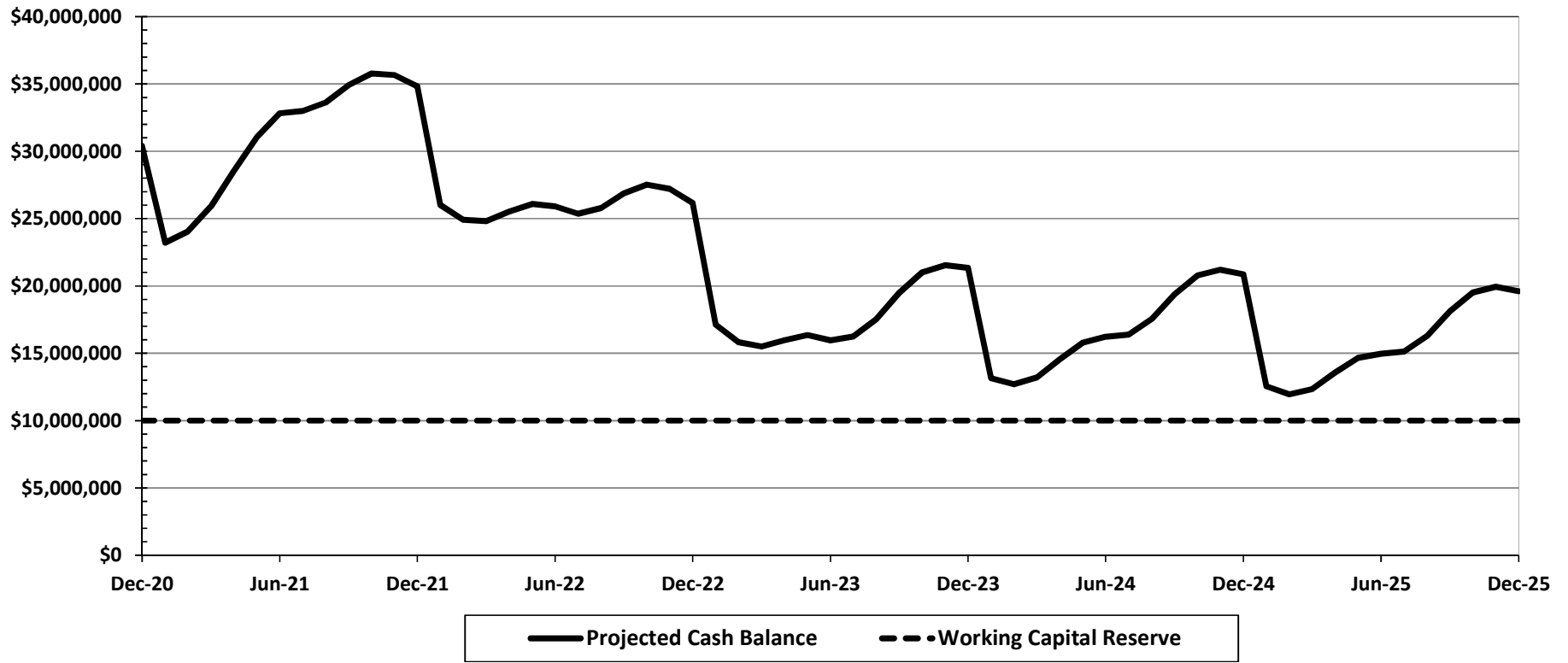
**Notes:**

- ◆ This report excludes accrued interest and employee flexible spending accounts.
- ◆ California Asset Management Program (CAMP) is a California Joint Powers Authority (JPA) established to provide California public agencies with professional investment services. The CAMP pool is a permitted investment for all local agencies under California Government Code Section 53601(p). The market valuation is provided by PFM Asset Management LLC.
- ◆ Local Agency Investment Fund (LAIF) is a pool of funds invested for California governmental agencies and is managed by the State Treasurer's Office of the State of California. The market valuation is provided by the State Treasurer's Office.
- ◆ The above portfolio is in full compliance with the District's Investment Policy.
- ◆ The District's investment portfolio is adequate to meet the District's cash flow requirements for the next six months.

**Vista Irrigation District**  
**SECURITIES DETAIL**  
**December 31, 2020**

<b>Issuer</b>	<b>Investment Type</b>	<b>Interest Rate</b>	<b>Maturity Date</b>	<b>Days to Maturity</b>	<b>Maturity Value</b>	<b>Cost</b>	<b>Market Value</b>	<b>Unrealized Gain</b>
U.S. Treasury	Treasury Bill	1.532%	01/28/21	28	\$ 1,500,000	\$ 1,477,402	\$ 1,499,937	\$ 22,535
U.S. Treasury	Treasury Bill	1.304%	02/25/21	56	1,500,000	1,480,738	1,499,844	19,105
U.S. Treasury	Treasury Bill	0.264%	03/25/21	84	1,500,000	1,496,057	1,499,731	3,674
U.S. Treasury	Treasury Bill	0.168%	04/22/21	112	1,500,000	1,497,498	1,499,641	2,143
U.S. Treasury	Treasury Bill	0.162%	05/20/21	140	1,500,000	1,497,573	1,499,511	1,938
U.S. Treasury	Treasury Bill	0.203%	06/17/21	168	1,500,000	1,496,967	1,499,413	2,446
U.S. Treasury	Treasury Bill	0.157%	07/15/21	196	1,500,000	1,497,649	1,499,331	1,682
U.S. Treasury	Treasury Bill	0.142%	08/12/21	224	1,500,000	1,497,877	1,499,190	1,313
U.S. Treasury	Treasury Bill	0.142%	09/09/21	252	1,500,000	1,497,877	1,499,140	1,264
U.S. Treasury	Treasury Bill	0.142%	10/07/21	280	1,500,000	1,497,877	1,498,987	1,111
U.S. Treasury	Treasury Bill	0.137%	11/04/21	308	1,500,000	1,497,953	1,498,823	870
U.S. Treasury	Treasury Bill	0.112%	12/02/21	336	1,500,000	1,498,332	1,498,688	357
U.S. Treasury	Treasury Bill	0.112%	12/30/21	364	1,500,000	1,498,332	1,498,429	98
		<u>0.352%</u>		<u>196</u>	<u>\$ 19,500,000</u>	<u>\$ 19,432,132</u>	<u>\$ 19,490,665</u>	<u>\$ 58,536</u>

**Vista Irrigation District  
CASH FLOW PROJECTION  
through December 2025**





**DRAFT MINUTES**

*Not part of the District's permanent record until approved by the Board of Directors.*

MINUTES OF THE REGULAR MEETING OF THE  
PUBLIC AFFAIRS COMMITTEE OF THE  
BOARD OF DIRECTORS OF THE  
VISTA IRRIGATION DISTRICT

January 19, 2021

A meeting of the Public Affairs Committee of Vista Irrigation District was held on Tuesday, January 19, 2021, at the offices of the District, 1391 Engineer Street, Vista, California.

**1. CALL TO ORDER**

Chair MacKenzie called the meeting to order at 9:02 a.m.

**2. ROLL CALL**

Committee members present: MacKenzie and Vásquez.

Staff present: Marlene Kelleher, Director of Administration; and Alisa Nichols, Management Analyst.

**3. APPROVAL OF AGENDA**

The agenda was approved as presented.

**4. PUBLIC COMMENT TIME**

No public comments were presented on items not appearing on the agenda.

**5. VID SCHOLARSHIP CONTEST**

See staff report attached hereto.

The Committee and staff discussed concerns related to potential difficulties of student participation due to schooling being conducted remotely because of the COVID-19 pandemic. The Committee discussed several ideas and instructed staff to contact counselors to determine how each school is conducting outreach while students are not on campus. The Committee recommended continuing to offer awards in the \$1,000 to \$3,000 range to allow flexibility in selecting the number of award recipients. Additionally, the Committee directed staff to remove the requirement to provide the student's GPA in an effort to increase participation.

The Committee and staff reviewed and discussed the scholarship application materials, including a new essay topic/question, timeline and promotion of the scholarship contest to local high schools. The Committee recommended continuing to provide a brochure to assist high school counselors and others with promoting the contest.

**6. 2020 ANNUAL REPORT AND 2021 SPRING/SUMMER NEWSLETTER**

See staff report attached hereto.

**DRAFT MINUTES**

*Not part of the District's permanent record until approved by the Board of Directors.*

The Committee and staff discussed the format and topics that will be included in the annual report, which will be produced in electronic format only and made available on the District's website. Ms. Kelleher and Ms. Nichols requested the Committee suggest ideas for content for this year's annual report including, but not limited to, a San Diego County Water Authority report, as well as additional articles. Chair MacKenzie suggested highlighting the District's 97 years in the community as well as upcoming reservoir projects. Chair MacKenzie also recommended including an article on each reservoir (as it is rehabilitated/constructed) in future annual reports. Additionally, Chair MacKenzie requested that the water infrastructure section clarify how many years the Main Replacement Program has been in place and that a graphic identifying how imported water is conveyed to the District be added.

Additionally, the Committee and staff briefly discussed the upcoming four-page newsletter that will incorporate condensed demographic and financial information along with highlights from the annual report. Chair MacKenzie recommended staff carry the reservoir article into the newsletter. Ms. Nichols said that the newsletter would likely be distributed in late spring or early summer. Staff also proposed producing a two-page Fall/Winter newsletter, which will include articles on relevant water topics and/or District activities and projects.

**7. COMMENTS BY COMMITTEE MEMBERS**

None were presented.

**8. ADJOURNMENT**

There being no further business to come before the Committee, at 10:08 a.m. Chair MacKenzie adjourned the meeting.

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Jo Mackenzie, Chair

ATTEST:

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Lisa R. Soto, Secretary  
Board of Directors  
VISTA IRRIGATION DISTRICT

**DRAFT MINUTES**

*Not part of the District's permanent record until approved by the Board of Directors.*

MINUTES OF THE ADJOURNED MEETING OF THE  
BOARD OF DIRECTORS OF  
VISTA IRRIGATION DISTRICT

January 20, 2021

An Adjourned Meeting of the Board of Directors of Vista Irrigation District was held on Wednesday, January 20, 2021, at the offices of the District, 1391 Engineer Street, Vista, California.

**1. CALL TO ORDER**

President Sanchez called the meeting to order at 9:00 a.m.

**2. ROLL CALL**

Directors present: Miller, Vásquez, Dorey, Sanchez, and MacKenzie.

Directors absent: None.

Staff present: Brett Hodgkiss, General Manager; Lisa Soto, Secretary of the Board; Don Smith, Director of Water Resources; Randy Whitmann, Director of Engineering; Frank Wolinski, Director of Operations and Field Services; and Marlene Kelleher, Director of Administration. Shallako Goodrick, Finance Supervisor and David Cosgrove, General Counsel were present via teleconference.

Other attendees: Daphne Munoz of CliftonLarsonAllen LLP was present via teleconference for agenda Item 8.

**3. PLEDGE OF ALLEGIANCE**

Director Miller led the pledge of allegiance.

**4. APPROVAL OF AGENDA**

21-01-07	<i>Upon motion by Director MacKenzie, seconded by Director Miller and unanimously carried (5 ayes: Miller, Vásquez, Dorey, MacKenzie, and Sanchez), the Board of Directors approved the agenda as presented.</i>
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**5. ORAL COMMUNICATIONS**

No public comments were presented on items not appearing on the agenda.

**6. CONSENT CALENDAR**

21-01-08	<i>Upon motion by Director Miller, seconded by Director Vásquez and unanimously carried (5 ayes: Miller, Vásquez, Dorey, MacKenzie, and Sanchez), the Board of Directors approved the Consent Calendar, including Resolution No. 21-03 approving disbursements.</i>
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**DRAFT MINUTES**

*Not part of the District's permanent record until approved by the Board of Directors.*

Regarding Item 6.A, President Sanchez requested that staff let the Board know the amount of financial assistance received.

A. Federal Emergency Management Agency and California Office of Emergency Services Financial Assistance

See staff report attached hereto. The Board noted and filed this informational report.

B. Acceptance of water system

See staff report attached hereto. Staff recommended and the Board accepted this water system for a 44-unit detached condominium development known as MLC Buena Vista, consisting of approximately 4.82 gross acres owned by Meritage HMS of California, Inc., located at 1525 Buena Vista Drive, Vista (I-3085, P17-0042; LN 2018-007; APN 169-220-10; DIV NO 4).

C. Minutes of Board of Directors meetings on December 9, 2020 and January 6, 2021

The minutes of December 9, 2020 and January 6, 2021 were approved as presented.

D. Resolution ratifying check disbursements

**RESOLUTION NO. 21-03**

**BE IT RESOLVED, that the Board of Directors of Vista Irrigation District does hereby approve checks numbered 65957 through 66031 drawn on Union Bank totaling \$700,437.81.**

**FURTHER RESOLVED that the Board of Directors does hereby authorize the execution of the checks by the appropriate officers of the District.**

**PASSED AND ADOPTED unanimously by a roll call vote of the Board of Directors of Vista Irrigation District this 20<sup>th</sup> day of January 2021.**

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**7. RESOLUTION HONORING PAST PRESIDENT RICHARD L. VÁSQUEZ**

See staff report attached hereto.

21-01-09	<p><i>Upon motion by Director Miller, seconded by Director MacKenzie, the Board of Directors adopted Resolution 21-04 honoring the District's 2020 past president, Richard L. Vásquez, by the following roll call vote:</i></p> <p><b>AYES:</b>            <i>Directors Miller, Vásquez, Dorey, MacKenzie, and Sanchez</i></p> <p><b>NOES:</b>            <i>None</i></p> <p><b>ABSTAIN:</b>        <i>None</i></p> <p><b>ABSENT:</b>         <i>None</i></p> <p><i>A copy of Resolution 21-04 is on file in the official Resolution Book of the District.</i></p>
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**DRAFT MINUTES**

***Not part of the District's permanent record until approved by the Board of Directors.***

The Board members joined General Manager Brett Hodgkiss in commending and thanking Director Vásquez for his leadership as Board President in 2020, which proved to be a challenging year due to the COVID-19 pandemic. Director Vásquez thanked his fellow Board members and staff for their hard work and support during his tenure as Board President.

**8. FISCAL YEAR 2020 AUDIT**

See staff report attached hereto.

Director of Administration Marlene Kelleher introduced Daphne Munoz of CliftonLarsonAllen LLP (auditors) who presented the results of the audit for the year ended June 30, 2020. Ms. Munoz reviewed the auditors' opinion and the methods and standards by which the audit was conducted. She stated that the District's financial statements and best practices were reviewed, and the auditors found no material weaknesses involving the District's internal control structure or its operation. She noted that the auditors encountered no significant difficulties in performing the audit and that there were no disagreements with management.

Ms. Munoz stated that the auditors issued a "best practices" report, which recommends that the District implement policies and technologies to strengthen its cybersecurity. She stated that the auditors' recommendation is to begin by performing a comprehensive risk assessment of the District's physical and logical infrastructure, networks, data, and personnel. Based on the findings of the assessment, the District implement policies and technologies to reduce the risk of cyberattacks, data breaches, theft, fraud and other threats.

Ms. Kelleher responded that staff intends to hire a consultant to perform a cybersecurity assessment; the findings will be shared with the Board. She noted that staff has already taken the step of inserting a notice on emails that originate from outside the District reminding the recipient not to use links or open attachments unless the sender is recognized. Ms. Kelleher stated that the assessment will be included in next year's budget request. Director Dorey suggested that, when appropriate, this item be added to the list of upcoming agenda items.

Ms. Munoz thanked staff for making the process as smooth as possible this year since work on the audit was performed remotely due to the pandemic. She noted that in spite of the special challenges the process was as smooth as in previous years. Ms. Kelleher thanked Ms. Munoz and her staff as well, stating that it has been a pleasure working with them for the last five years.

Ms. Kelleher updated the Board regarding funding liabilities for the District's retiree health coverage (no longer available for new hires), which she stated is fully funded. With regard to the District's funding liability for its participation in the Public Employees Retirement System (PERS), the District is considered a small agency (under 100 employees) and therefore part of a pool in which the District is adequately funded.

The Board thanked Ms. Munoz for her report. General Manager Brett Hodgkiss and the Board thanked Ms. Kelleher and Finance Supervisor Shallako Goodrick as well as Finance staff for their good work and another clean audit.

21-01-10	<b><i>Upon motion by Director Vásquez, seconded by Director Dorey and unanimously carried (5 ayes: Miller, Vásquez, Dorey, MacKenzie, and Sanchez), the Board of Directors accepted the Fiscal Year 2020 audit report by CliftonLarsonAllen LLP.</i></b>
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**DRAFT MINUTES**

*Not part of the District's permanent record until approved by the Board of Directors.*

**9. FINANCIAL REPORT FOR THE YEAR ENDED JUNE 30, 2020**

See staff report attached hereto.

Ms. Kelleher presented the Financial Report for the year ended June 30, 2020. She stated that this report contains statements of revenues and expenses directly related to operating Lake Henshaw and the surrounding Warner Ranch as well as three special reports comparing actual results to budgeted amounts approved by the Board. Ms. Kelleher stated that overall the District experienced a \$3.8 million operating gain this fiscal year, which is a decrease from the \$5.1 million operating gain for the prior fiscal year. The District purchased \$20.9 million of water from the San Diego County Water Authority. She reviewed the revenue and expense budget comparison as well as the property revenue and legal expense reports.

Mr. Kelleher provided clarification regarding the Capital Outlay Comparison, specifically concerning the line items with the notation "canceled" next to them. She stated that these notations were made in response to the Board's request that that staff review the items on the Capital Outlay list that had been outstanding for a long period of time and assess whether the projects are still viable, and if not, remove them from the list. Ms. Kelleher stated that the items with the word "canceled" next to them will be removed from future Capital Outlay lists. She clarified that many of these projects were individual projects related to the Vista Flume, and they will be incorporated as part of the larger Flume replacement project now being planned. Director MacKenzie requested more detailed information regarding the canceled items; Ms. Kelleher said she would provide that information for the Board.

Director MacKenzie noticed that the legal expenses for Liebert, Cassidy & Whitmore (LCW) were higher than in past years. Mr. Hodgkiss responded that LCW did a great deal of work for the District on labor relations issues as well as on the COVID-19 Response and Action Plan.

The Board thanked Ms. Kelleher for her report.

**10. REQUEST FOR PROPOSAL FOR SPECIAL COUNSEL**

See staff report attached hereto.

Mr. Hodgkiss said that the District is in need of Special Counsel services due to passing of the District's Special Counsel John Carter. He stated that staff modeled the Request for Proposal (RFP) for Special Counsel Services after the RFP the District issued in 2008; however, it was tailored to meet the District's needs now that a settlement has been reached. Mr. Hodgkiss stated that the list of attorneys/firms to receive the RFP included attorneys/firms that received the RFP in 2008, attorneys/firms on a State Water Resources Control Board list with expertise in water law and water rights and attorneys/firms recommended by counsel. He said that he also reached out to former General Manager Roy Coox, who headed up the RFP process in 2008, to inquire about any advertising that was done at that time for Special Counsel; Mr. Coox indicated that no advertising was done due to the specialized field of legal expertise being sought.

Mr. Hodgkiss stated that following the deadline for submittals staff will conduct an internal ranking of candidates, consistent with the 2008 process, to narrow the number of attorneys/firms to be interviewed by the Board. He advised that due to the COVID-19 pandemic interviews may need to be conducted virtually for the safety of all involved. Mr. Hodgkiss stated that the RFP packet will be sent out via email and United States postal service.

**DRAFT MINUTES**

*Not part of the District's permanent record until approved by the Board of Directors.*

The Board expressed its desire to hire an attorney/firm with experience working with Native American Bands. Mr. Hodgkiss stated that experience working with Native American Bands will be considered when ranking attorneys/firms. It was noted that due to the specialized field of legal expertise being sought the RFP was being sent to attorneys/firms located in all parts of California including Sacramento, Bakersfield, Santa Barbara, Los Angeles, etc.

21-01-11      *Upon motion by Director Miller, seconded by Director MacKenzie and unanimously carried (5 ayes: Miller, Vásquez, Dorey, MacKenzie, and Sanchez), the Board of Directors authorized the General Manager to send the Request for Proposal for Special Counsel to the firms listed.*

**11. CALL FOR NOMINATIONS FOR ASSOCIATION OF CALIFORNIA WATER AGENCIES REGION 10 LEADERSHIP**

See staff report attached hereto.

The Board discussed this matter briefly, noting Director Vásquez's ten years of past experience on the Association of California Water Agencies (ACWA) Region 10 Board and his willingness to receive the nomination, and took the following action:

21-01-12      *Upon motion by Director Dorey, seconded by Director Miller, the Board of Directors adopted Resolution 21-05 placing in nomination Richard L. Vásquez for a position on the ACWA Region 10 Board of Directors, by the following roll call vote:*

*AYES:            Directors Miller, Vásquez, Dorey, MacKenzie, and Sanchez*  
*NOES:            None*  
*ABSTAIN:        None*  
*ABSENT:         None*

*A copy of Resolution 21-05 is on file in the official Resolution Book of the District.*

**12. MATTERS PERTAINING TO THE ACTIVITIES OF THE SAN DIEGO COUNTY WATER AUTHORITY**

See staff report attached hereto.

Director Miller reported that he received his San Diego County Water Authority (Water Authority) committee assignments, which include him serving as Chair of the Administrative & Finance Committee, as well as Chair of the Labor Negotiations Work Group. He stated that he will also serve on the Financial Strategy Work Group and Engineering & Operations Committee. Director Miller reported on some discussion regarding changes to the Water Authority Boardroom to make in-person meetings safe to resume during the pandemic; however, the decision was made to continue virtual meetings until the pandemic is over or conditions improve such that in-person meetings can resume safely.

Mr. Hodgkiss reported on the Member Agencies Managers' meeting the previous day in which information was shared regarding the COVID-19 pandemic. Also discussed was potential legislation to allow virtual meetings to continue to take place beyond emergency times in order to increase participation by the public.

**DRAFT MINUTES**

*Not part of the District's permanent record until approved by the Board of Directors.*

**13. MEETINGS AND EVENTS**

See staff report attached hereto.

Director Vásquez reported on his virtual attendance at the Colorado River Water Users Federal Friday meeting. He stated that David Ross, Assistant Administrator for Water at the Environmental Protection Agency, presented the draft National Water Reuse Action Plan (WRAP). The WRAP seeks to support all communities to build capacity for water reuse projects and enhance the availability and effective use of water resources. Mr. Ross noted, to date, 139 out of 322 implementation milestones have been completed. The plan is expected to be completed by the end of the year. Director Vásquez noted that the National Weather Service also provided an update about the use of drones to aid in predicting weather patterns.

Director MacKenzie reported on her participation in a webinar by the California Special Districts Association (CSDA) titled "Brown Act Principles". She stated that the coverage of the Ralph M. Brown Act was a good refresher. Director MacKenzie noted one interesting point that was covered regarding closed sessions; if opposing counsel wishes to address the Board in closed session on negotiations or litigation, it is up to the Board to decide whether to allow it. If permitted, discussion would be limited to questions and answers, and any in-depth discussion by the Board would need to take place after opposing counsel leaves the room.

Director MacKenzie reported on her attendance at a meeting of the San Diego Chapter CSDA Board of Directors. She reported on the newly filled positions on the San Diego Chapter CSDA Board, including Albert Lau of Santa Fe Irrigation District as Chair, Jack Beebe of Fallbrook Public Utilities District as Vice Chair and Jose Martinez from Otay Water District as Secretary. Director MacKenzie noted that the San Diego Chapter CSDA meeting in February will include a panel discussion regarding how COVID-19 has affected agency operations.

Director Miller reported that he attended a two-hour Harassment Prevention Training course provided by the Water Authority the previous week. It was noted that the Board will be due to fulfill their Harassment Prevention Training requirement during the latter part of 2021.

Director Vásquez requested to attend the Vista State of the Community virtual event on January 25, 2021. He suggested that if the District could get a small timeslot to speak at the event it would be a good vehicle for promoting the District's upcoming 100-year anniversary in 2023. The Board agreed with Director Vásquez's suggestion and indicated that it would be a good idea for next year's State of the Community event. Director Dorey suggested that the District submit itself as a nomination for the Vista Historical Society Hall of Fame; the Board was also in favor of this idea. The Board briefly discussed the District's upcoming milestone anniversary and suggested when the time is right to begin planning a celebration event that an ad hoc committee of the Board be selected to provide input.

Director MacKenzie requested authorization to attend the ACWA Legislative Committee meetings as her schedule permits throughout 2021.



**DRAFT MINUTES**

*Not part of the District's permanent record until approved by the Board of Directors.*

21-01-13      *Upon motion by Director Dorey, seconded by Director Vásquez and unanimously carried (5 ayes: Miller, Vásquez, Dorey, MacKenzie, and Sanchez), the Board of Directors authorized Director Vásquez to attend the Vista State of the Community virtual event on January 25, 2021 and Director MacKenzie to attend the ACWA Legislative Committee meeting as her schedule will allow throughout 2021.*

**14.      ITEMS FOR FUTURE AGENDAS AND/OR PRESS RELEASES**

See staff report attached hereto.

It was noted that the Board will have to issue a request for proposal for audit services this year since the current firm has provided services to the District for the maximum number of years (five years) allowed per District policy.

President Sanchez suggested a future agenda item, when appropriate, to discuss the District's 100-year anniversary and appoint an ad hoc committee to provide input regarding the commemoration activities.

**15.      COMMENTS BY DIRECTORS**

President Sanchez noted that the day (January 20) marked the four-year anniversary of the passing of former Vista Irrigation District Board member Randy Reznicek.

**16.      COMMENTS BY GENERAL COUNSEL**

General Counsel David Cosgrove updated the Board regarding "Kessner et al. v. City of Santa Clara, et al. stating that the Court is still assessing the case and how it will be processed. The parties have stipulated to a briefing schedule on venue and jurisdiction as well as whether the case remains as one case, splits into 80 cases or some combination thereof. He stated that the opening brief from the defendants is due on March 4, 2021, and the matter will be heard towards the end of May 2021. Mr. Cosgrove also reported briefly on recent activity in the Antelope Valley groundwater adjudication.

**17.      COMMENTS BY GENERAL MANAGER**

Mr. Hodgkiss updated the Board on the results of a survey done by State Water Resources Control Board regarding the financial impact of COVID-19 on water systems. He stated that the survey found that throughout California, 1.6 million (or 12 percent) of residential water customers have been unable to pay their water bills during the pandemic. Mr. Hodgkiss noted that the average amount owed per household in past due water bills for the period beginning March 2020 and ending October 2020 was \$500. He said that the survey covered water systems providing service to 70 percent of Californians (28 million people); as of October 2020, total household debt was at \$1 billion with \$600 million of that debt being specifically attributable to past due water bills.

Mr. Hodgkiss reported that the water level of Lake Henshaw was at just over 6,000 acre-feet.

**DRAFT MINUTES**

*Not part of the District's permanent record until approved by the Board of Directors.*

**18. ADJOURNMENT**

There being no further business to come before the Board, at 10:51 a.m., President Sanchez adjourned the meeting.

\_\_\_\_\_  
Patrick Sanchez, President

ATTEST:

\_\_\_\_\_  
Lisa R. Soto, Secretary  
Board of Directors  
VISTA IRRIGATION DISTRICT



# Cash Disbursement Report

Payment Dates 1/7/2021 - 1/20/2021

Payment Number	Payment Date	Vendor	Description	Amount
66032	01/13/2021	Refund Check 66032	Customer Refund	44.25
66033-66034	01/13/2021	Refund Checks 66033 - 66034	Customer Refunds	380.23
66035	01/13/2021	Refund Check 66035	Customer Refund	2,684.99
66036-66039	01/13/2021	Refund Checks 66036 - 66039	Customer Refunds	384.13
66040	01/13/2021	ACWA/JPIA	Workers Compensation 10/2020 - 12/2020	50,726.09
66041	01/13/2021	Escondido Metal Supply	Aluminum Angle	110.42
66042	01/13/2021	Amazon Capital Services	Headlight & Turn Signal Buckets - Truck 73	112.45
	01/13/2021		Warehouse Non-Stock Supplies	557.12
	01/13/2021		Batteries	133.28
66043	01/13/2021	Answering Service Care, LLC	Answering Service	395.00
66044	01/13/2021	AT&T	SIP Trunks	445.85
	01/13/2021		Data Circuit	698.93
66045	01/13/2021	Big Drip Plumbing	Meter Tie-back - Mason Rd	1,200.00
66046	01/13/2021	Boot Barn Inc	Footwear Program (1)	180.00
	01/13/2021		Footwear Program (1)	132.75
66047	01/13/2021	Brian Stadnik	Customer Rebate Smart Leak Detector Rebate Program	100.00
66048	01/13/2021	California Account Service	Collection Commission	125.70
66049	01/13/2021	CDW Government Inc	Next Business Day Support Firewall	719.00
	01/13/2021		Informacast Paging system Licenses	2,297.50
66050	01/13/2021	Cecilia's Safety Service Inc	Traffic Control - Tylee St/Anna Way	570.00
	01/13/2021		Traffic Control - Oceanview Dr	380.00
	01/13/2021		Traffic Control - La Rueda Dr	831.25
	01/13/2021		Traffic Control - Mason Rd	1,235.00
66051	01/13/2021	Charles Mol	Customer Rebate Smart Leak Detector Rebate Program	100.00
66052	01/13/2021	CleanCapital HC4 Borrower LLC	Solar Use 12/2020	3,064.73
66053	01/13/2021	Clinical Lab of San Bernardino Inc	DBP Samples	920.00
66054	01/13/2021	Core & Main	Cap 1.25" Brass (5)	27.86
	01/13/2021		Cap 1" Brass (5)	1.84
	01/13/2021		Cap 1" PVC Sch 40 Slip (5)	2.44
	01/13/2021		Cap 1.25" PVC Sch 40 Slip (5)	4.06
	01/13/2021		3/4" x 1" Meter Bushing #A34-NL (10)	113.11
	01/13/2021		Gasket 1.5" Meter Flg HP Drop In (15)	172.94
	01/13/2021		Corp Stop .75" MIP X Flare (2)	97.43
	01/13/2021		Gate Valve 3" R/S DI Flange (1)	430.83

Payment Number	Payment Date	Vendor	Description	Amount
	01/13/2021		10" PO Angles (6)	1,288.54
66055	01/13/2021	CoreLogic Solutions Inc	RealQuest Online Services 12/2020	300.00
66056	01/13/2021	Craneworks Southwest Inc	Hydraulic Cylinder Rebuild	427.77
66057	01/13/2021	Diamond Environmental Services	Portable Restroom Service	114.70
	01/13/2021		Portable Restroom Service	84.39
	01/13/2021		Portable & Stationary Restroom Service	216.46
	01/13/2021		Portable Restroom Service	95.00
	01/13/2021		Portable Restroom Service	100.79
66058	01/13/2021	Digital Deployment, Inc	Website Hosting, Maintenance & Support 12/2020	300.00
66059	01/13/2021	Streamline	Website Hosting, Maintenance & Support 01/2021	300.00
66060	01/13/2021	Direct Energy	Electric 12/2020 - Henshaw Buildings & Grounds	260.01
	01/13/2021		Electric 12/2020 - Henshaw Well Field	7,712.28
	01/13/2021		Electric 12/2020 - T & D / Cathodic Protection	14.30
	01/13/2021		Electric 12/2020 - Reservoirs	11.65
	01/13/2021		Electric 12/2020 - Pump Stations	4,561.62
	01/13/2021		Electric 12/2020 - Treatment Plants	24.96
66061	01/13/2021	Drum Plumbing, Inc	Meter Tie-backs (4) - York Dr	5,825.00
66062	01/13/2021	Edgehill Road Gate Association	Edgehill Road/Gate Maintenance Fee 2021	600.00
66063	01/13/2021	Employee Relations, Inc	Background Check	26.00
66064	01/13/2021	FedEx	Express Shipping	42.18
66065	01/13/2021	Ferguson Waterworks	Fire Hydrant Rod 15"x.5" Break Off Stainless (2)	116.91
	01/13/2021		Fire Hydrant 6" Break Off Spool LB400 (1)	240.32
	01/13/2021		DFW Meter Box Small DFW1324CH4-12 (20)	1,730.92
	01/13/2021		Pipe 8" PVC DR-14 C900 (1160)	12,632.34
	01/13/2021		Pipe 6" PVC DR-14 C900 (140)	886.57
	01/13/2021		Ell 6"x16" POxFL Bury DI (5)	1,385.60
	01/13/2021		Nut Bolt Gkt Kit 6"-8"(6" gasket) 3/4 x 3 1/4 (23)	244.00
	01/13/2021		Adapter 2" Copper x MIP (18)	233.82
	01/13/2021		Service Saddle 10x1 PVC (7)	1,195.81
	01/13/2021		Ell 2" Brass Street 90 Degree (9)	214.34
	01/13/2021		Tee 8x6 DI Flange (1)	213.62
	01/13/2021		Tee 8x6 DI POxFL (5)	828.76
	01/13/2021		Coupling 4" Macro (1)	210.97
	01/13/2021		Sleeve 8"x12" Galvanized Top Sections (16)	148.95
	01/13/2021		Adapter 10" DI FLxPO (1)	140.03
	01/13/2021		Service Saddle 8x2 PVC (5)	750.66
	01/13/2021		Tubing 2" Copper Soft 20' (40)	599.27
	01/13/2021		Gate Valve 4" POxFL R/W (1)	447.38
	01/13/2021		Service Saddle 6x2 PVC (1)	131.65

Payment Number	Payment Date	Vendor	Description	Amount
	01/13/2021		Service Saddle 4x2 PVC (1)	114.08
	01/13/2021		Tee 10x8 DI Flange (1)	323.29
	01/13/2021		Coupling 8" Macro (1)	315.28
	01/13/2021		Sleeve 10"x12" Galvanized Top Sections (9)	109.60
	01/13/2021		Nut Bolt Gasket Kit 10"- 12" (10" gasket) (3)	68.20
	01/13/2021		Coupling 4" Deflection C900 (2)	42.87
	01/13/2021		Coupling 6" Repair PVC C900 (1)	36.56
	01/13/2021		Coupling 4" Repair PVC C900 (1)	23.82
	01/13/2021		Nut Bolt Gasket Kit 4" (4" gasket) (1)	5.95
	01/13/2021		Service Saddle 10x2 PVC (2)	382.79
	01/13/2021		Coupling 6" Deflection C900 (8)	263.26
	01/13/2021		Tee 10x8 DI POxFL (1)	314.36
	01/13/2021		Corp Stop 1" MIP X Flare (41)	2,267.95
	01/13/2021		Fire Hydrant LB400 Check Valve (5)	7,875.19
	01/13/2021		Zinc Anode bag 30lb (38)	4,853.93
	01/13/2021		Service Saddle 8x1 PVC (34)	4,687.85
	01/13/2021		Angle Ball Mtr Valve 1"Flare Swl Mtr Nut Lockwing (41)	4,286.46
	01/13/2021		Coupling 10" Deflection C900 (20)	3,938.35
	01/13/2021		Tubing 1" Copper Soft 60' (1140)	5,614.93
	01/13/2021		Gate Valve 10" POxFL R/W (2)	2,929.29
	01/13/2021		Gate Valve 8" POxFL R/W (4)	3,725.19
	01/13/2021		Corp Stop 2" MIP X FIP (9)	1,856.63
	01/13/2021		Gate Valve 6" POxFL R/W (6)	3,535.75
	01/13/2021		Coupling 8" Deflection C900 (100)	8,228.08
	01/13/2021		Angle Ball Valve 2" FNPT X MNPT (CurbStop) (9)	2,880.76
	01/13/2021		Rubber Kit for Cla-Val Parts	4,871.52
	01/13/2021		Fire Hydrant 6" Break Off Spool LB400 (1)	240.32
	01/13/2021		Fire Hydrant Spool 6x24 DI (1)	141.81
	01/13/2021		Fire Hydrant Rod 15"x.5" Break Off Stainless (3)	175.37
66066	01/13/2021	Flyers Energy, LLC	Fuel Use	55.62
66067	01/13/2021	FMLASource	FMLA Program 02/2021 - 01/2022	1,911.00
66068	01/13/2021	G & R Auto & Truck Repair	Smoke Opacity Test - Truck 65	50.00
	01/13/2021		Smoke Opacity Test - Truck 30	50.00
	01/13/2021		Smoke Opacity Test - Truck 11	50.00
	01/13/2021		Smoke Opacity Test - Truck 22	50.00
	01/13/2021		Smoke Opacity Test - Truck 44	50.00
	01/13/2021		Smoke Opacity Test - Truck 28	50.00
	01/13/2021		Smoke Opacity Test - Truck 7	50.00
	01/13/2021		Smoke Opacity Test - Truck 48	50.00

Payment Number	Payment Date	Vendor	Description	Amount
	01/13/2021		Smoke Opacity Test - Truck 1	50.00
	01/13/2021		Smoke Opacity Test - Truck 3	50.00
	01/13/2021		Smoke Opacity Test - Truck 54	50.00
	01/13/2021		Smoke Opacity Test - Truck 52	50.00
66069	01/13/2021	Hach Company	Door Assembly Kit (1)	133.16
66070	01/13/2021	Home Depot Credit Services	Acetone	8.63
	01/13/2021		Hose Saw - Truck 16	91.98
	01/13/2021		Battery for Sawzall - Truck 20	107.17
	01/13/2021		Drill Extension, Pliers	29.16
	01/13/2021		Can Fuel	97.27
	01/13/2021		Vise Grips, Hose Bib	46.00
	01/13/2021		Hose Bib, Compression Fittings	44.64
	01/13/2021		Hose Bib	(12.21)
	01/13/2021		Conduit Fitting	6.15
	01/13/2021		Water Lines, Light Switch	43.20
	01/13/2021		Concrete Tools	192.18
	01/13/2021		Concrete Tool	(60.56)
	01/13/2021		Finish Trowel	23.78
	01/13/2021		Parts for Boiler/Chiller	66.45
	01/13/2021		Parts for Boiler/Chiller	78.89
	01/13/2021		Electrical Circuit Tester, Fabrication Supplies	177.17
66071	01/13/2021	Inland Kenworth (US) Inc	Power Steering Reservoir Cap, Return Hose - Trk 3	44.77
66072	01/13/2021	James Howell	Customer Rebate Smart Leak Detector Rebate Program	100.00
66073	01/13/2021	James Wright	Customer Rebate Smart Leak Detector Rebate Program	100.00
66074	01/13/2021	Joe's Paving	Patch Paving	3,864.10
66075	01/13/2021	Jan-Pro of San Diego	Janitorial Service - COVID-19	1,334.00
66076	01/13/2021	Kelly Avalon	Customer Rebate Smart Leak Detector Rebate Program	100.00
66077	01/13/2021	Kimball Midwest	Degreaser & Hardware	261.02
66078	01/13/2021	Liebert Cassidy Whitmore	Legal Services 11/2020	97.50
	01/13/2021		Legal Services 11/2020	3,046.00
66079	01/13/2021	Lightning Messenger Express	Messenger Service 12/4/20 & 12/09/20	70.00
	01/13/2021		Messenger Service 12/31/20	52.50
66080	01/13/2021	Major League Pest	Monthly Pest Control	225.00
66081	01/13/2021	Moodys	Dump Fees	400.00
66082	01/13/2021	MRC, Smart Technology Solutions	Managed Print Services	529.34
66083	01/13/2021	NAPA Auto Parts	Fuel Filters (2) - Truck 3	53.93
	01/13/2021		Tread Plates, Cable Ties, License Frames	72.50
	01/13/2021		Filter - Truck 1	13.91
66084	01/13/2021	North County Auto Parts	Fluid Funnels (2) - Truck 79	2.06

Payment Number	Payment Date	Vendor	Description	Amount
	01/13/2021		Wiper Blades - Truck 40	35.55
	01/13/2021		Shop Chemicals	17.43
	01/13/2021		Filters - Truck 1	74.12
	01/13/2021		Funnel	7.77
66085	01/13/2021	Toyota Carlsbad	Window Switch Bezel - Truck 32	21.82
66086	01/13/2021	One Source Distributors	Prescription Eyewear	210.11
	01/13/2021		Prescription Eyewear	210.11
66087	01/13/2021	O'Reilly Auto Parts	Battery - Truck 65	105.12
	01/13/2021		Battery - W4	105.12
66088	01/13/2021	Pacific Pipeline Supply	Rubber Kit	467.11
	01/13/2021		Coupling (1)	99.73
	01/13/2021		Angle Stops (2)	316.07
66089	01/13/2021	Paychex of New York LLC	Onboarding/Recruiting Services 01/2021	812.50
66090	01/13/2021	Premier Chevrolet	Shift Cable & Brackets - Truck 73	76.76
	01/13/2021		Retainer Clips (14)	78.89
66091	01/13/2021	Quadient Finance USA, Inc	Postage Machine Refill	2,500.00
66092	01/13/2021	Raymond Handling Solutions Inc	Maintenance - F3	98.00
66093	01/13/2021	Richard Brady & Associates, Inc	HB Reservoir Rehabilitation 12/2020	403,162.00
66094	01/13/2021	Rincon del Diablo MWD	MD Reservoir Water Service 12/2020	55.44
66095	01/13/2021	Ryan Herco Flow Solutions	Maintenance Parts - Mud Pump	479.85
66096	01/13/2021	San Diego Gas & Electric	Electric 12/2020 - T&D	85.77
	01/13/2021		Electric 12/2020 - Reservoirs	44.75
66097	01/13/2021	Save Our Heritage Organisation	O&M Contribution 01/2021 - 03/2021	3,000.00
66098	01/13/2021	Southern Counties Lubricants, LLC	Fuel 12/16/20 - 12/31/20	4,902.56
66099	01/13/2021	State Water Resources Control Board	SWRCB System Fee 07/01/20 - 06/30/21	62,629.47
66100	01/13/2021	Steven Uslander	Customer Rebate Smart Leak Detector Rebate Program	100.00
66101	01/13/2021	Sunbelt Rentals	Scissor Lift Rental	532.09
66102	01/13/2021	Bend Genetics, LLC	HABS Lab Analysis	975.00
	01/13/2021		HABS Lab Analysis	975.00
	01/13/2021		HABS Lab Analysis	975.00
66103	01/13/2021	Midas Service Experts	Tires (2) - Truck 13	403.68
	01/13/2021		Tires (2) - Truck 56	402.93
66104	01/13/2021	TS Industrial Supply	Striping Paint Orange #740 (12)	65.21
	01/13/2021		Sea 2" Pipe Wrap Tape (10)	77.72
	01/13/2021		Screwdriver 8" Flat (2)	23.92
	01/13/2021		2 1/2" NST Swivel Gasket (10)	20.89
	01/13/2021		Striping Paint Yellow #720 (12)	65.21
	01/13/2021		Binder Chains, Load Binders	817.77
	01/13/2021		Hammer 4lb Steel Sledge (1)	19.31

Payment Number	Payment Date	Vendor	Description	Amount
	01/13/2021		Poly Sprayer (1)	59.00
	01/13/2021		Lifter SS 36" Meter Lid (2)	70.25
	01/13/2021		Shovel Round Point (5)	120.43
	01/13/2021		Towel Wypall X80 (4)	148.09
	01/13/2021		Wrench Crescent 12" Adjustable (2)	71.66
	01/13/2021		Blade 14" Diamond Concrete (2)	448.59
	01/13/2021		Blade Replacement VP-30 PVC (1)	29.23
	01/13/2021		4" NST Swivel Washer (10)	63.33
66105	01/13/2021	Underground Service Alert of Southern California	DigAlert Tickets 12/2020 (239)	404.35
	01/13/2021		DigAlert Web TMS Annual Subscription	450.00
	01/13/2021		Dig Safe Board Fee 12/2020	220.93
66106	01/13/2021	Vista Paint Corporation	Paint for Regulators	58.37
66107	01/13/2021	Vortex Industries Inc	Replaced Door Electronic Controller	1,850.76
66108	01/13/2021	Vulcan Materials Company and Affiliates	Cold Mix Asphalt	1,899.42
	01/13/2021		Cold Mix Asphalt	1,864.61
66109	01/13/2021	Watts Regulator Company	DPD Dispensers	377.21
66110	01/13/2021	Xerox Corporation	Xerox Supplies & Service	26.00
66111-66113	1/20/2021	Refund Checks 66111 - 66113	Customer Refunds	4,519.54
66114	01/20/2021	Electrical Sales Inc	Electrical Supplies	203.75
	01/20/2021		SCADA & Electrical Enclosures	1,639.63
	01/20/2021		Wire for Electrical Meter - Well 13A	220.09
	01/20/2021		Electrical Conduit Supplies	74.37
	01/20/2021		Electrical Lugs & Zip Ties	42.53
	01/20/2021		Ground Lug	2.79
	01/20/2021		Circuit Breaker	28.10
66115	01/20/2021	Grainger	480V Plug (1) - TIG Welder	384.31
66116	01/20/2021	HUB Construction Specialties	Concrete Form Tubes (4)	10.37
66117	01/20/2021	One Source Distributors	Air Monitor Service	179.90
	01/20/2021		Air Monitor Service	152.84
	01/20/2021		Air Monitor Service	234.03
	01/20/2021		Air Monitor Service	152.84
	01/20/2021		Air Monitor Service	152.84
	01/20/2021		Air Monitor Service	170.17
66118	01/20/2021	Plateau Pest Solutions Inc	Bee Removal (1), Hive Removal Service (1)	75.00
66119	01/20/2021	San Luis Rey Indian Water Authority	2020 Surplus Supplemental Water	8,362,561.20
66120	01/20/2021	SiteOne Landscape Supply, LLC	Straw Wattle Roll, Stakes	30.69
66121	01/20/2021	Spok, Inc	Pagers	44.44
66122	01/20/2021	UniFirst Corporation	Uniform Service	336.27
66123	01/20/2021	UniMeasure, Inc	Valve Position Indicators (2)	1,130.07



<b>Payment Number</b>	<b>Payment Date</b>	<b>Vendor</b>	<b>Description</b>	<b>Amount</b>
66124	01/20/2021	Vista Fence Company Inc	Posts (2)	105.00
<b>Grand Total:</b>				<b>9,057,815.28</b>



**STAFF REPORT**

**Agenda Item: 7**

**Board Meeting Date:** February 3, 2021  
**Prepared By:** Don Smith, Randy Whitmann, Frank Wolinski & Marlene Kelleher  
**Approved By:** Brett Hodgkiss

SUBJECT: DIVISION REPORTS

RECOMMENDATION: Note and file informational report.

PRIOR BOARD ACTION: None.

FISCAL IMPACT: None.

SUMMARY: Previous month’s and anticipated activities are reported by each division.

**ADMINISTRATION DIVISION**

*January*

- Continued coordinating implementation of the COVID-19 Response and Action Plan.
- Issued a news release announcing the District’s scholarship contest; distributed materials regarding the scholarship contest to local high schools; and posted an electronic copy of the application materials on the website.
- Delivered 2021 Water Awareness Calendars to fourth grade classes. Invited teachers to contact Vista Irrigation District for more information about upcoming poster contest.
- Continued recruitment for Laborer Trainee position.
- Began recruitment for System Operator I/II.

*February*

- Continue coordinating implementation of the COVID-19 Response and Action Plan.
- Continue recruitment for Laborer Trainee and System Operator I/II positions.

**OPERATIONS & FIELD SERVICES DIVISION**

*January*

- Water Quality Calls/Incidents for January – received three taste/odor calls. All calls were related to pipe lubricant from a newly installed water main; issue was resolved with flushing.
- Inspected and tested 18 new backflow devices that were integrated into the District’s cross-connection control program.
- Completed system connection to new yard piping and installed supervisory control and data acquisition (SCADA) and control panel enclosures at Buena Creek (HB) reservoir.
- Pechstein reservoir beam reinforcement project – completed construction of the work platform.
- E43 pressure regulator replacement – installed mounting posts for the SCADA enclosure; San Diego Gas & Electric inspected electrical conduit runs.
- Coordinated the replacement of the final (back-ordered) window at the customer service counter with level three ballistic glass.
- Flume - repaired high-density polyethylene liner and roof on Borden, Twin Oaks and MD benches and a joint leak on Meyers siphon.
- Continued mainline replacement of AC pipe on York Drive – install approximately 9,000’ of various sizes of PVC pipe, 142 services and 14 hydrant laterals. Approximately 75% complete.

## February

- Continue Pechstein reservoir beam reinforcement project.
- Complete SCADA panels and signal wire at Buena Creek (HB) reservoir.
- Continue E43 pressure regulator replacement project.
- Continue mainline replacement of AC pipe on York Drive – install approximately 9,000’ of various sizes of PVC pipe, 142 services and 14 hydrant laterals.

### Electrical Energy Use at VID Headquarters

December 2020

	Current Month Production	Average of Last 12 Months	Total, Fiscal Year-to-Date
Description	(kWh)	(kWh)	(kWh)
Solar Production (\$0.18 per kWh)	17,399	29,092	151,273
Power purchased from Direct Energy (\$0.05 per kWh)	21,033	15,020	122,384
<b>TOTAL ELECTRICAL ENERGY USE</b>	<b>38,432</b>	<b>44,113</b>	<b>273,657</b>

### ENGINEERING DIVISION

#### January

- The District has replaced approximately 9.25 miles of Nipponite pipe since 2002. Of the 6.72 miles of Nipponite pipe remaining in the system, replacement of 1.66 miles is currently in design and 0.0 miles is in construction.
- The District has replaced approximately 6,050 feet (1.15 miles) of pipe (steel – 100 feet, PVC – 0 feet, non-Nipponite asbestos cement – 5,950 feet and Nipponite – 0 feet) in Fiscal Year 2021.
- Buena Creek (HB) Reservoir Rehabilitation – Richard Brady and Associates completed installation of interior ladders and continued manway installation and final grading improvements.
- Edg Hill (E) Reservoir Replacement and Pump Station – completed review of the 100% design submittal.
- Flume Replacement Alignment Study – continued negotiating scope of work and fee with the selected consultant team.
- Projects along Flume
  - The Villages – 380 dwelling unit residential subdivision along Country Club Lane, between Nutmeg Street and Pamela Lane in Escondido. Project includes storm drain work along the Jones Siphon in addition to the relocation of an 18-inch transmission main feeding the Bennett service area. Project requires District review and approval of three tract maps, encroachment permit, joint use agreement, grant of right of way, improvement plan, and quitclaim and bill of sale. One tract map, encroachment permit, joint use agreement, and grant of right of way approved by the Board; all other items are currently in plan check.

#### February

- Mainline Replacement Projects in design (current projects): Alta Vista Dr., Vista Grande Dr.\*, Lonsdale Ln.\*, Plumosa Ave., Lita Ln., Catalina Ave.\*, Oak Dr.\*, San Clemente Way\*, Calle Maria, Via Christina, Olive Ave.\*, Green Hills Way, Elevado Rd., Portia Ave.\*, Rush Ave.\* (Total length = 3.60 miles).
- Mainline Replacement Projects in planning (future projects): Friendly Dr.\*, N. Citrus Ave.\*, E. Vista Way, Mason Rd., Lado De Loma, Eddy Dr., Camino Patricia, Camino Corto, Nordahl Rd.\*, HN Line- Gopher Canyon to Fairview Dr., Buena Creek Rd.\*, Robinhood Rd., Lower Ln., Easy St.,

Rancho Vista Rd., Bandini Place, McGavran Dr., Oro Avo Dr., Shale Rock, La Mirada, Crescent Dr., Descanso Ave., Mar Vista Dr., Miramar Dr., Camino Culebra\*, Camino Loma Verde\*, San Clemente Ave.\* (Total length = 8.65 miles).

- City of Vista Projects – (Paseo) South Santa Fe Streetscape Improvements: Phase II along South Santa Fe Avenue from Ocean View to Terrace Drive (CIP #8289); Phase III along South Santa Fe Avenue from Terrace Drive to Civic Center Drive (CIP #9291). Water facility construction has been completed and contractor is working on final streetscape improvements. (Total length = 0.77 miles).
- Buena Creek (HB) Reservoir Rehabilitation – Richard Brady and Associates to continue final grading improvements, manway installation, and fill and conduct reservoir leak test; begin final paving around reservoir site.
- Edgehill (E) Reservoir Replacement and Pump Station – Dudek to begin incorporating comments and preparing final design submittal.
- Flume Replacement Alignment Study – select consultant team.

\*Nipponite pipe

**WATER RESOURCES DIVISION**  
**VID Water Production**  
**December 2020**

Description	Current Month Production		Average Production of Last 12 Months		Total, Fiscal Year-to-Date
	(mgd)	(af)	(mgd)	(af)	(af)
<b>VID's EVWTP Water Production</b>					
Local Water	0.00	0.00	1.79	166.58	303.40
SDCWA Raw Water	11.40	1,084.70	8.43	789.46	6,809.50
<b>Subtotal (EVWTP Water Production)</b>	<b>11.40</b>	<b>1,084.70</b>	<b>10.22</b>	<b>956.03</b>	<b>7,112.90</b>
Oceanside Contract Water	0.51	48.80	1.47	136.94	663.30
SDCWA Treated Water	2.58	245.10	3.63	342.08	2,146.20
<b>TOTAL WATER PRODUCTION</b>	<b>14.49</b>	<b>1,378.60</b>	<b>15.32</b>	<b>1,435.05</b>	<b>9,922.40</b>

Lake Henshaw and Warner Ranch Wellfield statistics are summarized as follows:

**Lake Henshaw**

Storage as of January 26, 2021: 6,286 af (12% of 51,832 af capacity)  
 Current releases: 0 cfs  
 Change in storage for month of December: 92 af (gain)  
 Total releases for month of December: 0 af  
 Hydrologic year-to-date rain total: 7.68 inches (January 26, 2021)  
 Percent of yearly average rain: 31% (30-year average: 25.05 inches)  
 Percent of year-to-date average rain: 61% (30-year average through January: 12.55 in.)

**Warner Ranch Wellfield**

Number of wells running in December: 1  
 Total production for month of December: 43 af  
 Average depth to water table (January): 86 ft (see attached historical water table chart)

***January***

- Performed sampling for Harmful Algal Blooms in Lake Henshaw on January 4, 12 and 21, which show declining levels of microcystin near advisory thresholds. Advisory signage for recreational use at Lake Henshaw remains posted and releases from the lake remain suspended.
- Began review of 90 percent draft of plans and specifications for the San Pasqual Undergrounding Project.
- Coordinated an inspection of Henshaw Dam by California Department of Safety of Dams; no deficiencies in operation or maintenance were noted.

***February***

- Complete review of 90 percent draft of plans and specifications for the San Pasqual Undergrounding Project and submit comments to consultant.

**ATTACHMENTS:** Lake Henshaw Resort, Inc., Activity Reports – December 2020  
VID's Warner Wellfield – Water Table Depth vs. Monthly Wellfield Production

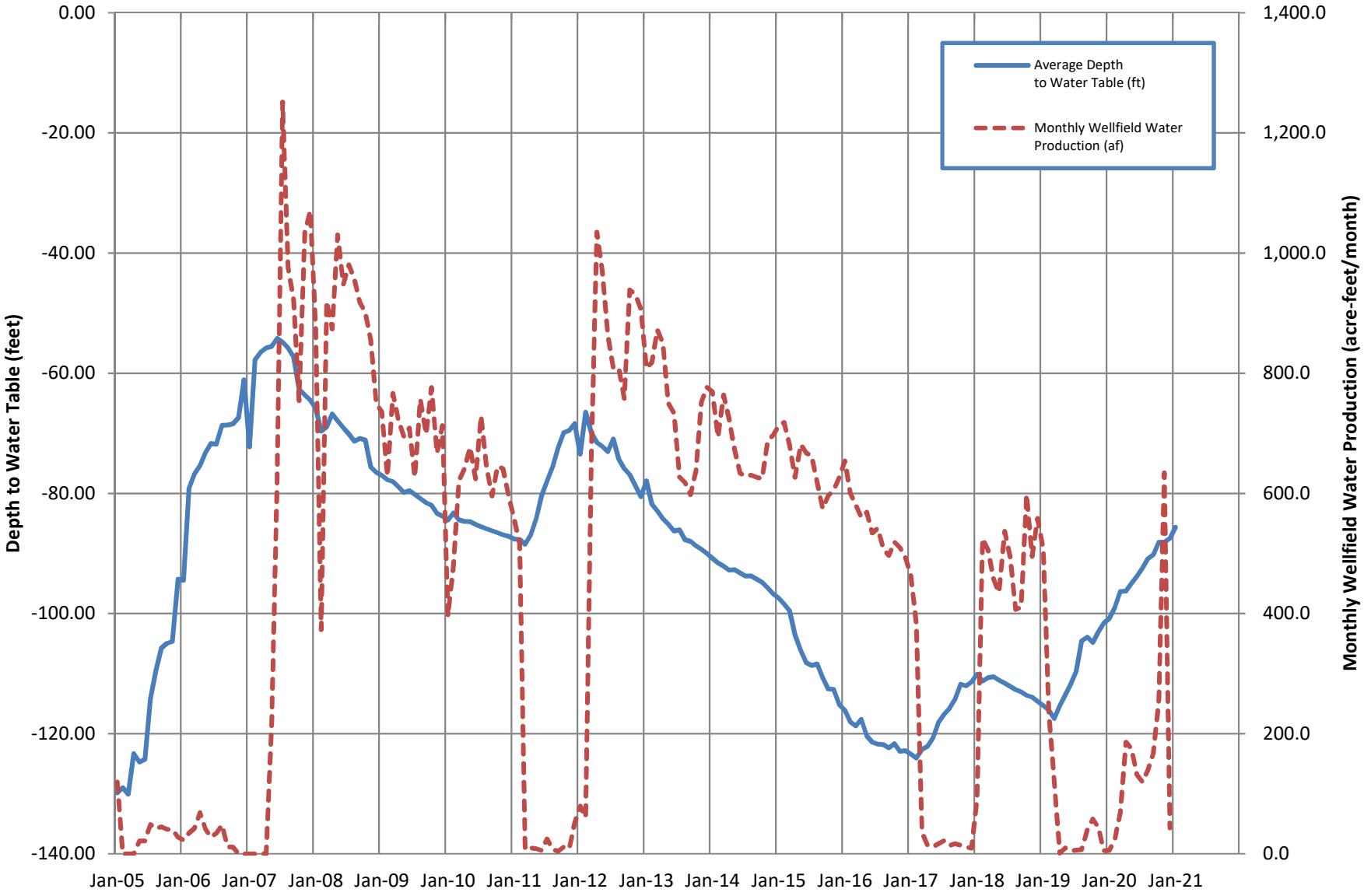


**LAKE HENSHAW RESORT, INC.  
ACTIVITY REPORT  
AS OF NOVEMBER 30, 2020**

	2019 Nov	2019 Dec	2020 Jan	2020 Feb	2020 Mar	2020 Apr	2020 May	2020 Jun	2020 Jul	2020 Aug	2020 Sep	2020 Oct	2020 Nov	12 MO AVG
Fishing Permits	244	112	102	179	96	4	714	1,015	910	712	543	480	302	431
Boat Launches	0	0	0	7	1	0	16	23	14	10	3	9	3	7
Motor Boats (full day rental)	4	2	7	4	0	0	14	38	57	37	38	21	8	19
Motor Boats (half day rental)	0	0	0	1	0	0	4	11	14	7	6	11	0	5
Campground/Head Count	128	39	110	94	51	5	879	1,062	1,562	790	1,660	492	297	587
Campground/Cars, Trucks, etc.	64	15	20	16	18	4	329	429	502	294	750	159	113	221
Campground/Recreational Vehicles	12	0	0	1	3	0	6	8	9	2	0	1	7	3
Mobile Home/Spaces	66	64	51	51	53	53	68	68	69	72	72	72	73	64
M.H.P. Daily (Visitors/Head Count)	67	63	28	20	16	15	2	0	4	6	8	8	14	15
M.H.P. (Residents/Head Count)	102	94	83	83	83	83	99	98	99	104	104	104	105	95
Storage	4	7	4	5	5	6	6	6	6	6	6	6	6	6
Cabins	144	98	88	82	45	35	118	191	231	262	184	135	137	134
Hunters	0	98	80	0	0	0	0	0	0	0	0	0	0	15

# VID's Warner Wellfield

## Water Table Depth vs. Monthly Wellfield Production



## BUENA CREEK (HB) RESERVOIR REHABILITATION BUDGET UPDATE - FEBRUARY 2021

Description of Work	Budgeted Cost	Actual Bid Cost	Over or Under Budgeted Amount
<b>Initial Site Work - M-Rae</b>			
<i>Demolish Existing Fence, Steel Roof, Gate, Grub Site, Initial Site Work for Crane and Equipment Access</i>	\$59,693	\$39,919	-\$19,774
<b>Exterior Stairs - Suez</b>			
<i>Disassemble, Transport, Protect, Store, and Reinstall Exterior Stairs</i>	\$52,718	\$50,488	-\$2,230
<b>Roof Demolition - DN Tanks</b>			
<i>Roof Demolition, Remediate Existing Asbestos</i>	\$809,400	\$1,026,840	\$217,440
<b>Tank Improvements - DN Tanks</b>			
<i>Footing Modifications, Seismic Cables, Wall Shotcrete, Tank Exterior Crack Repair, Pressure Wash Tank Interior, Interior Floor and Wall Crack Repairs, Seal Existing Floor Joints, Demolish Existing Inlet/Outlet, Modify Drain, Construct New Inlet, Outlet, Washdown, Demolish Exist Inlet/Outlet, Modify Drain, Construct Inlet, Outlet, Washdown, Construct New Concrete Floor, Construct New Concrete Cap Beam, CIM Wall-Slab Joint, Construct New Staff Gage, New Overflow, Post Construction Leak Test, Install Corrosion Protection System</i>	\$1,814,961	\$1,527,951	-\$287,011
<b>Interior Reservoir Stairs - DN Tanks</b>			
<i>Design, Furnish, Install, New Interior Access Stairs</i>	\$170,400	\$172,800	\$2,400
<b>Interior Coatings - DN Tanks</b>			
<i>Prepare Surface, Apply Coatings to Interior Wall</i>	\$210,870	\$323,630	\$112,760
<b>Aluminum Dome Roof - CST</b>			
<i>Design, Furnish, Install, New Aluminum Roof and Appurtenances</i>	\$785,570	\$668,127	-\$117,443
<b>Yard Piping Improvements - M-Rae</b>			
<i>Demolish Exist Yard Piping, Fittings, Valves, and Appurtenances, Construct New Yard Piping, Construct New Valve Vault, Remove and Replace Drain Valve, Construct Yard Piping Corrosion Protection System</i>	\$651,569	\$605,897	-\$45,672
<b>Electrical Improvements - M-Rae</b>			
<i>Construct New Conduit, Junctions and Pull Boxes</i>	\$37,275	\$88,296	\$51,021
<b>Stormwater Drainage and Final Site Work - M-Rae</b>			
<i>Demolish Existing Asphalt, Rough Grade Site, Install Subsurface Waterproofing, Modify Underdrains, Construct New Storm Drain Inlet and Piping, Connect to Exist Manhole, Finish Grade, Construct Concrete V-gutter, Pave Site with Asphalt Concrete</i>	\$192,812	\$339,307	\$146,495
<b>Additional AC Pavement</b>			
<i>Access Road Asphalt Paving</i>	\$101,500	\$91,300	-\$10,200
<b>Security Fence</b>			
<i>Construct New Chain Link Security Fence</i>	\$72,953	\$54,652	-\$18,301
<b>Exterior Reservoir Coating - DN Tanks</b>			
<i>Pressure Wash, Apply Coatings to Reservoir Exterior</i>	\$58,575	\$59,281	\$706
<b>General Conditions (ongoing)</b>			
<i>Provide Trailer, Porta Potty, Reproduction, Temporary Facilities, Insurance, Bonds, Special Inspection and Testing, Potholing, Surveying, Video, Install and Maintain Stormwater Best Management Practices</i>	\$343,692	\$237,370	-\$106,322
<b>Construction Total To Date</b>	<b>\$5,361,988</b>	<b>\$5,285,858</b>	<b>-\$76,130</b>





## STAFF REPORT

Agenda Item: 8

**Board Meeting Date:** February 3, 2021  
**Prepared By:** Don Smith  
**Approved By:** Brett Hodgkiss

**SUBJECT:** MANAGEMENT AND MITIGATION OF HARMFUL ALGAL BLOOMS IN LAKE HENSHAW AND LAKE WOHLFORD

**RECOMMENDATION:** Authorize the General Manager to execute a professional services agreement with Stillwater Sciences to provide services related to the management and mitigation of harmful algal blooms in Lake Henshaw and Lake Wohlford in an amount not to exceed \$440,000.

**PRIOR BOARD ACTION:** None.

**FISCAL IMPACT:** The project cost is \$440,000. The project is being pursued jointly by the District and City of Escondido (Escondido) per the terms of the 2017 Local Entities' Agreement. The District will be administering the agreement for this project; however, the project cost will be shared equally by the District and Escondido, resulting in a net cost to the District of \$220,000. The project is expected to be considered by the Escondido City Council at their February 10, 2021 meeting.

**SUMMARY:** The release of water from Lake Henshaw was suspended in July 2020 due to concerns over elevated levels of microcystin and anatoxin-a (cyanotoxins generated by Harmful Algal Blooms or HABs) in the lake. Since that time, the District has performed periodic monitoring of these cyanotoxins in Lake Henshaw, noting a seasonal reduction in concentration (see graph).

In September 2020, the District and Escondido issued a Request for Qualifications to five consultants with known expertise in the management and mitigation of HABs (MBC Aquatic Sciences, McCord Environmental, Inc., Robertson-Bryan Inc., Stillwater Sciences, and Wood Environment and Infrastructure Solutions, Inc.) and received four responses. The District and Escondido interviewed the two most qualified consultants (Stillwater Sciences and Wood Environment and Infrastructure Solutions, Inc.) and selected the Stillwater Sciences team as being the most qualified and responsive team. District and Escondido staffs have negotiated a scope of work and fee with Stillwater Sciences to provide technical assistance for the management and mitigation of HABs in the local water system jointly operated by both agencies.

**DETAILED REPORT:** The term "Harmful Algal Bloom" is commonly used to describe a temporal abundance of blue-green algae (also known as cyanobacteria) in a body of water. Cyanobacteria are naturally occurring photosynthetic prokaryotes, widely believed to be responsible for the development of an oxygen-rich atmosphere for the global environment. They inhabit a wide variety of aquatic environments, including freshwater, brackish and marine ecosystems and can form dense blooms. Many cyanobacteria are capable of producing toxins, referred to as cyanotoxins, which can be harmful to human health and the environment. HABs have received attention in recent years due to the global increase in the frequency and duration of toxic blooms. This increase may be attributed to a wide variety of factors, including elevated nutrient levels (eutrophication), increased temperature, salinity, water residence time, vertical stratification and pH, some of which may be exacerbated with climate change.

While cyanotoxins in Lake Henshaw are a concern to Escondido and the District (Local Entities), the natural attenuation of cyanotoxin concentrations in the local water system, dilution with imported water and the treatment processes used at the Escondido Vista Water Treatment Plant are helpful measures to protect the safety of the potable water supply. The La Jolla, Rincon and San Pasqual Bands of Indians (Bands) also have

concerns over cyanotoxins in the water that flows through or is delivered to their reservations, and their concerns are more sensitive to Lake Henshaw water quality. The Bands have retained their own consultant to advise them on matters related to HABs and cyanotoxins. The Local Entities intend to invite the Bands' consultant to participate in all technical aspects of the Project.

To address the concerns of the Bands and the Local Entities, the Local Entities propose to retain the services of Stillwater Sciences to perform the following tasks:

- Understand and characterize the factors that contribute to HABs in Lake Henshaw and Wohlford;
- Develop a short term monitoring plan to monitor cyanobacteria and cyanotoxins in Lake Henshaw and Lake Wohlford in 2021;
- Develop and evaluate alternatives to mitigate or treat HABs in the short term;
- Develop an Aquatic Pesticide Application Plan per the requirements of the State Water Resources Control Board to allow for the application of algaecide to Lake Henshaw in 2021 as necessary;
- Perform laboratory analyses to characterize the reservoir sediment release dynamics of nutrients in Lake Henshaw and Lake Wohlford;
- Screen alternatives to prevent or mitigate HABs in the long term;
- Develop a long term water quality monitoring plan; and
- Prepare a HABs Management and Mitigation Plan for Lake Henshaw and Lake Wohlford.

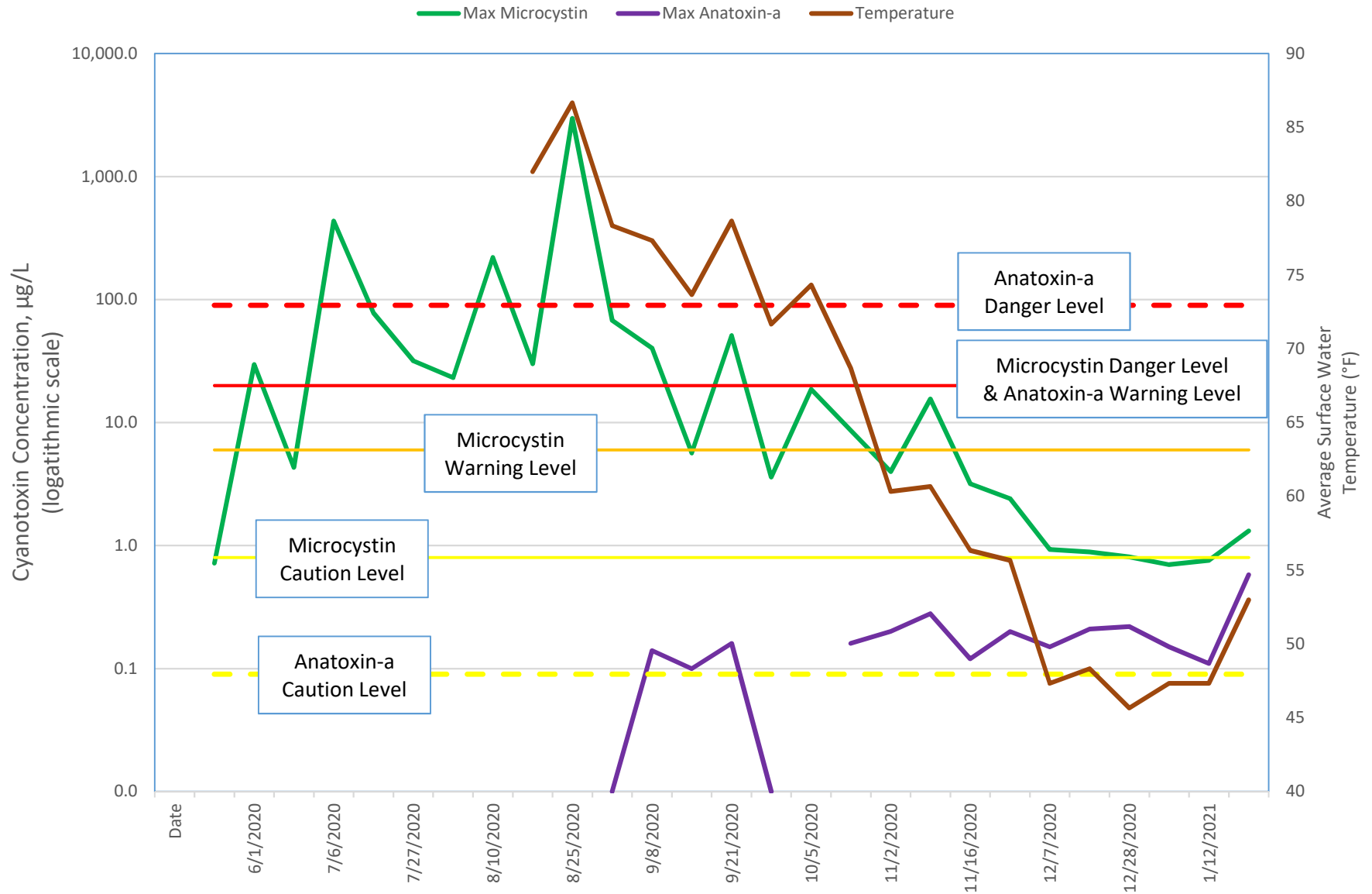
The agreement anticipates that Stillwater Sciences will present findings for the Project to the District Board of Directors, Escondido and the San Luis Rey Indian Water Authority, in summer 2022. While the Project is a necessary first step in understanding and addressing HABs in the short term, a second phase of the work is anticipated to refine strategies and/or design facilities to address HABs in Lake Henshaw and Lake Wohlford in the long term.

ATTACHMENT:

- Graph
- Scope of Work

Cyanotoxin concentrations are reported as the maximum value measured from 3 locations on any given sample day.

## Cyanotoxin Concentration in Lake Henshaw



## Exhibit A Scope of Work

The below scope of work is for the first phase of a project to manage harmful algal blooms (HABs) and cyanotoxins in Lake Henshaw and Lake Wohlford for the Vista Irrigation District (District) and the City of Escondido (Escondido). Phase I focuses on development and implementation of short-term solutions for mitigating or treating HABs, screening of potential long-term alternatives for preventing or minimizing HABs, development of a Water Quality Monitoring Plan and a HABs Management and Mitigation Plan, and data gathering to inform Phase II. Knowledge gained during Phase I will inform further ranking and prioritization of long-term prevention/minimization alternatives, selection of the preferred long-term alternative(s), and updates to the Water Quality Monitoring Plan and the HABs Management and Mitigation Plan, as needed.

### Phase I: Develop and Implement Short-term Alternatives and Fill Data Gaps to Inform Potential Long-term Alternatives

#### Task 1. Review and Analyze Existing Information and Identify Data Gaps

Task 1 involves initial information gathering, data analysis, and data gaps assessment to develop a detailed understanding of the Lake Henshaw, Escondido Canal, and Lake Wohlford project context. The following activities are included in Task 1:

- Compile information regarding reservoir/canal size, depth and morphology; hydrology and water balance (i.e., magnitude and timing of precipitation, runoff, groundwater inputs, inflows, outflows); water year and operational influences on reservoir storage amounts; thermal and chemical stratification patterns; seasonal water quality; HAB and cyanotoxin data; land uses in the surrounding watersheds; point and non-point sources of nutrients in reservoir inflows; occurrence of vegetation in shallow areas. (*Stillwater Sciences and Brown and Caldwell*)
- Conduct an in-person site visit with District and Escondido staff to familiarize key consulting team members with project facilities. (*Stillwater Sciences and Brown and Caldwell*)
- Interview District and Escondido reservoir and Water Treatment Plant (WTP) managers, in order to understand what engineering and operational activities may contribute to the occurrence of HABs. (*Stillwater Sciences and Brown and Caldwell*)
- Identify data gaps associated with the limnological and biogeochemical factors that control the seasonal timing, and relative and absolute amounts of nutrients available to support HAB formation. (*Stillwater Sciences, Brown and Caldwell, Water Quality Solutions, Robertson Bryan Inc., Alex Horne Associates, Bill Taylor [as available]*)
- Develop a conceptual model for HAB formation in the Lake Henshaw, Escondido Canal, and Lake Wohlford system, if sufficient existing information is available. (*Stillwater Sciences, Brown and Caldwell, Water Quality Solutions, Robertson Bryan Inc., Alex Horne Associates, Bill Taylor [as available]*)
- Recommend efficient strategies for collecting the missing information to allow for a more informed ranking of the contributing factors for each waterbody. (*Stillwater Sciences, Brown and Caldwell, Water Quality Solutions, Robertson Bryan Inc., Alex Horne Associates, Bill Taylor [as available]*)

- Prepare material for and lead a remote (i.e., video conference) *Review of Existing Information Workshop* to present the results of the existing information review, conceptual model development and data gaps analysis, to District and Escondido reservoir and WTP managers. Gather insights and refinements based on staff expertise. (*Stillwater Sciences and Brown and Caldwell*). Attendance at workshop to include *Stillwater Sciences, Brown and Caldwell, Water Quality Solutions, Robertson Bryan Inc., Alex Horne Associates, Bill Taylor (as available)*.
- Summarize the results of the existing information review and data gaps analysis in a draft section of the *HABs Management and Mitigation Plan*, including a discussion of the key factors and variables that influence production of HABs and cyanotoxins, and in particular microcystin. Provide the draft section to District and Escondido staff for review. Note that review comments will be incorporated into the final *HABs Management and Mitigation Plan* under Task 5. (*Stillwater Sciences and Brown and Caldwell*)

### **Meetings**

- *In-person site visit following COVID-19 safety protocols for District, Escondido, Stillwater Project Manager (PM), and Brown and Caldwell PM, including two 8-hr days for the site visit plus travel*
- *Up to six 1-hr remote (i.e., video conference) monthly consultant team meetings with Stillwater and selected subconsultant participants*
- *One 2-hr remote (i.e., video conference) Review of Existing Information Workshop with Stillwater and selected subconsultant participants*

### **Deliverables**

- *Draft Section of HABs Management and Mitigation Plan: Key Factors Influencing HABs in Lake Henshaw and Lake Wohlford; Microsoft Word electronic file*

### **Task 2A. Monitor Cyanobacteria and Cyanotoxin Concentrations to Inform Short-term Alternative Selection**

Task 2A will be conducted to monitor and characterize the spatial and temporal distribution of cyanobacteria species and cyanotoxin concentrations prior to and during the start of the 2021 summer bloom, including the following activities:

- Outline 2021 monitoring activities, including sampling design, sampling, and analytical methods, which will be refined under Task 4 Water Quality Monitoring Plan. (*Stillwater Sciences*)
- Conduct *in situ* sampling at Lake Henshaw and Lake Wolford. Grab sampling will be undertaken by District and Escondido field staff.
- Analysis will be conducted by a laboratory specializing in cyanotoxins and HAB species (e.g., Otten Laboratories, Sacramento, CA), and will include the following:
  - Quantification of total microcystin/nodularin by enzyme linked immunosorbent assay (ELISA).
  - Quantification of total toxin producing cyanobacteria by toxin class using real-time quantitative polymerase chain reaction (QPCR) methods.
  - Microscope photos and identification of potentially toxigenic (PTOX) cyanobacteria.

This task includes coordination with the analytical laboratory, and data analysis and reporting (*Stillwater Sciences, Robertson Bryan Inc.*). This task also includes approximately \$13,000 in analytical laboratory costs in 2021 but assumes that collection and delivery/shipment to the analytical laboratory would be undertaken by District and/or Escondido field staff. Note that costs for monitoring to be conducted in 2022, if needed, is not included in the Task 2A budget.

#### **Deliverables**

- *Outline of 2021 monitoring activities as brief Technical Memorandum describing sampling locations, methods, and timing.*
- *Draft and Final Technical Memorandum describing results of the 2021 monitoring*

#### **Task 2B. Develop and Evaluate Alternatives to Mitigate or Treat HABs in the Short Term**

Task 2B will identify and screen potential alternatives for mitigating or treating HABs in Lake Henshaw, the Escondido Canal, and Lake Wohlford, should they occur in 2021, including the following specific activities:

- Prepare material for and lead a remote (i.e., video conference) *Screening Workshop for Short-term Alternatives* to evaluate short-term reservoir and water treatment mitigation measures to address HAB occurrences. Consider short-term mitigation measures intended to address impacts of algal blooms by killing or reducing algae and reducing the potential for cyanotoxins to be released to the water column. Include discussion of physical mixing and/or destratification, selective withdrawal, dilution/flushing, algacide application, and separation (flotation, skimming) (Table 1), and novel mitigation techniques being applied in other regional watersheds. Include likely response times for each of the potential mitigation and treatment methods. Attendance at workshop to include *Stillwater Sciences, Brown and Caldwell, Robertson Bryan Inc., Alex Horne Associates, Bill Taylor (as available), Marine Biochemists*.
- As part of the *Screening Workshop for Short-term Alternatives*, narrow the list of five or so potential mitigation and treatment methods in Table 1 to one or two approaches that will be most suitable for Lake Henshaw, Lake Wohlford, and potentially the Escondido Canal. (*Stillwater Sciences, Brown and Caldwell, Robertson Bryan Inc., Alex Horne Associates, Bill Taylor (as available), Marine Biochemists*)
- Identify a mitigation or treatment method(s) that could be immediately implemented in Lake Henshaw and/or Lake Wohlford to control HABs in 2021, should they occur. (*Stillwater Sciences, Brown and Caldwell, Robertson Bryan Inc., Alex Horne Associates, Bill Taylor (as available), Marine Biochemists*)
- Based on the outcome of the *Screening Workshop for Short-term Alternatives*, develop a preliminary “rapid response monitoring program” for discussion and feedback at a remote (i.e., video conference) *Rapid Response Monitoring Workshop*. The rapid response monitoring program will be designed to provide the District and Escondido evidence that a HAB may be developing in the lake(s) and will help to ensure treatment performance. Attendance at workshop to include *Stillwater Sciences, Brown and Caldwell, Robertson Bryan Inc., Alex Horne Associates, Bill Taylor (as available), Marine Biochemists*.
- Based on interviews of District and Escondido reservoir and Vista-Escondido WTP managers conducted as part of activities under Task 1, recommend a preliminary trigger for invoking rapid response monitoring for the Vista-Escondido WTP and each

- waterbody at specific locations that are regularly accessible and repeatable. (*Stillwater Sciences, Robertson Bryan Inc., Bill Taylor (as available)*)
- Provide recommendations for monitoring constituents including cyanotoxins (e.g., remote sensing, real-time PCR, others), and preliminary sampling frequencies to provide the District and Escondido with the ability to track progression of the potential HAB and indicate at what point treatment should be undertaken to maximize treatment effectiveness and reduce unnecessary costs. (*Stillwater Sciences, Robertson Bryan Inc., Bill Taylor (as available)*)
  - Provide recommendations for the level of treatment (including whether multiple repeat treatments are recommended), application methods, and treatment area, as well as thresholds at which District and/or Escondido staff can stop rapid response monitoring because the HAB threat has passed. (*Stillwater Sciences, Brown and Caldwell, Robertson Bryan Inc., Alex Horne Associates, Bill Taylor (as available), Marine Biochemists*)
  - Review Escondido’s approved Aquatic Pesticide Application Plan (APAP) for Lake Wohlford and the Escondido Canal. If the use of algaecides to mitigate bloom events in Lake Wohlford (continued) and/or Lake Henshaw (new) is identified at the *Screening Workshop for Short-term Alternatives* as a useful component of an overall management strategy, include preparation of an APAP for Lake Henshaw and the Warner Ranch that satisfies the requirements of the State of California Water Quality Order 2013-0002-DWQ (as amended) and is consistent with the mitigation approaches included in the existing APAP for Lake Wohlford and the Escondido Canal. The APAP will be submitted to the State Water Resources Control Board by March 31, 2021. (*Stillwater Sciences, Marine Biochemists*)
  - Develop draft section of the *HABs Management and Mitigation Plan* describing the process of selecting mitigation and/or treatment alternatives during the *Screening Workshop for Short-term Alternatives* and identifying the preferred alternative(s) for mitigating or treating HABs and cyanotoxins in Lake Henshaw and Lake Wohlford. Provide the draft section to District and Escondido staff for review. Note that review comments will be incorporated into the final *HABs Management and Mitigation Plan* under Task 5. (*Stillwater Sciences*)
  - Develop draft section of *Water Quality Monitoring Plan: Rapid Response Monitoring* of the rapid response monitoring program so that the monitoring protocols are available for District and Escondido use in 2021 if necessary. Any refinements to the protocols based on the 2021 field season will be included in the *Water Quality Monitoring Plan* (see Task 4). (*Stillwater Sciences*)

**Table 1. Potential Mitigation and Treatment Methods for In-Lake/Reservoir Water Quality Management to be Considered at the Screening Workshop for Short-term Alternatives**

In-lake/Reservoir Method
Mixing and/or destratification (P, M)
Selective withdrawal (M)
Dilution/flushing (P, M)
Algaecides (M)
Separation (flotation, skimming) (M)

P = typically used as a prevention method

M = typically used as a mitigation or treatment method



### Meetings

- Up to six 1-hr remote (i.e., video conference) monthly consultant team meetings with Stillwater and selected subconsultant participants
- One 2-hr remote (i.e., video conference) Screening Workshop for Short-term Alternatives with Stillwater and selected subconsultant participants
- One 2-hr remote (i.e., video conference) Rapid Response Monitoring Program Workshop with Stillwater and selected subconsultant participants

### Deliverables

- APAP for Lake Henshaw and the Warner Ranch by March 31, 2021
- Draft Section of HABs Management and Mitigation Plan: Alternatives Evaluation for Mitigating or Treating HABs and Cyanotoxins in Lake Henshaw and Lake Wohlford
- Draft Section of Water Quality Monitoring Plan: Rapid Response Monitoring; both deliverables as Microsoft Word electronic files

### Task 3A. Screen Alternatives to Prevent or Minimize HABs in the Long Term

Task 3A involves screening of alternatives for preventing or minimizing HABs in Lake Henshaw, the Escondido Canal, and Lake Wohlford, including the following activities:

- Prepare material for and lead a remote (i.e., video conference) *Screening Workshop for Long-term Alternatives*. Evaluate a comprehensive set of in-lake and watershed management methods for their applicability in addressing long-term reservoir management objectives for both Lake Henshaw and Lake Wohlford. Present a suite of common in-lake methods focused on preventing HABs in shallow waterbodies, including physical (e.g., mixing and/or destratification, harvesting), chemical (e.g., aeration, oxygenation, phosphorus inactivation using alum), and biological alternatives (e.g., biomanipulation), as well as broader watershed management methods (Table 2). Include consideration of the following:
  - Water flow from Lake Henshaw to Lake Wohlford through the Escondido Canal, and the idea that management of Henshaw Lake and conditions in the canal may influence water quality in Lake Wohlford.
  - Continued aeration at Lake Wohlford to control seasonal HABs, albeit with potential refinements to improve performance.
  - Whether future plans for replacing the existing dam at Lake Wohlford with a larger dam just downstream may result in a sufficiently different set of operations, hydraulic residence time, and/or average depth that will be likely to change HAB patterns.
  - Novel techniques being considered and/or applied in other regional watersheds that may have merit with respect to algae and water chemistry control in Lake Henshaw and/or Lake Wohlford.
  - Relevant case studies, as needed, to provide context (potential risks and benefits) for the various prevention (P) methods under consideration (Table 2).

Attendance at workshop to include Stillwater Sciences, Brown and Caldwell, Alex Horne Associates, Bill Taylor (as available).



**Table 2. Potential Prevention and Minimization Methods for In- and Out-of-Lake/Reservoir Water Quality Management to be Considered at the Screening Workshop for Long-term Alternatives**

In-lake/Reservoir Method
Dredging (P)
Water level fluctuation (P)
Mixing and/or destratification (P, M)
Macrophyte harvesting (P)
Wetland filters (fringe) (P)
Algae harvesting (P)
Dilution/flushing (P, M)
Sediment sealing/physical nutrient sequestration (fabrics) (P)
Oxygenation/aeration/nitrate addition (P)
Shading/dyes (P)
Sediment sealing/chemical nutrient sequestration (chemical, alum, etc.) (P)
Pathogens/diseases of algae (P)
Grazers (on algae or macrophytes) (P)
Nutrient harvesting from fish/weeds (P)
Biomanipulation (e.g., removing target fish) (P)
Out of lake/Reservoir Method
Source water nutrient controls (P)
Erosion control BMPs (reductions in grazing intensity, livestock exclusion, improved stormwater management BMPs) (P)
Riparian filters (tributary streams) (P)
Treatment wetlands (tributary streams) (P)
P = typically used as a prevention method
M = typically used as a mitigation method

- Based on feedback from the *Screening Workshop for Long-term Alternatives*, undertake further evaluation of a subset of 2–4 management approaches, or combination of approaches, judged to have the greatest applicability and suitability for long-term water quality improvements in each reservoir, given the available information. The evaluation will include the following:
  - Brief description of the management action
  - Spatial location
  - Goals and capabilities
  - Compatibility with current drinking water reservoir management objectives and any associated aquatic beneficial uses
  - Order of magnitude (AAECI Class 5) estimated capital costs<sup>1</sup>
  - Preliminary operation and maintenance costs
  - Anticipated construction/implementation schedules
  - Likely permit requirements
  - Additional information needed to further rank and prioritize alternative, including consideration of whether numerical modeling is likely to be an efficient and cost-effective tool for doing so. Consideration of the value of modeling will take into account modeling costs, the utility of the output for

<sup>1</sup> Working from capital costs for other applications of similar technologies, scaled in size and adjusted for current San Diego area costs.

providing useful management guidance, and cost reductions obtained by optimizing the size of mitigation systems.

*(Stillwater Sciences, Brown and Caldwell, Water Quality Solutions, Robertson Bryan Inc., Alex Horne Associates, Bill Taylor (as available), Marine Biochemists, UC Merced)*

- Summarize the process of selecting a subset of potential prevention and minimization alternatives during the *Screening Workshop for Long-term Alternatives* in a draft section of the *HABs Management and Mitigation Plan*, including a discussion of the additional information needed to further rank and prioritize alternatives and support selection of the preferred alternative(s). Provide the draft section to District and Escondido staff for review. Note that review comments will be incorporated into the final *HABs Management and Mitigation Plan* under Task 5. *(Stillwater Sciences)*

### **Meetings**

- *One 2-hr remote (i.e., video conference) Screening Workshop for Long-term Alternatives with Stillwater and selected subconsultant participants*

### **Deliverables**

- *Draft Section of HABs Management and Mitigation Plan: Alternatives Screening for Preventing or Minimizing HABs and Cyanotoxins in Lake Henshaw and Lake Wohlford; Microsoft Word electronic file*

### **Task 3B. Determine Reservoir Sediment Release Dynamics of Nutrients and Other Redox Sensitive Compounds**

Task 3B will evaluate exchanges of nutrients and surficial sediment samples collected from the hypolimnion (bottom waters) of Lake Henshaw and Lake Wolford. This task will involve experimental sediment-water interface chambers, supplied by Professor Marc Beutel (UC Merced), subjected to varying water column dissolved oxygen concentrations to help confirm whether nutrient release, which can exacerbate cyanobacteria growth, is likely to be occurring at the sediment-water interface, and whether manganese sulfide, which can degrade raw water treatability, is also likely to be released under anoxic conditions. The chamber experiments will include the following activities:

- Collect sediments and water at two (2) or three (3) stations per reservoir, with three (3) chamber replicates at each station. The final number of stations per reservoir will be determined based on the outcome of Task 1.
- Assess sediment release dynamics of nutrients (i.e., ammonia, nitrate, orthophosphate, manganese, iron) and other redox sensitive compounds (i.e., manganese, sulfide) under aerobic versus anaerobic conditions in each chamber replicate.
- Quantify total phosphorus and total iron in the reservoir sediments as a measure of the reservoir of potential legacy phosphorus and to determine whether there is sufficient iron to support binding of phosphorus if oxygenation/aeration is used as a management strategy.
- Prepare a draft and final technical memorandum describing the results of the chamber experiments.

Task 3B will be managed by Stillwater Sciences, which includes review and input regarding the final experimental design (i.e., number of stations per reservoir) and review of draft and final

reports. All sediment collection, experimentation, and detailed reporting will be carried out by Professor Marc Buetel's laboratory at UC Merced, under subcontract to Stillwater Sciences.

### ***Deliverables***

- *Draft and Final Technical Memorandum describing results of the reservoir sediment release chamber study*

### ***Task 4. Develop Water Quality Monitoring Plan***

Task 4 involves preparation of a Water Quality Monitoring Plan that will support short-term mitigation and treatment of HABs in Lake Henshaw, Lake Wohlford, and potentially the Escondido Canal, and will identify additional data collection required to further rank and prioritize alternatives to prevent or minimize HABs in the long-term and ultimately support selection of the preferred alternative(s). With respect to the latter, the recommended monitoring will be limited to one to two additional studies and will be designed to test key assumptions behind the conceptual model (e.g., whether early detection of noxious cyanobacteria and rapid response interrupts HAB dominance; whether internal recycling of nutrients via wind-driven mixing and/or sediment release is a substantial contributor to a lake's nutrient budget and HAB stimulation; whether later-season blooms of non-nitrogen-fixing toxigenic cyanobacteria are dependent on early season blooms of nitrogen-fixing cyanobacteria). The Water Quality Monitoring Plan will include the following:

- Details of the rapid response monitoring program developed under Task 2B, including determination of baseline monitoring locations and intervals; identification of triggers for invoking rapid response monitoring; identification of components of rapid response monitoring; identification of whether public notifications are needed; identification of when to stop rapid response monitoring; responsibilities to implement the rapid response monitoring program; annual cost of rapid response monitoring.
- Necessary monitoring to support selection of the preferred alternative(s), including specific goals and merits of the monitoring; sample frequency, sample locations, sample collection methodology, parameters/constituents (e.g., water temperature, dissolved oxygen, pH, nutrients, turbidity, water level, chlorophyll-a), analytical methods, types of data analyses; responsibilities to implement the plan; relative cost of each type of monitoring on an annual basis.

*Stillwater Sciences, Brown and Caldwell, Robertson Bryan Inc., Alex Horne and Associates, and Bill Taylor [as available]*

Stillwater Sciences will prepare for and lead a remote (i.e., video conference) *Water Quality Monitoring Plan Workshop* to present the results of the draft plan to District and Escondido reservoir and WTP managers and to gather insights and refinements based on staff expertise. Attendance at workshop to include *Stillwater Sciences, Brown and Caldwell, and Bill Taylor [as available]*. Refinements to the plan will be in response to District and Escondido review and input and will be incorporated into the final *HABs Management and Mitigation Plan* (see Task 5).

### ***Meetings***

- *One 1-hr remote (i.e., video conference) Water Quality Monitoring Plan Workshop with Stillwater and selected subconsultant participants*

### ***Deliverables***

- *Draft Section of HABs Management and Mitigation Plan: Water Quality Monitoring Plan; Microsoft Word electronic file*

### ***Task 5. Develop HABs Management and Mitigation Plan***

Task 5 involves the synthesis and presentation of findings from Tasks 1 – 4 in a *Draft and Final HABs Management and Mitigation Plan*. District and Escondido review comments associated with the individual draft section deliverables for each task will be used to develop the associated sections of the draft and final plan. For each draft section of the *HABs Management and Mitigation Plan* developed under Tasks 1 – 4, the District will provide Stillwater with one set of consolidated, non-conflicting, reconciled comments. This task primarily involves Stillwater Sciences, with review and input from Brown and Caldwell, Robertson Bryan Inc., Alex Horne and Associates, Bill Taylor (as available), and UC Merced.

The Stillwater Sciences Project Manager will prepare for and attend meetings of the District Board of Directors, the Escondido City Council, and a stakeholder group (one meeting each) to present the findings and recommendations of the study and answer any questions. Stillwater Sciences will coordinate with the District and the City of Escondido to determine whether it is appropriate for additional team members to attend the presentations.

### ***Meetings***

- *Three 2-hr in-person meetings (one each) plus travel for the District Board of Directors, the Escondido City Council, and a stakeholder group with the Stillwater PM*

### ***Deliverables***

- *Draft and Final HABs Management and Mitigation Plan; Draft Plan in Microsoft Word electronic file format; Final Plan in Adobe PDF electronic file format*

### ***Task 6. Project Management***

This task includes all aspects of project management for Phase I of the Lake Henshaw and Lake Wohlford HABs Management and Mitigation project, and will involve the following activities (*Stillwater Sciences*):

- *Project Kick-Off Meeting* – The Project Kick-off Meeting will include a review of the overall approach to project management, including discussion of the planned roles and responsibilities, project scope, schedule, budget, project controls processes, deliverables, and workshops. The purpose of the kick-off meeting will be to create alignment amongst the key project stakeholders on the project delivery plan, goals, objectives, expectations of all stakeholders, and measurements of success.
- *Progress Meetings* – Key team members will participate in monthly progress teleconferences with District and Escondido staff. Meetings will include a review of progress, discussion of items requiring feedback, list of outstanding issues requiring resolution, status of scope, schedule and budget, and review of risks. The meetings will be managed by Dr. Singer.

- *Progress Reports* – Progress reports will be prepared and submitted each month. The monthly progress reports will be clear and concise to facilitate quick understanding of key project achievements, status and critical issues. The monthly progress reports will include:
  - Assessment of actual versus planned progress in completing the Scope of Services, including a description of the tasks and deliverables completed to date.
  - For each task, the percentage of services performed versus the percentage of fees incurred for such task, and explanation of any significant variances in percentage of services performed compared to percentage of fees incurred.
  - For each task, the percentage of the fees incurred for such task compared to dollar amount allocated to such task.
  - Look-ahead schedule listing deliverables and activities planned for the next month.
  - Summary of any proposed changes to the Scope of Services including justifications for such changes.
  - Action Items and Decision Log – This log will document action items and project concerns and issues throughout the Project duration that require resolution by the District and/or the Stillwater Sciences Team.
- *Meeting Agendas and Minutes* – The agenda for meetings and workshops will be provided at least three (3) business days prior to the meetings and the minutes within five (5) business days after the meetings and workshops. The minutes will focus on decisions made and open action items.

### ***Meetings***

- *One 1-hr remote (i.e., video conference) Project Kickoff Meeting with District, Escondido, Stillwater PM, Stillwater Deputy Project Manager (DPM), and up to two Brown and Caldwell key technical staff*
- *Up to seventeen 1-hr remote (i.e., video conference) Monthly Progress Meetings with District, Escondido, Stillwater PM, Stillwater Deputy Project Manager (DPM), and other technical team members, as needed*

### ***Deliverables***

- *Monthly Progress Meeting agendas and notes, monthly invoices*



## STAFF REPORT

Agenda Item: 9

Board Meeting Date: February 3, 2021  
Prepared By: Phil Zamora  
Reviewed By: Marlene Kelleher  
Approved By: Brett Hodgkiss

**SUBJECT:** EMPLOYEE PERSONNEL POLICIES MANUAL REVISIONS

**RECOMMENDATION:** Adopt Resolution No. 21-XX revising Employee Personnel Policies Manual sections 2.2, 2.8 and 9.

**PRIOR BOARD ACTION:** On November 1, 2017, the Board adopted Resolution No. 17-43 revising the Employee Personnel Policies Manual.

**FISCAL IMPACT:** None.

**SUMMARY:** During labor negotiations in 2017, revisions were made to the District's Employee Personnel Policies Manual. Since that time, the State of California expanded the provisions of the California Family Rights Act (Senate Bill 1383), and the Federal Motor Carrier Safety Administration established a national clearinghouse as a central repository to track commercial drivers. The District is required to implement the provisions of both laws, requiring revisions to sections 2.2, Sick Leave, 2.8, Family Care and Medical Leave, and 9, Drug and Alcohol, of its Employee Personnel Policies Manual; the proposed changes have been reviewed and approved by District labor counsel and Teamsters union.

**DETAILED REPORT:** Revisions to sections 2.2, 2.8 and 9 of the Employee Personnel Policies Manual are presented in **strikeout** and address the following:

California Family Rights Act (Senate Bill 1383):

- Expanded definition of family member; now includes grandparents, grandchildren, and siblings.
- Allowance for an employee to care for an adult child (age 18 or over) with a serious health condition.
- Expanded definition of "qualifying exigency"; now covers active military duty.
- Removal of the "key employee" exception to the right for reinstatement.

Drug and Alcohol Clearinghouse:

- Purpose of national clearinghouse, including how it pertains employers and commercial drivers.
- Requirement that employers complete an annual query of currently employed commercial drivers.
- Requirement that employers complete a full pre-employment query on prospective drivers.

**ATTACHMENTS:**

- Strikeout version of sections 2.2, 2.8 and 9 of the Employee Personnel Policies Manual
- Resolution No. 21-XX revising Employee Personnel Policy Manual sections 2.2, 2.8 and 9

## 2.2 SICK LEAVE

### A. DEFINED

1. Sick leave is paid leave from duty which may be granted by the District to an employee for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or any of the following of the employee's family members: child of any age or dependency status; parent; parent-in-law; spouse; registered domestic partner; grandparent; grandchildren; or sibling~~because of illness, injury, exposure to contagious disease, illness or injury of a member of the employee's immediate family and family (including step children) residing in the employee's household requiring the employee's attendance, and medical, dental and optical appointments to the extent that such appointments cannot be scheduled outside the work day. Sick leave may also be granted to care for a domestic partner (as defined under section 297 of the California Family Code) or for his/her children to the extent required by law. Sick leave may also be granted to an employee who is a victim of domestic violence, sexual assault, or stalking to: i) obtain or attempt to obtain a temporary restraining order or other court assistance to help ensure the health safety or welfare of the employee or his/her child; or ii) obtain medical attention or psychological counseling; services from a shelter; program or crisis center; or participate in safety planning or other actions to increase safety.~~
- ~~2. Up to forty (40) hours of sick leave in a calendar year may be granted to care for the sickness, injury, or disability of an employee's natural or adoptive mother or father not living in the employee's immediate household.~~
- ~~3.2.~~ The transferring (sharing) of accrued sick leave balances between employees is prohibited.

### B. SICK LEAVE USE

1. An employee may be granted sick leave ~~only in case of actual sickness as defined~~for the reasons set forth above. In the event that ~~an the~~ employee or ~~a member of~~ the employee's ~~immediate~~ family ~~member~~ recovers from any such sickness after being granted sick leave, and during the regularly scheduled hours of work, then such employee shall notify the appropriate immediate supervisor and be available to return to duty.
2. In order to apply for sick leave use, an employee shall notify the appropriate immediate supervisor prior to the time established as the beginning of the employee's work day, unless the District determines that the employee's duties require more restrictive reporting. Failure to do so without good reason shall result in that day of absence being treated as leave of absence without pay. Each request for sick leave shall be set forth on the District's Time Off Request Form (Appendix A).
3. If the employee is absent on sick leave for more than one (1) day, the employee will keep the immediate supervisor informed as to the date the employee expects to return to work.
- ~~4. Sick leave will not be granted to any employee absent from duty as a result of any sickness, injury or disability purposely self inflicted or caused by willful misconduct.~~
- ~~5.4.~~ Sick leave will not be granted to any employee absent from duty after separation from District service, or during a District authorized leave of absence without pay, or any other absence from duty not authorized by the District.

Sick leave will not be granted to any employee to permit an extension of the employee's vacation. However, if illness occurs while an employee is on vacation, sick leave may be



substituted for vacation at the request of the employee, upon presentation of proof of illness (unless otherwise prohibited by applicable state or federal laws), and subject to the approval of the employee's supervisor.

- ~~6.5.~~ The District may require a physician's certification at any time regarding the sickness or injury of the employee or their immediate family member and the date of the employee's intended return to work. This may be required in those cases where misuse of sick leave is suspected, ~~or~~ for all sick leave absences in excess of three days, or in any and all cases when sick leave balances become exhausted on the date of the absence. If the employee is unable or refuses to produce timely and acceptable documentation of illness, the absence will be treated as unexcused.
- ~~7.6.~~ Supervisors have the discretion to place employees on sick leave when, in the judgment of the supervisor, the presence of the employee at work would endanger the health and welfare of other employees or where the illness or injury of the employee interferes with the performance of such employee's duties.
- ~~8.7.~~ In the event employee has exhausted all sick leave, unless otherwise prohibited by applicable state or federal laws, accrued compensatory time off will be used, and then accrued vacation will be used for authorized sick leave.
- ~~9.8.~~ In the event of a work-related injury, employee's accrued sick leave may be used to supplement workers' compensation benefits up to but not exceeding the amount of employee's base wage rate.
- ~~10.9.~~ With the prior written permission of the employee, accrued compensatory time off and then vacation time will be used by the District in an attempt to maintain employee's pay status after all sick leave has been utilized. Vacation and sick leave may be used in conjunction or combined with State Disability Insurance (SDI) or Paid Family Leave payments up to but not to exceed the employee's basic wage rate.
- ~~11.10.~~ In cases where the employee's absence may be related to the employee's ability to perform the essential functions of his/her job description, a doctor's release may be required prior to the employee's return to work.
- ~~12.11.~~ In the event that the District has good cause to believe that an employee may not be able to safely or reliably perform his/her duties, the District may require a medical or psychological examination to ascertain the employee's fitness for duty. This examination will be provided at District expense and by a District designated health care provider.

**C. SICK LEAVE ACCRUAL**

1. All full-time employees will accrue 2.15 hours of sick leave each pay period while on paid status throughout the entire pay period. Such accrual shall take place on a bi-weekly basis after the completion of the pay period. No accrual shall take place for any pay period in which the employee has performed less than a full pay period of service (or paid leave, *i.e.* paid status).
2. Sick leave may be accrued to a maximum of one thousand hours except as provided below:
3. Sick leave granted by the District and used by an employee shall be deducted from the employee's accrued sick leave balance. Sick leave shall be used in minimum increments of a half hour.



4. Employees granted a leave of absence with pay or other approved leave with pay shall accrue sick leave as provided herein.
5. Sick leave will not be accrued by an employee absent from duty after separation from District service, or during a District authorized leave of absence without pay, or any other absence from duty not authorized by the District.

**D. REIMBURSEMENT FOR ACCRUED SICK LEAVE**

Upon termination of employment for other than disciplinary reasons, employee shall receive payment in accordance with the applicable Memorandum of Agreement or Board Resolution. Upon retirement, employee shall receive payment in accordance with the applicable Memorandum of Agreement or Board Resolution

**E. EXCESSIVE USE OF SICK LEAVE/ABUSE/MISUSE OF SICK LEAVE**

An employee shall be subject to disciplinary action for abuse of sick leave that is a claim of entitlement to sick leave when the employee does not meet the requirements of sick leave as defined in Section 1. Excessive use of sick leave is defined as sick leave exceeding three (3) separate absences in any month, six (6) in any three (3) months, or usage in excess of District averages. Calculations of excessive usage shall exclude family and medical leave absences, workers' compensation absences or absences normally excluded from such calculations by law.

**F. EVALUATION OF SICK LEAVE USAGE**

Abuse of sick leave will be considered in establishing the performance rating.

**G. RETURN TO WORK**

Regular employees unable to perform the essential functions of their position, with or without reasonable accommodation, as a result of a physical or psychological illness or injury for a period of twelve (12) months (see Health Leave) from the first date of the absence shall:

1. Be terminated from employment. Employees who are separated pursuant to this section shall be accorded procedural due process (i.e., notice and an opportunity to respond to the separation) in accordance with the appeal procedures for disciplinary actions outlined in these rules and procedures. or,
2. If disabled, be retired under the Public Employees Retirement System, or;
3. Be offered the opportunity to resign from the position and be placed on a rehire list for a period not to exceed one (1) year. Any employee returning to work pursuant to this section shall provide to the Human Resources office verification from a medical practitioner of his/her ability to return to work and perform the essential functions of his/her position, with or without accommodation.

If during the period in which the employee is on the rehire list, the employee is physically and/or psychologically able to resume the duties of his/her previous position and there is a vacant position in the employee's classification, the employee will be entitled to return to that position with all the rights, benefits, and responsibilities of a regular employee. However, an employee on a rehire list shall not accrue seniority. Thus, the employee will return to work with the same amount of seniority held prior to being placed on the rehire list.

Placement on the rehire list does not preclude an employee from applying for a disability retirement.

4. Medical Leaves of Absence: Employees on family and medical care leave, pregnancy disability leave or other statutory leaves will not be terminated or offered the rehire list option in lieu of separation during such leave if separation during such leave would be precluded by law.

## 2.8 FAMILY CARE AND MEDICAL LEAVE

### A. POLICY

To the extent not already provided for under current leave policies and provisions, the Vista Irrigation District will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (“FMLA”), and the regulations of the California Family Rights Act, as amended by Senate Bill 1383 effective January 1, 2021, (“CFRA”). Unless otherwise provided by this article, “Leave” under this article shall mean leave pursuant to the FMLA and CFRA.

### B. DEFINITIONS

1. “12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
2. “Child” means the following:
  - a. Under the FMLA, “child” means a child under the age of 18 years of age, or 18 years of age or older, who is incapable of self-care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care, and includes a biological, adopted, foster or step-child. A child is “incapable of self-care” if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living, such as caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, or using telephones and directories.
  - b. Under the CFRA, “child” means a child, including a child who is 18 years of age or older, regardless of whether the child is capable of self-care. An employee’s child means a biological, adopted, foster, step-child, legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis (in place of a parent).

~~a child under 18 years of age, or 18 years of age and older who is incapable of self care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day to day responsibility for care and includes a biological, adopted, foster or step-child.~~

~~A child is “incapable of self care” if he/she requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living—such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.~~
3. “Family member” for FMLA leave means an employee’s child, parent and spouse. “Family member” for CFRA leave means an employee’s child, parent, spouse, domestic partner, grandchild, grandparent, and sibling.
4. “Grandchildren” means a child of the employee’s “Child” as defined above ~~the biological and/or legally adopted grandchild or step-grandchild of at least one employee.~~

- ~~2.5.~~ “Grandparents” means a parent of the employee’s “Parent” as defined below~~the father or mother of an employee’s own father and/or mother. Grandfather is a person's father's father and grandmother is a person's mother's mother.~~
- ~~3.6.~~ “Parent” means the biological, adoptive, step or foster parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- ~~4.7.~~ “Sibling” means the brother or sister of an employee. "Blood-related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.
- ~~5.8.~~ “Spouse” means one or two persons to a marriage, regardless of the sex of the persons, and for purposes of CFRA leave, includes a registered “Domestic Partner” as defined below~~a husband or wife as defined or recognized under California State law for purposes of marriage.~~
- ~~6.9.~~ “Domestic Partner,” is another adult with whom the employee has filed a Declaration of Domestic Partnership with the Secretary of State and who meets the criteria specified in as defined by California Family Code §§ 297 and 299.2. A legal union formed in another state that is substantially equivalent to the California domestic partnership is also sufficient. Domestic Partner shall have the same meaning as “Spouse” for purposes of CFRA Leave.
- ~~7.10.~~ “Serious health condition” means an illness, injury impairment, or physical or mental condition that involves:
- a. Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or
  - b. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
    - i. A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
      1. Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or
      2. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

- ii. Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law, an employee disabled by pregnancy is entitled to pregnancy disability leave.)
- iii. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
  - 1. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
  - 2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - 3. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
- iv. A period of incapacity, which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- v. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

8.11. "Health Care Provider" means:

- a. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
- b. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition;
- c. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
- d. Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
- e. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and

- f. Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

12. "Covered active duty" means: (1) in the case of a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; and (2) in the case of a member of the reserve component of the Armed Forces, duty during the deployment of members of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions.

9-13. "Covered Service member" means: (1) a current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness [incurred in the line of duty on active duty]; or (2) a veteran who is undergoing medical treatment, recuperation or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

### C. REASONS FOR LEAVE

Leave is only permitted for the following reasons:

1. The birth of a child or to care for a newborn of an employee;
2. The placement of a child with an employee in connection with the adoption or foster care of a child;
3. Leave to care for a child, parent, or spouse, or domestic partner, sibling, grandparent, or grandchild who has a serious health condition; ~~or~~
4. Under the CFRA only, leave is permitted to care for a domestic partner, grandparent, grandchild, or sibling who has a serious health condition. Leave for this purpose does not apply to FMLA leave and will not run concurrently with leave under the FMLA;
5. Under the CFRA only, leave for a variety of "qualifying exigencies" arising out of the fact that an employee's domestic partner is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation. Leave for this purpose does not apply to FMLA leave and will not run concurrently with leave under the FMLA;
- 4-6. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position; ~~;~~
- 5-7. For a "qualifying exigency" arising out of the fact that an employee's spouse, registered domestic partner, son, daughter, or parent is on covered active duty or call to active duty status.
- 6-8. To care for a spouse, registered domestic partner, son, daughter, parent, or "next of kin" who is a covered servicemember of the United States Armed Forces, who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member's active duty, and was aggravated by service in the line of duty on active duty in the Armed Forces. Under the FMLA, this specific unpaid leave can run up to 26 weeks during of unpaid leave during a single 12-month period. The first 12

weeks of this leave may run concurrently with the CFRA only if the family member that the employee is caring for has a serious health condition and is a family member covered under the CFRA.

#### **D. EMPLOYEES ELIGIBLE FOR LEAVE**

An employee is eligible for leave if the employee:

1. Has been employed for at least 12 months; and
2. Has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

#### **E. AMOUNT OF LEAVE**

##### **1. Maximum Duration of Leave**

Eligible employees are entitled up to a total of 12 workweeks (or 26 weeks to care for a covered service member) of leave during any 12-month period. ~~for. If FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.~~

- ~~1. The employee's own serious health condition;~~
- ~~2. To care for a family member with a serious health condition including child, parent, spouse or domestic partner, sibling, grandparent, or grandchild.~~
- ~~3. For the birth or placement of a child for adoption or foster care; or~~
- ~~4. To address a "qualifying exigency" involving an employee's family member on covered active military duty~~

~~An eligible employee is entitled to up to 26 weeks of leave during a single 12-month period to care for a family member, or "next of kin" who is a covered service member in the United States Armed Forces, including National Guard or Reserves, who incurred a serious injury or illness while on active duty, or aggravated an existing or preexisting injury by service in the line of duty. This leave is in addition to, and separate, from FMLA/CFRA leave for other reasons.~~

##### **2. Minimum Duration of Leave**

If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions.

If leave is requested to care for a child, parent, spouse or domestic partner, sibling, grandparent, or grandchild, or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

##### **3. Parents Both Employed By Vista Irrigation District**

In any case in which both parents of a child, adoptee or foster child are employed by the Vista Irrigation District and are entitled to leave, the aggregate number of workweeks of FMLA bonding leave to which both may be entitled may be limited to 12 workweeks



during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (*i.e.*, bonding leave). Each parent, however, is entitled to take 12 workweeks of CFRA bonding leave during any 12-month period. Similarly, where married spouses both work for the Vista Irrigation District, they may each receive be limited to a total of 12 weeks FMLA leave for bonding leave.

In any case in which parents of a covered service member are employed by the Vista Irrigation District are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 26 workweeks during any 12-month period if leave is taken to care for a covered service member.

This limitation on leave amounts does not apply to any other type of leave under this policy, except as noted below.

#### **F. EMPLOYEE BENEFITS WHILE ON LEAVE**

Leave under this policy is unpaid, except as provided in Section G below. While on leave, employees will continue to be covered by Vista Irrigation District's group health insurance to the same extent that coverage is provided while the employee is on the job.

If the employee is disabled by pregnancy, coverage will continue up to four months each leave year. If an employee disabled by pregnancy also uses leave under the CFRA for baby-bonding, the Vista Irrigation District will maintain her coverage while she is disabled by pregnancy (up to four months or 17 1/3 weeks) and during her CFRA leave (up to 12 weeks).

After FMLA and/or CFRA leave has been exhausted, employees will be covered by Vista Irrigation District's group health insurance if they continue to have paid accrued balances (sick/vacation/comp time) available. All other employees in an unpaid status will engage in the "interactive process" to determine whether the District can reasonably accommodate the employee's need for additional time off, including the payment by the District of their group insurance benefits, or workplace modifications.

Employees are required to make the appropriate employee contributions for group benefits for continued coverage, in advance ~~via a payroll deduction~~ (if the employee is using his or her paid leave) or an individual agreement (if the employee is not using his or her paid leave). Depending on the particular plan, Vista Irrigation District will inform employees whether the premiums should be paid to the carrier or to the District. Employee coverage on a particular plan may be dropped if an employee is more than 30 days late in making a premium payment.

However, employees will receive a notice at least 15 days before coverage is to cease, advising them that they will be dropped if their employee contribution for group benefits is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, Vista Irrigation District shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. Vista Irrigation District shall have the right to recover premiums through deduction from any sums due the District's (e.g. unpaid wages, vacation pay, etc.).



## **G. SUBSTITUTION OF PAID ACCRUED LEAVES**

While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves. Similarly, Vista Irrigation District may require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, and, where permissible by law) will also require an employee to use family and medical care leave concurrently with a non-FMLA/CFRA leave (such as Health Leave or Worker's Compensation Leave) which is FMLA/CFRA-qualifying.

### **1. Employee's Right to Use Paid Accrued Leaves Concurrently With Family Leave**

Where an employee has earned or accrued paid vacation, executive leave, or compensatory time, that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy.

As for sick leave, an employee is entitled to use sick leave concurrently with leave under this policy if:

- a. The leave is for the employee's own serious health condition; or
- b. The leave is needed to care for a parent, spouse or child with a serious health condition, and would be permitted as sick leave under the District's sick leave policy.

### **2. Employee Use of Paid Leave When Using FMLA/CFRA Leave**

Unless prohibited by law or agreement, employees may use their accrued leaves concurrently with FMLA/CFRA leave, including sick, vacation, and compensatory time off. Employees are required to use accrued sick leave during FMLA/CFRA leave if the leave is for the employee's own serious health condition.

### **3. Vista Irrigation District's Right To Require An Employee To Exhaust FMLA/CFRA Leave Concurrently With Other Leaves**

If an employee takes a leave of absence for any reason, which is non-FMLA/CFRA-qualifying, the District<sup>2s</sup> may designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement.

### **4. Vista Irrigation District's and Employee's Rights If an Employee Requests Accrued Leave without Mentioning Either the FMLA or CFRA**

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA-qualifying purpose, the District may ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. If the District denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA-qualifying purpose, the District may inquire further into the reason for the absence. If the reason is FMLA/CFRA-qualifying, the District may require the employee to exhaust accrued leave as described above.

## **H. MEDICAL CERTIFICATION**

Employees who request leave for their own serious health condition or to care for a a-child, parent, spouse or domestic partner, sibling, grandparent, or grandchild ~~child, parent or a spouse~~ who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by Vista Irrigation District.

If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.

**1. Time To Provide A Certification**

When an employee's leave is foreseeable and at least 30 days' notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the District's within the time frame requested by the District's (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

**2. Consequences For Failure To Provide An Adequate Or Timely Certification**

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a medical certification within the time frame established by this policy, the District's may delay the taking of FMLA/CFRA leave until the required certification is provided.

**3. Recertification**

If Vista Irrigation District has reason to doubt the validity of a certification, the District may require a medical opinion of a second health care provider chosen and paid for by the District. If the second opinion is different from the first, the District may require the opinion of a third provider jointly approved by the District and the employee, but paid for by the District. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a recertification.

**4. Intermittent Leave Or Leave On A Reduced Leave Schedule**

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for himself/herself or for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

**I. EMPLOYEE NOTICE OF LEAVE**

Although Vista Irrigation District recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g., for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be orally given. If the District determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the District may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.

**J. REINSTATEMENT UPON RETURN FROM LEAVE**

**1. Right to Reinstatement**

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees

have no greater rights to reinstatement, benefits and other conditions of employment than if the employee has been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and District's the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.

**2. Employee's Obligation to Periodically Report on His/Her Condition**

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

**3. Fitness-for-Duty Certification**

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification may result in denial of reinstatement.

**Reinstatement of "Key Employees"**

~~Vista Irrigation District may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the District within 75 miles of the work site) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the District, and the employee is notified of the District's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.~~

**K. REQUIRED FORMS**

Employees must fill out the following applicable forms in connection with leave under this policy:

1. "Request for Family or Medical Leave Form" prepared by the District to be eligible for leave.

NOTE: EMPLOYEES WILL RECEIVE A DISTRICT RESPONSE TO THEIR REQUEST, WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE;

2. Medical certification—either for the employee's own serious health condition or for the serious health condition of a child, parent, spouse or domestic partner, grandparent, grandchild, or sibling;
3. Authorization for payroll deductions for benefit plan coverage continuation; and
4. Fitness-for-duty to return from leave form.

## SECTION NINE – DRUGS AND ALCOHOL

### 9.1 POLICY

It is Vista Irrigation District's policy to provide a safe workplace and establish high standards of health and safety for employees and the public we serve. To promote and maintain a safe, healthy and productive work environment for all employees and the public, the District's objective is to have a work force that is free from the influence of controlled substances and alcohol. The purpose of this Policy and Program is also to assure that District vehicles and heavy equipment are operated in a safe manner and the public is protected from risks associated with improper use of alcohol or the use of drugs in the operation of District vehicles and heavy equipment.

This Policy and Program ~~are~~is intended to comply with applicable federal and state laws governing drug-free workplaces, as well as the United States Department of Transportation's ("DOT") Controlled Substances and Alcohol Use Testing Regulations for persons performing safety-sensitive functions. This Policy and Program includes adherence to the DOT Drug and Alcohol Clearinghouse (49 C.F.R. § 382.701 et. seq.) for employees who operate a Commercial Motor Vehicle ("CMV").

The purpose of the Clearinghouse, as mandated by applicable sections of 49 Code of Federal Regulations 49, Parts 40 and ~~Parts~~ 382–391, is to maintain records of all drug and alcohol program violations to allow the Federal Motor Carrier Safety Administration ("FMCSA"), CMV employers, State Driver Licensing Agencies, and law enforcement officials to identify — in real-time — Commercial Driver's License ("CDL") drivers who have violated federal drug and alcohol testing program requirements, and thereby improve safety on our nation's roads. Records of these drug and alcohol ~~The~~ violations are maintained in a central repository and ~~require that~~ Clearinghouse. ~~Employers are required to query the Clearinghouse system to determine whether prospective or current and prospective employees have incurred~~engaged in a drug or alcohol violation that would prohibit them from performing safety-sensitive functions covered by the Federal Motor Carrier Safety Administration (FMCSA). This will provide the FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a Commercial Motor Vehicle (CMV) and drivers who have met the evaluation, referral, education/treatment process, negative return-to-duty test, and other necessary requirements ~~ensure that such drivers receive the required evaluation and treatment before resuming safety-sensitive functions. Specifically, information maintained in the Clearinghouse also assists employers to identify will ensure that drivers who committed a drug or alcohol violation while working for another one employer and, or who attempting to find work with another employer, so they may prohibit these drivers from performing do not perform safety-sensitive functions until the drivers have completed completing the evaluation, referral, education/treatment process, negative return-to-duty test, and other necessary requirements before resuming safety-sensitive functions~~return to-duty process.

The District is also concerned about the possession, distribution, purchase or sale of illegal drugs and controlled substances in the workplace. These activities may adversely affect work performance, efficiency, safety and health. In addition, they constitute a potential risk to the welfare and safety of others, risks of injury to other persons, property loss or damage, or negative image for the District.

The District's policy is designed to promote an alcohol and drug-free workplace and to comply with all applicable state and federal laws. This policy establishes the rules and procedures regarding the use of drugs and/or alcohol as it pertains to employment and the procedures to be used to test for drug and/or alcohol use.

The District provides reasonable accommodations as required by law to those employees whose drug or alcohol problem classifies them as disabled. While the District will be supportive of those who seek help voluntarily, the District will be equally firm in identifying and disciplining those whose continued drug and alcohol use, even if enrolled in counseling or rehabilitation programs, results in performance

deficiencies, danger to the health and safety of others and themselves, and/or violations of federal, state or City laws and/or policies.

Employees are required to sign a statement certifying that he/she has received a copy of this policy and understand its contents. Any questions regarding rights and obligations under this Policy shall be referred to the Human Resources Manager.

## 9.2 DEFINITIONS

Words or phrases in this Policy and Program are defined as follows:

- A. "Accident" - an occurrence involving the operation of a motor vehicle or other non-motorized equipment which results in: 1) a fatality or bodily injury demanding immediate medical treatment away from the scene of the accident; or 2) resulted in property damage estimated at \$1,000 or more to any vehicle or other property (e.g. commercial or residential buildings, garages, trees, fences, shrubbery, landscaping, power lines, electrical boxes, hydrants, etc.). Accident does not include an occurrence involving only boarding or alighting from a stationary motor vehicle or an occurrence involving only the loading or unloading of cargo or other equipment.
- B. "Alcohol" - the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohols.
- C. "Alcohol concentration" (or content) - the alcohol in a volume of breath expressed in terms of grams of Alcohol per 210 liters of breath as indicated by an Evidential Breath Testing Device (EBTD) as defined herein. For example, a breath alcohol content or concentration of .02 means .02 grams of alcohol in 210 liters of expired deep lung air.
- D. "Alcohol Test" or "Testing" - a method of detecting and measuring the Alcohol Concentration in a Covered Employee's body in accordance with the requirements and procedure in the DOT Regulations or California law.
- E. "Alcohol Use" - the drinking or swallowing of any beverage, liquid mixture, or preparation, including any medication, involving Alcohol.
- F. "Breath Alcohol Technician" (BAT) - an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing (EBT) device.
- G. "Commercial Motor Vehicle" (CMV) - a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property which requires a commercial driver's license for operation in the State of California. Commercial driver's licenses include, but are not limited to, California Class A, Class B, and Class C with endorsement.
- H. "Confirmation Test"
  - 1. In alcohol testing, it refers to a second test, following a screening test with a result of .01 or greater, that provides a quantitative data of alcohol concentration.
  - 2. In controlled substances testing it refers to a second test to identify the presence of a specific drug or metabolite.

In order to ensure reliability and accuracy, this test is separate from and uses a different technique and chemical principle from that of the screening test.

- I. "Controlled Substances" - the terms "drugs" and "controlled substances" are interchangeable and have the same meaning. Unless otherwise provided, these terms refer to marijuana, cocaine,

opiates, phencyclidine (PCP), amphetamines including methamphetamines, and other substances as categorized by state or federal laws as controlled substances.

- J. “Employee Assistance Program” (EAP) - a treatment and referral program provided by the District to assist employees and dependents with personal or familial difficulties, as well as problems with alcohol abuse or use of controlled substances.
- K. “Evidential Breath Testing” (EBT) - a device used for alcohol breath testing that has been approved by the National Highway Safety Administration.
- L. “Medical Review Officer” (MRO) - a licensed physician responsible for receiving laboratory results generated by an employer’s drug testing program. The MRO must have knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate positive test results.
- M. “Prescription Drug” - any substance that can lawfully be obtained or possessed pursuant to a valid prescription by a licensed physician.
- N. “Reasonable Suspicion” - reasonable suspicion that an employee is under the influence of drugs and/or alcohol. Examples of indicators which can form a reasonable suspicion that an employee is under the influence of alcohol, drugs, or controlled substances include but are not limited to direct observation of the following:
  - a. slurred speech;
  - b. glassy or bloodshot eyes;
  - c. odor of alcohol;
  - d. unsteady walking and movement;
  - e. an accident involving District property, employee or client;
  - f. a near accident or other safety violation;
  - g. physical or verbal altercation;
  - h. possession of alcohol, drugs, controlled substances, or drug paraphernalia;
  - i. sleeping on the job;
  - j. pattern of abnormal or erratic behavior;
  - k. information either provided by reliable and credible sources or independently corroborated;
  - l. conviction for a drug-related offense;
  - m. tampering with a previous drug test.

O. **Queries:** The District will obtain reports (queries) from the Clearinghouse at these times:

- Once a year for all drivers (limited query), and

- Preceding employment of any new drivers.
- Reports to the Clearinghouse will include:
- the driver's name, date of birth, commercial driver's license number and state of issuance, violation and/or testing data

Ø.P. “Substance Abuse Professional” (SAP) - a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

### **9.3 COVERED EMPLOYEES**

The prohibition against drug and alcohol use in the workplace applies to all District employees when they are on District property or when performing any District related business, or when driving a motor vehicle. This policy applies to all external applicants for District jobs, and to all employees, whether full- time, part-time, and temporary or volunteers.

There are special drug and alcohol testing requirements for safety sensitive employees, as mandated by the DOT regulations, and as set forth below in this policy. A safety sensitive employee is an employee who meets any of the criteria below and as designated by the District in its sole discretion:

- A. One in any position that the District has designated as requiring the use of a Class "A" or Class "B" commercial driver's license.
- B. One who performs safety sensitive functions, the performance of which may affect the public safety, including:
  - 1. Driving the controls of a Commercial Motor Vehicle (“CMV”);
  - 2. Spending time in a CMV;
  - 3. Loading or unloading a CMV, supervising or assisting in the loading or unloading, attending to a CMV being loaded or unloaded, remaining in readiness to operate the CMV, or giving or receiving receipts for shipments loaded or unloaded;
  - 4. Repairing, obtaining assistance, inspecting, maintaining, or attending to a CMV;
  - 5. Use of heavy equipment.

A safety sensitive employee is considered to be performing a safety sensitive function during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety sensitive function, including while the employee is on an off-site lunch period or a break.

### **9.4 PROHIBITED SUBSTANCES**

- A. **Alcohol**  
This policy addresses alcohol use such that it is present in the body at a level in excess of that stated in the guidelines by the Department of Transportation, as amended, and other federal and state laws, as noted in this Policy.
- B. **Drugs or Controlled Substances**  
This policy addresses any controlled substance which, in the opinion of competent medical professionals, causes or may cause significant impairment of job performance or which causes or

may cause behavior that is a threat to the safety of the affected employee or others. All controlled substances listed in any federal, state or local controlled substance acts or regulations, including, but not limited to, marijuana, amphetamines, opiates, phencyclidine (PCP) and cocaine, and those substances listed in Schedules I through V of the Section 202 of the federal Controlled Substances Act, are covered by this policy.

**C. Prescription Drugs**

No prescription drug shall be possessed or used by an employee other than the employee for whom the drug is prescribed by a licensed medical practitioner. A prescription drug shall be used only in the manner, combination, and quantity prescribed. An employee must advise his/her supervisor of the use or influence of any prescription drug prior to beginning work, when taking the medication or drug could interfere with the safe and effective performance of duties, or the operation of a District vehicle or heavy machinery, such that the employee poses a direct threat to the health and safety of himself/herself or others. An employee's failure to provide this notice in a timely manner can result in discipline, up to and including termination. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician may be required.

**9.5 PROHIBITED CONDUCT**

The District prohibits the following acts:

- A. Being under the influence of, or in possession of alcohol, drugs, or controlled substances when reporting for work, during working hours (regular, overtime hours, etc.), and while traveling on District business during normal working hours;
- B. Ingesting, injecting, or otherwise using alcohol, drugs, or controlled substances while performing job duties, and during meal and rest break periods, except in accordance with above Section 9.4.C regarding prescription drugs where applicable;
- C. Being under the influence of alcohol, drugs, or any controlled substances while subject to being called to duty, including stand-by time;
- D. Performing a safety sensitive function within four hours of using alcohol or while using alcohol;
- E. Directly or through a third party, manufacturing, selling, distributing, dispensing, otherwise attempting to manufacture, selling, or distributing alcohol, drugs, or controlled substances during work hours, including rest breaks or while on District premises;
- F. Use of District property or premises to manufacture, sell or distribute alcohol, drugs, or controlled substances;
- G. Absence or tardiness as a result of having been under the influence of alcohol, drugs, or controlled substances during non-work time; and
- H. Refusing to submit immediately to any alcohol, drug or controlled substance test required by this Policy when directed by the District. Refusal includes but is not limited to:
  - 1. A refusal to provide a urine sample for a drug test;
  - 2. An inability to provide a urine sample without a valid medical explanation;
  - 3. A refusal to complete and sign a testing authorization form;



4. An inability to provide breath or to provide an adequate amount of breath without a valid medical explanation;
  5. Tampering with or attempting to adulterate or substitute the urine specimen;
  6. Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested;
  7. Obstructing the collection procedure or testing process in any way; or
  8. Leaving the scene of an accident without a valid reason as to why and no authorization from a supervisor or manager was obtained.
- I. Consuming alcohol, drugs, or controlled substances during the eight hours immediately following an accident in which the employee was involved, or until the employee undergoes a post-accident alcohol or drug test, whichever comes first.
- J. Refusal to submit to a search of personal property when directed by the District, and upon reasonable suspicion.

## **9.6 NOTIFYING THE DISTRICT OF ANY CRIMINAL DRUG STATUTE CONVICTION**

In accordance with the Drug-Free Workplace Act of 1988, an employee must immediately notify the District of any criminal drug statute conviction of a violation that occurred in the workplace no later than five business days after such conviction. Any employee who fails to provide this notice will be subject to discipline, up to and including termination.

Notice of Violations: Drivers are required to notify the District in writing if they have violated the drug and/or alcohol prohibitions of 49 C.F.R. Parts 40 or 382 while employed with the District. The statement must be received before the end of the business day the day after the driver received notification of the violation or prior to performing any safety-sensitive duties, whichever comes first.

## **9.7 CONSEQUENCES FOR VIOLATION OF THIS POLICY**

### **A. DISCIPLINE**

Any violation of this Policy may result in discipline, up to, and including, termination. Discipline may be imposed regardless of whether or not an employee is convicted of any crime related to any violation of this Policy.

If an alcohol or drug test is positive for alcohol or drugs, the District shall conduct an investigation to gather all facts. The decision to discipline or discharge will be carried out in conformance with District's policies and procedures and due process rights of the employee. This policy does not limit the employees' or the District's rights. Appropriate District representatives will prepare and carry out appropriate disciplinary proceedings in accordance with full due process and representation rights, if applicable.

Any violation of this Policy that may constitute criminal conduct or violation of the DOT regulations may be reported to the appropriate law enforcement agencies and/or subject the employee to civil penalties.

**B. REMOVAL FROM WORK SITE**

Employees reasonably believed to be under the influence of alcohol, drugs, or controlled substances shall be immediately prevented from engaging in further work and shall be detained for a reasonable time until they can be safely transported from the work site.

Employees who test positive for substance or alcohol use may be removed from their duties or placed on leave, pending possible disciplinary action, and required to go to the Employee Assistance Program or a rehabilitation program of their choice approved by the District. Use of the EAP does not replace normal disciplinary procedures for unsatisfactory job performance or violation of this policy.

**C. REMOVAL OF SAFETY SENSITIVE FUNCTIONS**

A commercial driver whose alcohol test indicates an alcohol concentration level of .01 to .04 will be removed from his/her safety sensitive position for at least 24 hours. An employee who performs safety sensitive functions other than commercial driving whose alcohol test indicates an alcohol concentration level of .02 to .04 will be removed from his/her safety sensitive positions for at least 24 hours. An employee whose alcohol test indicates an alcohol concentration level greater than .04 will be removed from his or her position for a period to be determined by the Human Resources Manager.

**D. TERMINATION FOR INABILITY TO PERFORM ESSENTIAL FUNCTIONS**

After the District has complied with any legal obligation to reasonably accommodate an employee's protected disability, the District may separate an employee who is unable to perform the essential functions of the job in accordance with state or federal law.

**9.8 DRUG AND ALCOHOL TESTING POLICIES FOR SAFETY SENSITIVE EMPLOYEES**

There are specific drug and alcohol testing requirements pursuant to the DOT regulations that are only applicable to safety sensitive employees, as defined by Section 9.3 of this policy above, and as set forth below. Drug and alcohol testing policies for non-safety sensitive positions is set forth in Section 9.9 of this policy.

**A. PRE-EMPLOYMENT TESTING**

Prior to the start of employment, the District may require applicants for positions to submit to a test for alcohol and drug use as a condition of employment. Any applicant who refuses to provide consent for this test, or who tests positive for drug and/or alcohol use will be disqualified from District employment.

Pursuant to the DOT regulations, the District is further required to conduct a records check and direct inquiry regarding all applicants for safety sensitive positions, as set forth below:

**1. Requirement for Records Check for Applicants**

As required by the DOT regulations, an applicant to a safety sensitive position will be required to provide written consent for the District to request alcohol and drug testing records from prior employers regulated by the DOT for the two-year period prior to the date of application. These records shall include any alcohol test results of .04 or higher alcohol concentration; refusals to be tested; verified positive drug tests; and documentation of the successful completion of return-to-duty requirements by the DOT.

Prior to employment with the District, all drivers must create a Clearinghouse account and log in to permit the District consent to acquire a "full" report Drivers must sign a separate Consent "for Limited Queries" form allowing the District access to "limited" queries each year. Drivers may limit the length of time that such consent is valid but making it valid for the duration of employment with the District is recommended.

The District will notify the driver that they must immediately log in to the Clearinghouse to provide permission so the District may obtain the driver's full Clearinghouse record if a limited query exposes information about the driver. Such record will be acquired within 24 hours of the limited query.

A driver who refuses to grant the consent described above will not be allowed to perform any safety-sensitive duties as defined in §382.107. The driver will not be allowed to resume the safety-sensitive duties until the driver has granted the mandatory consent, the District obtains the report, and the Clearinghouse query shows that the driver is eligible to carry out safety-sensitive duties.

## **2. Requirements for Direct Inquiry**

The applicant also must provide information regarding whether he/she has tested positive or has refused to test on any pre-employment drug or alcohol test for any safety sensitive job applied for but not obtained during the prior two years, as required by the DOT regulations.

## **3. Reporting**

Beginning on or after January 6, 2020, the District must report the following violations to the Clearinghouse for any Driver who is subject to the Clearinghouse rules. The District's service providers, Medical Review Officer(s), and/or its Substance Abuse Professional(s) will report as required by FMCSA:

- Any verified positive, adulterated, or substituted DOT drug test
- Any validated DOT alcohol test result of 0.04 or higher
- Any refusal to submit to a DOT required drug or alcohol test
- Any confirmed and recorded "actual knowledge" that the driver violated the DOT drug or alcohol rules, including:
  - Any on-duty alcohol use, including any citation for driving under the influence of alcohol (DUI) while driving a commercial motor vehicle
  - Any alcohol use within 4 hours before going on duty
  - Any alcohol use within 8 hours of an accident or before a post-accident test is complete (whichever occurs first)
  - Any prohibited drug use while on duty
- Successful completion of the return-to-duty process following treatment
- Any negative DOT return-to-duty test
- Successful completion of follow-up testing

## **B. REASONABLE SUSPICION TESTING AND SEARCH**

If the District reasonably suspects that an employee is under the influence of alcohol, drugs, or controlled substances while performing job duties or operating District equipment, the District may require the employee to submit to an alcohol and/or drug test. An employee's refusal to submit to such a test is cause for discipline, up to and including termination. Refusal to submit shall be equivalent to a positive drug or alcohol test.

Moreover, the District reserves the authority to search, without employee consent and, where applicable, all areas of District property which the District maintains control or joint control with

the employee. The search shall be approved by the Human Resources Manager. The Human Resources Manager or his/her representative shall conduct and witness the search. A designated employee representative (i.e. Senior Teamster Representative, VISA Representative, etc.) shall also witness the search. Areas in which District maintains full control include but are not limited to all District owned properties and buildings and District owned vehicles and equipment. Areas jointly controlled by the District and employee include, but are not limited to, desks, lockers, file cabinets, office cabinets, and bookshelves, except as otherwise limited by any section of the California Government Code. District may notify the appropriate law enforcement agency if it is believed that an employee may have illegal drugs in his or her possession.

### **C. POST-ACCIDENT TESTING**

Any employee involved in an accident may be subject to an alcohol test within 2 hours of the accident or within 8 hours if this is not possible and the reasons for the delay must be documented by a supervisor. Any employee involved in an accident may be subject to a drug test within 32 hours following the accident. Not only may the operator of the vehicle be tested, but so may any other employee whose performance may have contributed to the accident, such as the employee who maintains the vehicle or work-site where the accident occurred. Employees subject to post-accident testing requests must make themselves available for testing as soon as reasonably possible after the accident. Failure to do so without a valid reason may result in disciplinary action up to and including termination.

An accident for purposes of this section, occurs while in a District commercial motor vehicle ("CMV") on District property, when operating a personal vehicle for District business, or when operating a CMV on a public/private road or property in commerce and involves any of the following: 1) the accident involved a fatality or bodily injury demanding immediate medical treatment away from the scene of the accident; or 2) resulted in property damage estimated at \$1,000 or more to any vehicle or other property (e.g. commercial or residential buildings, garages, trees, fences, shrubbery, landscaping, power lines, electrical boxes, hydrants, etc.). The operator of the CMV must immediately report this accident to the appropriate authorities, as well as the District, so that the relevant drug/alcohol tests may be conducted.

### **D. TRANSFERS TO SAFETY SENSITIVE POSITIONS**

#### **1. Requirement for Records Check**

As required by the DOT regulations, employees who transfer to a safety sensitive job will be required to provide written consent for the District to request alcohol and drug testing records from prior employers regulated by the DOT for the two-year period prior to the date of application. These records shall include any alcohol test results of .04 or higher alcohol concentration; refusals to be tested; verified positive drug tests; and documentation of the successful completion of return-to-duty requirements by the DOT.

#### **2. Requirements for Direct Inquiry**

Transferred employees also must provide information regarding whether he/she has tested positive or has refused to test on any pre-employment drug or alcohol test for any safety sensitive job applied for but not obtained during the prior two years, as required by the DOT regulations.

**E. RANDOM TESTING**

Safety sensitive employees will be subject to random alcohol and drug testing as required by the DOT guidelines. Depending on the random selection, some employees may be tested more than once in a year, while others are not tested at all. Testing will take place just prior to the employee performing a safety sensitive function, while the employee is performing a safety sensitive function, or just after the employee has stopped performing a safety sensitive function.

**1. Alcohol Test**

Unless otherwise amended by the DOT guidelines, the District will randomly test at least 10% of the total number of safety sensitive employees per year for alcohol.

**2. Drug Test**

Unless otherwise amended by the DOT guidelines, the District will randomly test at least 50% of the total number of safety sensitive employees per year for drugs.

**F. RETURN-TO-DUTY TESTING**

An employee who has violated this Policy may be subject to a return-to-duty test and up to six unannounced drug/alcohol tests during the first twelve months back to a safety sensitive position. The results must indicate an alcohol concentration of less than .01%, or in cases of a drug test, must indicate a verified negative result. This testing is separate from any random testing obligation.

If an alcohol or drug test is positive for alcohol or drugs, the District shall conduct an investigation to gather all facts. The decision to discipline or discharge will be carried out in conformance with District's policies and procedures and due process rights of the employee. Any violation of this return-to-duty testing may result in discipline, up to, and including, termination.

**9.9 DRUG AND ALCOHOL TESTING POLICIES FOR NON-SAFETY SENSITIVE EMPLOYEES**

All applicants for non-safety sensitive positions and current non-safety sensitive employees are subject to drug and alcohol testing as follows:

**A. PRE-EMPLOYMENT TESTING**

The District has a special need to require certain job applicants to take a drug and alcohol test after a conditional job offer has been given. These applicants include those applying for jobs classified by the District as safety-sensitive positions that involve a danger to the public, or those applicants seeking jobs which can directly influence children. These applicants must take and pass a mandatory drug and alcohol test as soon as practical following their acceptance of an offer of employment that is conditioned upon passing a pre-employment physical and drug/alcohol test.

**B. REASONABLE SUSPICION TESTING AND SEARCH**

If the District reasonably suspects that an employee is under the influence of alcohol, drugs, or controlled substances while performing job duties or operating District equipment, the District reserves the right to conduct a reasonable suspicion drug test, without employee consent. An employee's refusal to submit to such a test is cause for discipline, up to and including termination.

Moreover, the District reserves the authority to search, without employee consent and, where applicable, all areas of District property which the District maintains control or joint control with the employee. The search will be conducted only with the approval of the Human Resources Manager. Areas in which District maintains full control include but are not limited to all District owned properties and buildings and District owned vehicles and equipment. Areas jointly controlled by the District and employee include, but are not limited to, desks, lockers, file cabinets, office cabinets, and bookshelves, except as otherwise limited by any section of the California Government Code. District may notify the appropriate law enforcement agency if it is believed that an employee may have illegal drugs in his or her possession.

**C. POST-ACCIDENT TESTING**

Unless the District determines that the employee's performance was not a contributing factor, any employee involved in an accident, as defined in Section 9.2 of this policy, may be subject to an alcohol test within 2 hours of the accident, or within 8 hours if this is not possible and the reasons for the delay must be documented by a supervisor. An employee involved in an accident, as defined in Section 9.2 of this policy, may be subject to a drug test within 32 hours following the accident. Not only may the operator of the vehicle be tested, but so may any other employee whose performance may have contributed to the accident, such as the employee who maintains the vehicle or work-site where the accident occurred. Failure to do so without a valid reason may result in disciplinary action up to and including termination.

**D. RETURN-TO-DUTY TESTING**

Employees who test positive may not return to work until such time as another drug/or alcohol test is negative or a medical evaluation permits the employee to return, and the return is approved by the District.

Employees who have tested positive for drug and/or alcohol shall submit to random drug and/or alcohol testing for a period of 12 months following the negative test. If employee tests positive as a result of the random testing within this time period, he/she is subject to immediate termination and will be given full due process rights. Any violations of this return-to-duty testing may result in discipline, up to, and including, termination.

**9.10 TESTING PROCEDURES**

All testing will be conducted as required in 49 CFR Part 40, as amended.

Employees seeking specific details regarding the procedures and methodology of drug/alcohol testing under this Policy are referred to those DOT regulations set forth in 49 CFR PART 40. Employees who wish to review this information may contact the Human Resources Manager for assistance in securing a written copy of these regulations.

**A. TESTING FOR DRUGS**

In accordance with the DOT regulations, testing for drugs under this Policy shall only be conducted using urine specimens that will be collected in accordance with the DOT regulations (49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, Subpart E, as may be amended from time to time). Employees may request a copy of these procedures from the Human Resources Manager.

Each urine specimen will be tested at a federally certified laboratory for the controlled substances and their respective detection levels contained in the regulation which may be amended from time to time. The testing laboratory is required to test all incoming primary specimens for dilution, substitution, and adulteration. The testing procedure is a two-step process. The first is a screening test. If the screening test is positive for one or more of the above substances, a confirmation test is performed for each identified drug using gas chromatography/mass spectrometry (GC/MS) analysis. All samples will also be examined to determine if it has been diluted or adulterated with any other substances designed to mask prohibited substance use.

Employees who are found positive for one or more of the above substances will be contacted by telephone by the MRO. The MRO will inform the individual of the finding and allow the individual to provide an explanation which may medically justify use of the identified substance. The use of other outside medical experts may be utilized in this process at the direction of the MRO. Unjustified use of the substance will result in the MRO reporting the finding as a "positive" to the District. Findings which are determined to be medically acceptable in the opinion of the MRO will be reported as "negative" to the District representative.

Any individual who has been tested and disagrees with the MRO's determination that the specimen is "positive" or that the specimen has been adulterated or substituted, may request that the "split" specimen be sent to another certified laboratory for analysis. The employee must make this request within 72 hours of being notified by the MRO of the finding. The District will initially pay for the split sample to be tested upon an employee's request for an appeal determination. In the event the MRO's decision is not reversed, the employee will be responsible to reimburse the District for the second analysis.

Unless the District is otherwise directed to re-test an employee by an MRO, a dilute negative shall be accepted as a negative test result and the employee or applicant shall not be required to produce an additional sample for testing purposes.

## **B. TESTING FOR ALCOHOL**

In accordance with DOT regulations, testing for alcohol is performed by a Breath Alcohol Technician ("BAT") through the use of an evidential breath test ("EBT") which measures the amount of alcohol concentration in the individual's system. In order to perform the test, the employee will be asked to provide a breath sample into the device which then calculates the extent of alcohol inebriation. The machines used to perform these tests are required to be calibrated and the operators are required to undergo training and testing in order to meet the Federal criteria. Refusal to submit to an alcohol test as required by the Federal regulations will be presumed as a positive finding and will result in a physician referral to determine if there is any medical basis to justify the refusal to test.

Usually, two breath tests will be performed in order to determine if an individual has a prohibited alcohol concentration. A screening test is conducted first.

## **9.11 RECORD KEEPING AND CONFIDENTIALITY**

The District is obligated to maintain records of the administration, including violations, of this Policy for a period of five years.

Any laboratory reports and test results shall not appear in an employee's general personnel folder but will be contained in a separate, confidential medical folder that will be securely kept under the control of the Human Resources Manager. The report or test results may be disclosed to District management on a strictly need-to-know basis and to the tested employee upon request.

With employee consent, the District may provide test results to the Employee Assistance Program. With employee consent, the EAP can report to an appropriate District representative the employee's progress in the following EAP recommendations.

Disclosures, without patient consent, may also occur under the following situations:

1. When the information is compelled by law or by judicial or administrative process;
2. When the information has been placed at issue in a formal dispute between the employer and employee
3. When the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure; or
4. When requested by the DOT or any state or local officials with regulatory authority over the District or any of its safety sensitive employees.

## **9.12 REHABILITATION**

The District encourages employees to use the District-sponsored employee assistance program (EAP) voluntarily to assist them in resolving any alcohol, drug, or controlled substance problems. Employees should contact the Human Resources Manager for additional information, including further information concerning the dangerous effects of alcohol misuse and drug use on an employee's health, work, and personal life.

The District is committed to providing reasonable accommodation to those employees whose alcohol or drug problem classifies them as disabled under federal and/or state law.

While the District will be supportive of those who seek help voluntarily, the District will be firm in identifying and disciplining those who continue alcohol misuse or drug use and who do not seek help or continue alcohol misuse or drug use even while enrolled in counseling or rehabilitation programs.

Therefore, the District may require employees to use the EAP and in addition to mandatory referrals to an SAP where applicable.

## **9.13 TRAINING**

The District will provide information concerning the District's procedures regarding drug use and alcohol misuse to supervisors and employees. The District will also provide alcohol and substance abuse training as required by state and federal law (i.e. DOT, etc.). The District has designated the Human Resources Manager as the person responsible to answer questions about compliance with these procedures and concerning any materials supplied to employees.



#### **9.14 MANAGER AND SUPERVISOR RESPONSIBILITIES**

Managers and supervisors have the following additional responsibilities under this policy:

1. Managers and supervisors are responsible for reasonable enforcement of this policy.
2. Managers and supervisors may request that an employee submit to a medical evaluation, which may include drug and/or alcohol test, when they have a reasonable suspicion, as defined in Section 9.2 - Definitions, that an employee is under the influence of drugs or alcohol while on the job.
3. Managers and supervisors should seek a witness, if feasible, to verify reasonable suspicion. The employee should be approached and given an opportunity to explain the behavior before further action is taken.
4. Managers and supervisors who request an employee submit to a medical evaluation, which may include a drug and/or alcohol test, will document in writing, at the earliest possible opportunity, the facts constituting reasonable suspicion.
5. Where there is reasonable suspicion that the employee is under the influence of alcohol or drugs, managers and supervisors should notify the Human Resources Manager, and get approval to take the employee to a site for a medical evaluation, which may include an alcohol and/or drug test, and then transport the employee home. Managers and supervisors encountering an employee who refuses an order to submit to a drug and/or alcohol analysis upon request shall remind the employee of the requirements and disciplinary consequences of this policy.
6. Managers and supervisors shall not physically search employees, nor shall they search the personal possessions of employees, without the freely given consent of, and in the presence of, the employee and a responsible third party witness.
7. Managers and supervisors shall notify the Human Resources Manager when they have reasonable suspicion to believe that an employee may have alcohol and/or illegal drugs in his or her possession or in an area not jointly or fully controlled by the District. If the Human Resources Manager concurs that there is reasonable suspicion of illegal drug possession, the appropriate law enforcement agency will be notified.
8. Managers and supervisors must notify the Human Resources Manager immediately after an employee reports that he/she was convicted of any workplace drug crime. The District is required to report convictions of employees to the federal government within 10 days.
9. Managers and supervisors have the responsibility to encourage employees to use EAP when deteriorating or unsatisfactory job performance does not respond to usual supervisory action. A supervisor should not attempt to diagnose an employee's problem. The supervisor's role is to monitor job performance.

RESOLUTION NO. 21-XX

RESOLUTION OF THE BOARD OF DIRECTORS OF  
VISTA IRRIGATION DISTRICT REVISING  
EMPLOYEE PERSONNEL POLICIES MANUAL SECTIONS 2.2, 2.8 AND 9

WHEREAS, the Vista Irrigation District's negotiation team completed meet and confer labor negotiations for 2018, 2019, 2020 and 2021 salaries and benefits as set forth in a Memorandum of Agreement for represented employees and a Board Resolution for unrepresented employees; and

WHEREAS, the District has established an Employee Personnel Policies Manual and related Policy Addendums further governing the employment relationship as between the District and its employees; and

WHEREAS, the District is required, from time to time, to update, amend, add and delete portions of the Employee Personnel Policies Manual.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of Vista Irrigation District does hereby approve revising sections 2.2, Sick Leave, 2.8, Family Care and Medical Leave and 9, Drugs and Alcohol, of said Employee Personnel Policies Manual and incorporating policy changes into the body of the document as set forth in the attached "Exhibit A", incorporated herein by reference.

BE IT FURTHER RESOLVED that the Board of Directors has authorized execution of documents (if any) by the General Manager or his/her designee that may be required to carry out this Resolution.

PASSED AND ADOPTED by the Board of Directors this 3<sup>rd</sup> day of February, 2021 by the following roll call vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Patrick H. Sanchez, President

ATTEST:

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Lisa Soto, Secretary  
Board of Directors  
Vista Irrigation District

## **EXHIBIT A**

### **2.2 SICK LEAVE**

#### **A. DEFINED**

1. Sick leave is paid leave from duty which may be granted by the District to an employee for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or any of the following of the employee's family members: child of any age or dependency status; parent; parent-in-law; spouse; registered domestic partner; grandparent; grandchildren; or sibling. Sick leave may also be granted to an employee who is a victim of domestic violence, sexual assault, or stalking to: i) obtain or attempt to obtain a temporary restraining order or other court assistance to help ensure the health safety or welfare of the employee or his/her child; or ii) obtain medical attention or psychological counseling; services from a shelter; program or crisis center; or participate in safety planning or other actions to increase safety.
2. The transferring (sharing) of accrued sick leave balances between employees is prohibited.

#### **B. SICK LEAVE USE**

1. An employee may be granted sick leave for the reasons set forth above. In the event that the employee or the employee's family member recovers from any such sickness after being granted sick leave, and during the regularly scheduled hours of work, then such employee shall notify the appropriate immediate supervisor and be available to return to duty.
2. In order to apply for sick leave use, an employee shall notify the appropriate immediate supervisor prior to the time established as the beginning of the employee's work day, unless the District determines that the employee's duties require more restrictive reporting. Failure to do so without good reason shall result in that day of absence being treated as leave of absence without pay. Each request for sick leave shall be set forth on the District's Time Off Request Form (Appendix A).
3. If the employee is absent on sick leave for more than one (1) day, the employee will keep the immediate supervisor informed as to the date the employee expects to return to work.
4. Sick leave will not be granted to any employee absent from duty after separation from District service, or during a District authorized leave of absence without pay, or any other absence from duty not authorized by the District.

Sick leave will not be granted to any employee to permit an extension of the employee's vacation. However, if illness occurs while an employee is on vacation, sick leave may be substituted for vacation at the request of the employee, upon presentation of proof of illness (unless otherwise prohibited by applicable state or federal laws), and subject to the approval of the employee's supervisor.

5. The District may require a physician's certification at any time regarding the sickness or injury of the employee or their immediate family member and the date of the employee's intended return to work. This may be required in those cases where misuse of sick leave is suspected, for all sick leave absences in excess of three days, or in any and all cases when sick leave balances become exhausted on the date of the absence. If the employee is unable or refuses to produce timely and acceptable documentation of illness, the absence will be treated as unexcused.

6. Supervisors have the discretion to place employees on sick leave when, in the judgment of the supervisor, the presence of the employee at work would endanger the health and welfare of other employees or where the illness or injury of the employee interferes with the performance of such employee's duties.
7. In the event employee has exhausted all sick leave, unless otherwise prohibited by applicable state or federal laws, accrued compensatory time off will be used, and then accrued vacation will be used for authorized sick leave.
8. In the event of a work-related injury, employee's accrued sick leave may be used to supplement workers' compensation benefits up to but not exceeding the amount of employee's base wage rate.
9. With the prior written permission of the employee, accrued compensatory time off and then vacation time will be used by the District in an attempt to maintain employee's pay status after all sick leave has been utilized. Vacation and sick leave may be used in conjunction or combined with State Disability Insurance (SDI) or Paid Family Leave payments up to but not to exceed the employee's basic wage rate.
10. In cases where the employee's absence may be related to the employee's ability to perform the essential functions of his/her job description, a doctor's release may be required prior to the employee's return to work.
11. In the event that the District has good cause to believe that an employee may not be able to safely or reliably perform his/her duties, the District may require a medical or psychological examination to ascertain the employee's fitness for duty. This examination will be provided at District expense and by a District designated health care provider.

**C. SICK LEAVE ACCRUAL**

1. All full-time employees will accrue 2.15 hours of sick leave each pay period while on paid status throughout the entire pay period. Such accrual shall take place on a bi-weekly basis after the completion of the pay period. No accrual shall take place for any pay period in which the employee has performed less than a full pay period of service (or paid leave, *i.e.* paid status).
2. Sick leave may be accrued to a maximum of one thousand hours except as provided below:
3. Sick leave granted by the District and used by an employee shall be deducted from the employee's accrued sick leave balance. Sick leave shall be used in minimum increments of a half hour.
4. Employees granted a leave of absence with pay or other approved leave with pay shall accrue sick leave as provided herein.
5. Sick leave will not be accrued by an employee absent from duty after separation from District service, or during a District authorized leave of absence without pay, or any other absence from duty not authorized by the District.

**D. REIMBURSEMENT FOR ACCRUED SICK LEAVE**

Upon termination of employment for other than disciplinary reasons, employee shall receive payment in accordance with the applicable Memorandum of Agreement or Board Resolution. Upon retirement, employee shall receive payment in accordance with the applicable Memorandum of Agreement or Board Resolution

**E. EXCESSIVE USE OF SICK LEAVE/ABUSE/MISUSE OF SICK LEAVE**

An employee shall be subject to disciplinary action for abuse of sick leave that is a claim of entitlement to sick leave when the employee does not meet the requirements of sick leave as defined in Section 1. Excessive use of sick leave is defined as sick leave exceeding three (3) separate absences in any month, six (6) in any three (3) months, or usage in excess of District averages. Calculations of excessive usage shall exclude family and medical leave absences, workers' compensation absences or absences normally excluded from such calculations by law.

**F. EVALUATION OF SICK LEAVE USAGE**

Abuse of sick leave will be considered in establishing the performance rating.

**G. RETURN TO WORK**

Regular employees unable to perform the essential functions of their position, with or without reasonable accommodation, as a result of a physical or psychological illness or injury for a period of twelve (12) months (see Health Leave) from the first date of the absence shall:

1. Be terminated from employment. Employees who are separated pursuant to this section shall be accorded procedural due process (i.e., notice and an opportunity to respond to the separation) in accordance with the appeal procedures for disciplinary actions outlined in these rules and procedures. or,
2. If disabled, be retired under the Public Employees Retirement System, or;
3. Be offered the opportunity to resign from the position and be placed on a rehire list for a period not to exceed one (1) year. Any employee returning to work pursuant to this section shall provide to the Human Resources office verification from a medical practitioner of his/her ability to return to work and perform the essential functions of his/her position, with or without accommodation.

If during the period in which the employee is on the rehire list, the employee is physically and/or psychologically able to resume the duties of his/her previous position and there is a vacant position in the employee's classification, the employee will be entitled to return to that position with all the rights, benefits, and responsibilities of a regular employee. However, an employee on a rehire list shall not accrue seniority. Thus, the employee will return to work with the same amount of seniority held prior to being placed on the rehire list.

Placement on the rehire list does not preclude an employee from applying for a disability retirement.

4. Medical Leaves of Absence: Employees on family and medical care leave, pregnancy disability leave or other statutory leaves will not be terminated or offered the rehire list option in lieu of separation during such leave if separation during such leave would be precluded by law.

## **2.8 FAMILY CARE AND MEDICAL LEAVE**

### **A. POLICY**

To the extent not already provided for under current leave policies and provisions, the Vista Irrigation District will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (“FMLA”), and the regulations of the California Family Rights Act, as amended by Senate Bill 1383 effective January 1, 2021, (“CFRA”). Unless otherwise provided by this article, “Leave” under this article shall mean leave pursuant to the FMLA and CFRA.

### **B. DEFINITIONS**

1. “12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
2. “Child” means the following:
  - a. Under the FMLA, “child” means a child under the age of 18 years of age, or 18 years of age or older, who is incapable of self-care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care, and includes a biological, adopted, foster or step-child. A child is “incapable of self-care” if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living, such as caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, or using telephones and directories.
  - b. Under the CFRA, “child” means a child, including a child who is 18 years of age or older, regardless of whether the child is capable of self-care. An employee’s child means a biological, adopted, foster, step-child, legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis (in place of a parent).
3. “Family member” for FMLA leave means an employee’s child, parent and spouse. “Family member” for CFRA leave means an employee’s child, parent, spouse, domestic partner, grandchild, grandparent, and sibling.
4. “Grandchild” means a child of the employee’s “Child” as defined above.
5. “Grandparents” means a parent of the employee’s “Parent” as defined below.
6. “Parent” means the biological, adoptive, step or foster parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
7. “Sibling” means the brother or sister of an employee. “Blood-related” means they share at least one biological or adoptive parent. “Step” means they are not related by blood, but are related by the marriage of their parents.
8. “Spouse” means one or two persons to a marriage, regardless of the sex of the persons, and for purposes of CFRA leave, includes a registered “Domestic Partner” as defined below.

9. “Domestic Partner,” is another adult with whom the employee has filed a Declaration of Domestic Partnership with the Secretary of State and who meets the criteria specified in California Family Code §§ 297 and 299.2. A legal union formed in another state that is substantially equivalent to the California domestic partnership is also sufficient. Domestic Partner shall have the same meaning as “Spouse” for purposes of CFRA Leave.
10. “Serious health condition” means an illness, injury impairment, or physical or mental condition that involves:
  - a. Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or
  - b. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
    - i. A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
      1. Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or
      2. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
    - ii. Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law, an employee disabled by pregnancy is entitled to pregnancy disability leave.)
    - iii. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
      1. Requires periodic visits for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
      2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
      3. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

- iv. A period of incapacity, which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- v. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

11. “Health Care Provider” means:

- a. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
- b. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition;
- c. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
- d. Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
- e. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- f. Any health care provider from whom an employer or group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

12. “Covered active duty” means: (1) in the case of a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; and (2) in the case of a member of the reserve component of the Armed Forces, duty during the deployment of members of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions.

13. “Covered Service member” means: (1) a current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness [incurred in the line of duty on active duty]; or (2) a veteran who is undergoing medical treatment, recuperation or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.



## **C. REASONS FOR LEAVE**

Leave is only permitted for the following reasons:

1. The birth of a child or to care for a newborn of an employee;
2. The placement of a child with an employee in connection with the adoption or foster care of a child;
3. Leave to care for a child, parent, or spouse who has a serious health condition;
4. Under the CFRA only, leave is permitted to care for a domestic partner, grandparent, grandchild, or sibling who has a serious health condition. Leave for this purpose does not apply to FMLA leave and will not run concurrently with leave under the FMLA;
5. Under the CFRA only, leave for a variety of “qualifying exigencies” arising out of the fact that an employee’s domestic partner is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation. Leave for this purpose does not apply to FMLA leave and will not run concurrently with leave under the FMLA;
6. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position;
7. For a “qualifying exigency” arising out of the fact that an employee’s spouse, registered domestic partner, son, daughter, or parent is on covered active duty or call to active duty status.
8. To care for a spouse, son, daughter, parent, or “next of kin” who is a covered servicemember of the United States Armed Forces, who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member’s active duty, and was aggravated by service in the line of duty on active duty in the Armed Forces. Under the FMLA, this unpaid leave can run up to 26 weeks during a single 12-month period. The first 12 weeks of this leave may run concurrently with the CFRA only if the family member that the employee is caring for has a serious health condition and is a family member covered under the CFRA.

## **D. EMPLOYEES ELIGIBLE FOR LEAVE**

An employee is eligible for leave if the employee:

1. Has been employed for at least 12 months; and
2. Has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

## **E. AMOUNT OF LEAVE**

### **1. Maximum Duration of Leave**

Eligible employees are entitled up to a total of 12 workweeks (or 26 weeks to care for a covered service member) of leave during any 12-month period. If FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

## **2. Minimum Duration of Leave**

If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions.

If leave is requested to care for a child, parent, spouse or domestic partner, sibling, grandparent, or grandchild, or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

## **3. Parents Both Employed By Vista Irrigation District**

In any case in which both parents of a child, adoptee or foster child are employed by the Vista Irrigation District and are entitled to leave, the aggregate number of workweeks of FMLA bonding leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (*i.e.*, bonding leave). Each parent, however, is entitled to take 12 workweeks of CFRA bonding leave during any 12-month period.

In any case in which parents of a covered service member are employed by the Vista Irrigation District are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 26 workweeks during any 12-month period if leave is taken to care for a covered service member.

This limitation on leave amounts does not apply to any other type of leave under this policy, except as noted below.

## **F. EMPLOYEE BENEFITS WHILE ON LEAVE**

Leave under this policy is unpaid, except as provided in Section G below. While on leave, employees will continue to be covered by Vista Irrigation District's group health insurance to the same extent that coverage is provided while the employee is on the job.

If the employee is disabled by pregnancy, coverage will continue up to four months each leave year. If an employee disabled by pregnancy also uses leave under the CFRA for baby-bonding, the Vista Irrigation District will maintain her coverage while she is disabled by pregnancy (up to four months or 17 1/3 weeks) and during her CFRA leave (up to 12 weeks).

After FMLA and/or CFRA leave has been exhausted, employees will be covered by Vista Irrigation District's group health insurance if they continue to have paid accrued balances (sick/vacation/comp time) available. All other employees in an unpaid status will engage in the "interactive process" to determine whether the District can reasonably accommodate the employee's need for additional time off, including the payment by the District of their group insurance benefits, or workplace modifications.

Employees are required to make the appropriate employee contributions for group benefits for continued coverage, in advance via a payroll deduction (if the employee is using his or her paid leave) or an individual agreement (if the employee is not using his or her paid leave). Depending on the particular plan, Vista Irrigation District will inform employees whether the premiums should be paid to the carrier or to the District. Employee coverage on a particular plan may be dropped if an employee is more than 30 days late in making a premium payment.

However, employees will receive a notice at least 15 days before coverage is to cease, advising them that they will be dropped if their employee contribution for group benefits is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, Vista Irrigation District shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. Vista Irrigation District shall have the right to recover premiums through deduction from any sums due the District's (e.g. unpaid wages, vacation pay, etc.).

## **G. SUBSTITUTION OF PAID ACCRUED LEAVES**

While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves. Similarly, Vista Irrigation District may require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, and, where permissible by law) will also require an employee to use family and medical care leave concurrently with a non-FMLA/CFRA leave (such as Health Leave or Worker's Compensation Leave) which is FMLA/CFRA-qualifying.

### **1. Employee's Right to Use Paid Accrued Leaves Concurrently With Family Leave**

Where an employee has earned or accrued paid vacation, executive leave, or compensatory time, that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy.

As for sick leave, an employee is entitled to use sick leave concurrently with leave under this policy if:

- a. The leave is for the employee's own serious health condition; or
- b. The leave is needed to care for a parent, spouse or child with a serious health condition, and would be permitted as sick leave under the District's sick leave policy.

### **2. Employee Use of Paid Leave When Using FMLA/CFRA Leave**

Unless prohibited by law or agreement, employees may use their accrued leaves concurrently with FMLA/CFRA leave, including sick, vacation, and compensatory time off. Employees are required to use accrued sick leave during FMLA/CFRA leave if the leave is for the employee's own serious health condition.

### **3. Vista Irrigation District's Right To Require An Employee To Exhaust FMLA/CFRA Leave Concurrently With Other Leaves**

If an employee takes a leave of absence for any reason, which is non-FMLA/CFRA-qualifying, the District may designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement.

### **4. Vista Irrigation District's and Employee's Rights If an Employee Requests Accrued Leave without Mentioning Either the FMLA or CFRA**

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA-qualifying purpose, the District may ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. If the District denies the

employee's request and the employee provides information that the requested time off is for a FMLA/CFRA-qualifying purpose, the District may inquire further into the reason for the absence. If the reason is FMLA/CFRA-qualifying, the District may require the employee to exhaust accrued leave as described above.

## **H. MEDICAL CERTIFICATION**

Employees who request leave for their own serious health condition or to care for a child, parent, spouse or domestic partner, sibling, grandparent, or grandchild who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by Vista Irrigation District.

If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.

### **1. Time To Provide A Certification**

When an employee's leave is foreseeable and at least 30 days' notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the District's within the time frame requested by the District (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

### **2. Consequences For Failure To Provide An Adequate Or Timely Certification**

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a medical certification within the time frame established by this policy, the District's may delay the taking of FMLA/CFRA leave until the required certification is provided.

### **3. Recertification**

If Vista Irrigation District has reason to doubt the validity of a certification, the District may require a medical opinion of a second health care provider chosen and paid for by the District. If the second opinion is different from the first, the District may require the opinion of a third provider jointly approved by the District and the employee, but paid for by the District. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a recertification.

### **4. Intermittent Leave Or Leave On A Reduced Leave Schedule**

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for himself/herself or for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

## **I. EMPLOYEE NOTICE OF LEAVE**

Although Vista Irrigation District recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (*e.g.*, for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon

as possible that such leave will be needed. Such notice may be orally given. If the District determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the District may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.

## **J. REINSTATEMENT UPON RETURN FROM LEAVE**

### **1. Right to Reinstatement**

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee has been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and District's the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.

### **2. Employee's Obligation to Periodically Report on His/Her Condition**

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

### **3. Fitness-for-Duty Certification**

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification may result in denial of reinstatement.

## **K. REQUIRED FORMS**

Employees must fill out the following applicable forms in connection with leave under this policy:

1. "Request for Family or Medical Leave Form" prepared by the District to be eligible for leave.

**NOTE: EMPLOYEES WILL RECEIVE A DISTRICT RESPONSE TO THEIR REQUEST, WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE;**

2. Medical certification—either for the employee's own serious health condition or for the serious health condition of a child, parent, spouse or domestic partner, grandparent, grandchild, or sibling;
3. Authorization for payroll deductions for benefit plan coverage continuation; and
4. Fitness-for-duty to return from leave form.

## **SECTION NINE – DRUGS AND ALCOHOL**

### **9.1 POLICY**

It is Vista Irrigation District's policy to provide a safe workplace and establish high standards of health and safety for employees and the public we serve. To promote and maintain a safe, healthy and productive work environment for all employees and the public, the District's objective is to have a work force that is free from the influence of controlled substances and alcohol. The purpose of this Policy and Program is also to assure that District vehicles and heavy equipment are operated in a safe manner and the public is protected from risks associated with improper use of alcohol or the use of drugs in the operation of District vehicles and heavy equipment.

This Policy and Program are intended to comply with applicable federal and state laws governing drug-free workplaces, as well as the United States Department of Transportation's ("DOT") Controlled Substances and Alcohol Use Testing Regulations for persons performing safety-sensitive functions. This Policy and Program includes adherence to the DOT Drug and Alcohol Clearinghouse (49 C.F.R. § 382.701 et. seq.) for employees who operate a Commercial Motor Vehicle ("CMV").

The purpose of the Clearinghouse, as mandated by applicable sections of 49 Code of Federal Regulations, Parts 40 and 382-391, is to maintain records of all drug and alcohol program violations to allow the Federal Motor Carrier Safety Administration ("FMCSA"), CMV employers, State Driver Licensing Agencies, and law enforcement officials to identify — in real-time — Commercial Driver's License ("CDL") drivers who have violated federal drug and alcohol testing program requirements, and thereby improve safety on our nation's roads. Records of these drug and alcohol violations are maintained in a central Clearinghouse. Employers are required to query the Clearinghouse to determine whether prospective or current employees have engaged in a drug or alcohol violation that would prohibit them from performing safety-sensitive functions covered by the FMCSA. This will provide the FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a CMV and drivers who have met the evaluation, referral, education/treatment process, negative return-to-duty test, and other necessary requirements before resuming safety-sensitive functions. Information maintained in the Clearinghouse also assists employers to identify drivers who committed a drug or alcohol violation while working for one employer and attempting to find work with another employer so they may prohibit these drivers from performing safety-sensitive functions until the drivers have completed the evaluation, referral, education/treatment process, negative return-to-duty test, and other necessary requirements before resuming safety-sensitive functions.

The District is also concerned about the possession, distribution, purchase or sale of illegal drugs and controlled substances in the workplace. These activities may adversely affect work performance, efficiency, safety and health. In addition, they constitute a potential risk to the welfare and safety of others, risks of injury to other persons, property loss or damage, or negative image for the District.

The District's policy is designed to promote an alcohol and drug-free workplace and to comply with all applicable state and federal laws. This policy establishes the rules and procedures regarding the use of drugs and/or alcohol as it pertains to employment and the procedures to be used to test for drug and/or alcohol use.

The District provides reasonable accommodations as required by law to those employees whose drug or alcohol problem classifies them as disabled. While the District will be supportive of those who seek help voluntarily, the District will be equally firm in identifying and disciplining those whose continued drug and alcohol use, even if enrolled in counseling or rehabilitation programs, results in performance deficiencies, danger to the health and safety of others and themselves, and/or violations of federal, state or City laws and/or policies.

Employees are required to sign a statement certifying that he/she has received a copy of this policy and understand its contents. Any questions regarding rights and obligations under this Policy shall be referred to the Human Resources Manager.

## 9.2 DEFINITIONS

Words or phrases in this Policy and Program are defined as follows:

- A. "Accident" - an occurrence involving the operation of a motor vehicle or other non-motorized equipment which results in: 1) a fatality or bodily injury demanding immediate medical treatment away from the scene of the accident; or 2) resulted in property damage estimated at \$1,000 or more to any vehicle or other property (e.g. commercial or residential buildings, garages, trees, fences, shrubbery, landscaping, power lines, electrical boxes, hydrants, etc.). Accident does not include an occurrence involving only boarding or alighting from a stationary motor vehicle or an occurrence involving only the loading or unloading of cargo or other equipment.
- B. "Alcohol" - the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohols.
- C. "Alcohol concentration" (or content) - the alcohol in a volume of breath expressed in terms of grams of Alcohol per 210 liters of breath as indicated by an Evidential Breath Testing Device (EBTD) as defined herein. For example, a breath alcohol content or concentration of .02 means .02 grams of alcohol in 210 liters of expired deep lung air.
- D. "Alcohol Test" or "Testing" - a method of detecting and measuring the Alcohol Concentration in a Covered Employee's body in accordance with the requirements and procedure in the DOT Regulations or California law.
- E. "Alcohol Use" - the drinking or swallowing of any beverage, liquid mixture, or preparation, including any medication, involving Alcohol.
- F. "Breath Alcohol Technician" (BAT) - an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing (EBT) device.
- G. "Commercial Motor Vehicle" (CMV) - a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property which requires a commercial driver's license for operation in the State of California. Commercial driver's licenses include, but are not limited to, California Class A, Class B, and Class C with endorsement.
- H. "Confirmation Test"
  - 1. In alcohol testing, it refers to a second test, following a screening test with a result of .01 or greater, that provides a quantitative data of alcohol concentration.
  - 2. In controlled substances testing it refers to a second test to identify the presence of a specific drug or metabolite.

In order to ensure reliability and accuracy, this test is separate from and uses a different technique and chemical principle from that of the screening test.
- I. "Controlled Substances" - the terms "drugs" and "controlled substances" are interchangeable and have the same meaning. Unless otherwise provided, these terms refer to marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines including methamphetamines, and other substances as categorized by state or federal laws as controlled substances.
- J. "Employee Assistance Program" (EAP) - a treatment and referral program provided by the District to assist employees and dependents with personal or familial difficulties, as well as problems with alcohol abuse or use of controlled substances.

- K. "Evidential Breath Testing" (EBT) - a device used for alcohol breath testing that has been approved by the National Highway Safety Administration.
- L. "Medical Review Officer" (MRO) - a licensed physician responsible for receiving laboratory results generated by an employer's drug testing program. The MRO must have knowledge of substance abuse disorders and have appropriate medical training to interpret and evaluate positive test results.
- M. "Prescription Drug" - any substance that can lawfully be obtained or possessed pursuant to a valid prescription by a licensed physician.
- N. "Reasonable Suspicion" - reasonable suspicion that an employee is under the influence of drugs and/or alcohol. Examples of indicators which can form a reasonable suspicion that an employee is under the influence of alcohol, drugs, or controlled substances include but are not limited to direct observation of the following:
- a. slurred speech;
  - b. glassy or bloodshot eyes;
  - c. odor of alcohol;
  - d. unsteady walking and movement;
  - e. an accident involving District property, employee or client;
  - f. a near accident or other safety violation;
  - g. physical or verbal altercation;
  - h. possession of alcohol, drugs, controlled substances, or drug paraphernalia;
  - i. sleeping on the job;
  - j. pattern of abnormal or erratic behavior;
  - k. information either provided by reliable and credible sources or independently corroborated;
  - l. conviction for a drug-related offense;
  - m. tampering with a previous drug test.
- O. "Queries" - The District will obtain reports (queries) from the Clearinghouse at these times:
- Once a year for all drivers (limited query), and
  - Preceding employment of any new drivers.
  - Reports to the Clearinghouse will include:
  - the driver's name, date of birth, commercial driver's license number and state of issuance, violation and/or testing data
- P. "Substance Abuse Professional" (SAP) - a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.



### **9.3 COVERED EMPLOYEES**

The prohibition against drug and alcohol use in the workplace applies to all District employees when they are on District property or when performing any District related business, or when driving a motor vehicle. This policy applies to all external applicants for District jobs, and to all employees, whether full- time, part-time, and temporary or volunteers.

There are special drug and alcohol testing requirements for safety sensitive employees, as mandated by the DOT regulations, and as set forth below in this policy. A safety sensitive employee is an employee who meets any of the criteria below and as designated by the District in its sole discretion:

- A. One in any position that the District has designated as requiring the use of a Class "A" or Class "B" commercial driver's license.
- B. One who performs safety sensitive functions, the performance of which may affect the public safety, including:
  - 1. Driving the controls of a Commercial Motor Vehicle ("CMV");
  - 2. Spending time in a CMV;
  - 3. Loading or unloading a CMV, supervising or assisting in the loading or unloading, attending to a CMV being loaded or unloaded, remaining in readiness to operate the CMV, or giving or receiving receipts for shipments loaded or unloaded;
  - 4. Repairing, obtaining assistance, inspecting, maintaining, or attending to a CMV;
  - 5. Use of heavy equipment.

A safety sensitive employee is considered to be performing a safety sensitive function during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety sensitive function, including while the employee is on an off-site lunch period or a break.

### **9.4 PROHIBITED SUBSTANCES**

#### **A. Alcohol**

This policy addresses alcohol use such that it is present in the body at a level in excess of that stated in the guidelines by the Department of Transportation, as amended, and other federal and state laws, as noted in this Policy.

#### **B. Drugs or Controlled Substances**

This policy addresses any controlled substance which, in the opinion of competent medical professionals, causes or may cause significant impairment of job performance or which causes or may cause behavior that is a threat to the safety of the affected employee or others. All controlled substances listed in any federal, state or local controlled substance acts or regulations, including, but not limited to, marijuana, amphetamines, opiates, phencyclidine (PCP) and cocaine, and those substances listed in Schedules I through V of the Section 202 of the federal Controlled Substances Act, are covered by this policy.

#### **C. Prescription Drugs**

No prescription drug shall be possessed or used by an employee other than the employee for whom the drug is prescribed by a licensed medical practitioner. A prescription drug shall be used only in the manner, combination, and quantity prescribed. An employee must advise his/her supervisor of the use or influence of any prescription drug prior to beginning work, when taking the medication or drug could

interfere with the safe and effective performance of duties, or the operation of a District vehicle or heavy machinery, such that the employee poses a direct threat to the health and safety of himself/herself or others. An employee's failure to provide this notice in a timely manner can result in discipline, up to and including termination. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician may be required.

## **9.5 PROHIBITED CONDUCT**

The District prohibits the following acts:

- A. Being under the influence of, or in possession of alcohol, drugs, or controlled substances when reporting for work, during working hours (regular, overtime hours, etc.), and while traveling on District business during normal working hours;
- B. Ingesting, injecting, or otherwise using alcohol, drugs, or controlled substances while performing job duties, and during meal and rest break periods, except in accordance with above Section 9.4.C regarding prescription drugs where applicable;
- C. Being under the influence of alcohol, drugs, or any controlled substances while subject to being called to duty, including stand-by time;
- D. Performing a safety sensitive function within four hours of using alcohol or while using alcohol;
- E. Directly or through a third party, manufacturing, selling, distributing, dispensing, otherwise attempting to manufacture, selling, or distributing alcohol, drugs, or controlled substances during work hours, including rest breaks or while on District premises;
- F. Use of District property or premises to manufacture, sell or distribute alcohol, drugs, or controlled substances;
- G. Absence or tardiness as a result of having been under the influence of alcohol, drugs, or controlled substances during non-work time; and
- H. Refusing to submit immediately to any alcohol, drug or controlled substance test required by this Policy when directed by the District. Refusal includes but is not limited to:
  - 1. A refusal to provide a urine sample for a drug test;
  - 2. An inability to provide a urine sample without a valid medical explanation;
  - 3. A refusal to complete and sign a testing authorization form;
  - 4. An inability to provide breath or to provide an adequate amount of breath without a valid medical explanation;
  - 5. Tampering with or attempting to adulterate or substitute the urine specimen;
  - 6. Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested;
  - 7. Obstructing the collection procedure or testing process in any way; or

8. Leaving the scene of an accident without a valid reason as to why and no authorization from a supervisor or manager was obtained.
- I. Consuming alcohol, drugs, or controlled substances during the eight hours immediately following an accident in which the employee was involved, or until the employee undergoes a post-accident alcohol or drug test, whichever comes first.
- J. Refusal to submit to a search of personal property when directed by the District, and upon reasonable suspicion.

## **9.6 NOTIFYING THE DISTRICT OF ANY CRIMINAL DRUG STATUTE CONVICTION**

In accordance with the Drug-Free Workplace Act of 1988, an employee must immediately notify the District of any criminal drug statute conviction of a violation that occurred in the workplace no later than five business days after such conviction. Any employee who fails to provide this notice will be subject to discipline, up to and including termination.

**Notice of Violations:** Drivers are required to notify the District in writing if they have violated the drug and/or alcohol prohibitions of 49 C.F.R. Parts 40 or 382 while employed with the District. The statement must be received before the end of the business day the day after the driver received notification of the violation or prior to performing any safety-sensitive duties, whichever comes first.

## **9.7 CONSEQUENCES FOR VIOLATION OF THIS POLICY**

### **A. DISCIPLINE**

Any violation of this Policy may result in discipline, up to, and including, termination. Discipline may be imposed regardless of whether or not an employee is convicted of any crime related to any violation of this Policy.

If an alcohol or drug test is positive for alcohol or drugs, the District shall conduct an investigation to gather all facts. The decision to discipline or discharge will be carried out in conformance with District's policies and procedures and due process rights of the employee. This policy does not limit the employees' or the District's rights. Appropriate District representatives will prepare and carry out appropriate disciplinary proceedings in accordance with full due process and representation rights, if applicable.

Any violation of this Policy that may constitute criminal conduct or violation of the DOT regulations may be reported to the appropriate law enforcement agencies and/or subject the employee to civil penalties.

### **B. REMOVAL FROM WORK SITE**

Employees reasonably believed to be under the influence of alcohol, drugs, or controlled substances shall be immediately prevented from engaging in further work and shall be detained for a reasonable time until they can be safely transported from the work site.

Employees who test positive for substance or alcohol use may be removed from their duties or placed on leave, pending possible disciplinary action, and required to go to the Employee Assistance Program or a rehabilitation program of their choice approved by the District. Use of the EAP does not replace normal disciplinary procedures for unsatisfactory job performance or violation of this policy.

**C. REMOVAL OF SAFETY SENSITIVE FUNCTIONS**

A commercial driver whose alcohol test indicates an alcohol concentration level of .01 to .04 will be removed from his/her safety sensitive position for at least 24 hours. An employee who performs safety sensitive functions other than commercial driving whose alcohol test indicates an alcohol concentration level of .02 to .04 will be removed from his/her safety sensitive positions for at least 24 hours. An employee whose alcohol test indicates an alcohol concentration level greater than .04 will be removed from his or her position for a period to be determined by the Human Resources Manager.

**D. TERMINATION FOR INABILITY TO PERFORM ESSENTIAL FUNCTIONS**

After the District has complied with any legal obligation to reasonably accommodate an employee's protected disability, the District may separate an employee who is unable to perform the essential functions of the job in accordance with state or federal law.

**9.8 DRUG AND ALCOHOL TESTING POLICIES FOR SAFETY SENSITIVE EMPLOYEES**

There are specific drug and alcohol testing requirements pursuant to the DOT regulations that are only applicable to safety sensitive employees, as defined by Section 9.3 of this policy above, and as set forth below. Drug and alcohol testing policies for non-safety sensitive positions is set forth in Section 9.9 of this policy.

**A. PRE-EMPLOYMENT TESTING**

Prior to the start of employment, the District may require applicants for positions to submit to a test for alcohol and drug use as a condition of employment. Any applicant who refuses to provide consent for this test, or who tests positive for drug and/or alcohol use will be disqualified from District employment.

Pursuant to the DOT regulations, the District is further required to conduct a records check and direct inquiry regarding all applicants for safety sensitive positions, as set forth below:

**1. Requirement for Records Check for Applicants**

As required by the DOT regulations, an applicant to a safety sensitive position will be required to provide written consent for the District to request alcohol and drug testing records from prior employers regulated by the DOT for the two-year period prior to the date of application. These records shall include any alcohol test results of .04 or higher alcohol concentration; refusals to be tested; verified positive drug tests; and documentation of the successful completion of return-to-duty requirements by the DOT.

Prior to employment with the District, all drivers must create a Clearinghouse account and log in to permit the District consent to acquire a "full" report Drivers must sign a separate Consent "for Limited Queries" form allowing the District access to "limited" queries each year. Drivers may limit the length of time that such consent is valid but making it valid for the duration of employment with the District is recommended.

The District will notify the driver that they must immediately log in to the Clearinghouse to provide permission so the District may obtain the driver's full Clearinghouse record if a limited query exposes information about the driver. Such record will be acquired within 24 hours of the limited query.

A driver who refuses to grant the consent described above will not be allowed to perform any safety-sensitive duties as defined in §382.107. The driver will not be allowed to resume the safety-sensitive duties until the driver has granted the mandatory consent, the District obtains the report, and the Clearinghouse query shows that the driver is eligible to carry out safety-sensitive duties.

**2. Requirements for Direct Inquiry**

The applicant also must provide information regarding whether he/she has tested positive or has refused to test on any pre-employment drug or alcohol test for any safety sensitive job applied for but not obtained during the prior two years, as required by the DOT regulations.

**3. Reporting**

Beginning on or after January 6, 2020, the District must report the following violations to the Clearinghouse for any Driver who is subject to the Clearinghouse rules. The District's service providers, Medical Review Officer(s), and/or its Substance Abuse Professional(s) will report as required by FMCSA:

- Any verified positive, adulterated, or substituted DOT drug test
- Any validated DOT alcohol test result of 0.04 or higher
- Any refusal to submit to a DOT required drug or alcohol test
- Any confirmed and recorded "actual knowledge" that the driver violated the DOT drug or alcohol rules, including:
  - Any on-duty alcohol use, including any citation for driving under the influence of alcohol (DUI) while driving a commercial motor vehicle
  - Any alcohol use within 4 hours before going on duty
  - Any alcohol use within 8 hours of an accident or before a post-accident test is complete (whichever occurs first)
  - Any prohibited drug use while on duty
- Successful completion of the return-to-duty process following treatment
- Any negative DOT return-to-duty test
- Successful completion of follow-up testing

**B. REASONABLE SUSPICION TESTING AND SEARCH**

If the District reasonably suspects that an employee is under the influence of alcohol, drugs, or controlled substances while performing job duties or operating District equipment, the District may require the employee to submit to an alcohol and/or drug test. An employee's refusal to submit to such a test is cause for discipline, up to and including termination. Refusal to submit shall be equivalent to a positive drug or alcohol test.

Moreover, the District reserves the authority to search, without employee consent and, where applicable, all areas of District property which the District maintains control or joint control with the employee. The search shall be approved by the Human Resources Manager. The Human Resources Manager or his/her representative shall conduct and witness the search. A designated employee representative (i.e. Senior Teamster Representative, VISA Representative, etc.) shall also witness the search. Areas in which District maintains full control include but are not limited to all District owned properties and buildings and District owned vehicles and equipment. Areas jointly controlled by the District and employee include, but are not limited to, desks, lockers, file cabinets, office cabinets, and bookshelves, except as otherwise limited by any section of the California Government Code. District may notify the appropriate law enforcement agency if it is believed that an employee may have illegal drugs in his or her possession.

## **C. POST-ACCIDENT TESTING**

Any employee involved in an accident may be subject to an alcohol test within 2 hours of the accident or within 8 hours if this is not possible and the reasons for the delay must be documented by a supervisor. Any employee involved in an accident may be subject to a drug test within 32 hours following the accident. Not only may the operator of the vehicle be tested, but so may any other employee whose performance may have contributed to the accident, such as the employee who maintains the vehicle or work-site where the accident occurred. Employees subject to post-accident testing requests must make themselves available for testing as soon as reasonably possible after the accident. Failure to do so without a valid reason may result in disciplinary action up to and including termination.

An accident for purposes of this section, occurs while in a District commercial motor vehicle ("CMV") on District property, when operating a personal vehicle for District business, or when operating a CMV on a public/private road or property in commerce and involves any of the following: 1) the accident involved a fatality or bodily injury demanding immediate medical treatment away from the scene of the accident; or 2) resulted in property damage estimated at \$1,000 or more to any vehicle or other property (e.g. commercial or residential buildings, garages, trees, fences, shrubbery, landscaping, power lines, electrical boxes, hydrants, etc.). The operator of the CMV must immediately report this accident to the appropriate authorities, as well as the District, so that the relevant drug/alcohol tests may be conducted.

## **D. TRANSFERS TO SAFETY SENSITIVE POSITIONS**

### **1. Requirement for Records Check**

As required by the DOT regulations, employees who transfer to a safety sensitive job will be required to provide written consent for the District to request alcohol and drug testing records from prior employers regulated by the DOT for the two-year period prior to the date of application. These records shall include any alcohol test results of .04 or higher alcohol concentration; refusals to be tested; verified positive drug tests; and documentation of the successful completion of return-to-duty requirements by the DOT.

### **2. Requirements for Direct Inquiry**

Transferred employees also must provide information regarding whether he/she has tested positive or has refused to test on any pre-employment drug or alcohol test for any safety sensitive job applied for but not obtained during the prior two years, as required by the DOT regulations.

## **E. RANDOM TESTING**

Safety sensitive employees will be subject to random alcohol and drug testing as required by the DOT guidelines. Depending on the random selection, some employees may be tested more than once in a year, while others are not tested at all. Testing will take place just prior to the employee performing a safety sensitive function, while the employee is performing a safety sensitive function, or just after the employee has stopped performing a safety sensitive function.

### **1. Alcohol Test**

Unless otherwise amended by the DOT guidelines, the District will randomly test at least 10% of the total number of safety sensitive employees per year for alcohol.

### **2. Drug Test**

Unless otherwise amended by the DOT guidelines, the District will randomly test at least 50% of the total number of safety sensitive employees per year for drugs.

**F. RETURN-TO-DUTY TESTING**

An employee who has violated this Policy may be subject to a return-to-duty test and up to six unannounced drug/alcohol tests during the first twelve months back to a safety sensitive position. The results must indicate an alcohol concentration of less than .01%, or in cases of a drug test, must indicate a verified negative result. This testing is separate from any random testing obligation.

If an alcohol or drug test is positive for alcohol or drugs, the District shall conduct an investigation to gather all facts. The decision to discipline or discharge will be carried out in conformance with District's policies and procedures and due process rights of the employee. Any violation of this return-to-duty testing may result in discipline, up to, and including, termination.

**9.9 DRUG AND ALCOHOL TESTING POLICIES FOR NON-SAFETY SENSITIVE EMPLOYEES**

All applicants for non-safety sensitive positions and current non safety sensitive employees are subject to drug and alcohol testing as follows:

**A. PRE-EMPLOYMENT TESTING**

The District has a special need to require certain job applicants to take a drug and alcohol test after a conditional job offer has been given. These applicants include those applying for jobs classified by the District as safety-sensitive positions that involve a danger to the public, or those applicants seeking jobs which can directly influence children. These applicants must take and pass a mandatory drug and alcohol test as soon as practical following their acceptance of an offer of employment that is conditioned upon passing a pre-employment physical and drug/alcohol test.

**B. REASONABLE SUSPICION TESTING AND SEARCH**

If the District reasonably suspects that an employee is under the influence of alcohol, drugs, or controlled substances while performing job duties or operating District equipment, the District reserves the right to conduct a reasonable suspicion drug test, without employee consent. An employee's refusal to submit to such a test is cause for discipline, up to and including termination.

Moreover, the District reserves the authority to search, without employee consent and, where applicable, all areas of District property which the District maintains control or joint control with the employee. The search will be conducted only with the approval of the Human Resources Manager. Areas in which District maintains full control include but are not limited to all District owned properties and buildings and District owned vehicles and equipment. Areas jointly controlled by the District and employee include, but are not limited to, desks, lockers, file cabinets, office cabinets, and bookshelves, except as otherwise limited by any section of the California Government Code. District may notify the appropriate law enforcement agency if it is believed that an employee may have illegal drugs in his or her possession.

**C. POST-ACCIDENT TESTING**

Unless the District determines that the employee's performance was not a contributing factor, any employee involved in an accident, as defined in Section 9.2 of this policy, may be subject to an alcohol test within 2 hours of the accident, or within 8 hours if this is not possible and the reasons for the delay must be documented by a supervisor. An employee involved in an accident, as defined in Section 9.2 of this policy, may be subject to a drug test within 32 hours following the accident. Not only may the operator of the vehicle be tested, but so may any other employee whose performance may have contributed to the accident, such as the employee who maintains the vehicle or work-site where the accident occurred. Failure to do so without a valid reason may result in disciplinary action up to and including termination.

## **D. RETURN-TO-DUTY TESTING**

Employees who test positive may not return to work until such time as another drug/or alcohol test is negative or a medical evaluation permits the employee to return, and the return is approved by the District.

Employees who have tested positive for drug and/or alcohol shall submit to random drug and/or alcohol testing for a period of 12 months following the negative test. If employee tests positive as a result of the random testing within this time period, he/she is subject to immediate termination and will be given full due process rights. Any violations of this return-to-duty testing may result in discipline, up to, and including, termination.

### **9.10 TESTING PROCEDURES**

All testing will be conducted as required in 49 CFR Part 40, as amended.

Employees seeking specific details regarding the procedures and methodology of drug/alcohol testing under this Policy are referred to those DOT regulations set forth in 49 CFR PART 40. Employees who wish to review this information may contact the Human Resources Manager for assistance in securing a written copy of these regulations.

#### **A. TESTING FOR DRUGS**

In accordance with the DOT regulations, testing for drugs under this Policy shall only be conducted using urine specimens that will be collected in accordance with the DOT regulations (49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, Subpart E, as may be amended from time to time). Employees may request a copy of these procedures from the Human Resources Manager.

Each urine specimen will be tested at a federally certified laboratory for the controlled substances and their respective detection levels contained in the regulation which may be amended from time to time. The testing laboratory is required to test all incoming primary specimens for dilution, substitution, and adulteration. The testing procedure is a two-step process. The first is a screening test. If the screening test is positive for one or more of the above substances, a confirmation test is performed for each identified drug using gas chromatography/mass spectrometry (GC/MS) analysis. All samples will also be examined to determine if it has been diluted or adulterated with any other substances designed to mask prohibited substance use.

Employees who are found positive for one or more of the above substances will be contacted by telephone by the MRO. The MRO will inform the individual of the finding and allow the individual to provide an explanation which may medically justify use of the identified substance. The use of other outside medical experts may be utilized in this process at the direction of the MRO. Unjustified use of the substance will result in the MRO reporting the finding as a "positive" to the District. Findings which are determined to be medically acceptable in the opinion of the MRO will be reported as "negative" to the District representative.

Any individual who has been tested and disagrees with the MRO's determination that the specimen is "positive" or that the specimen has been adulterated or substituted, may request that the "split" specimen be sent to another certified laboratory for analysis. The employee must make this request within 72 hours of being notified by the MRO of the finding. The District will initially pay for the split sample to be tested upon an employee's request for an appeal determination. In the event the MRO's decision is not reversed, the employee will be responsible to reimburse the District for the second analysis.



Unless the District is otherwise directed to re-test an employee by an MRO, a dilute negative shall be accepted as a negative test result and the employee or applicant shall not be required to produce an additional sample for testing purposes.

## **B. TESTING FOR ALCOHOL**

In accordance with DOT regulations, testing for alcohol is performed by a Breath Alcohol Technician (“BAT”) through the use of an evidential breath test (“EBT”) which measures the amount of alcohol concentration in the individual’s system. In order to perform the test, the employee will be asked to provide a breath sample into the device which then calculates the extent of alcohol inebriation. The machines used to perform these tests are required to be calibrated and the operators are required to undergo training and testing in order to meet the Federal criteria. Refusal to submit to an alcohol test as required by the Federal regulations will be presumed as a positive finding and will result in a physician referral to determine if there is any medical basis to justify the refusal to test.

Usually, two breath tests will be performed in order to determine if an individual has a prohibited alcohol concentration. A screening test is conducted first.

### **9.11 RECORD KEEPING AND CONFIDENTIALITY**

The District is obligated to maintain records of the administration, including violations, of this Policy for a period of five years.

Any laboratory reports and test results shall not appear in an employee’s general personnel folder but will be contained in a separate, confidential medical folder that will be securely kept under the control of the Human Resources Manager. The report or test results may be disclosed to District management on a strictly need-to-know basis and to the tested employee upon request.

With employee consent, the District may provide test results to the Employee Assistance Program. With employee consent, the EAP can report to an appropriate District representative the employee’s progress in the following EAP recommendations.

Disclosures, without patient consent, may also occur under the following situations:

1. When the information is compelled by law or by judicial or administrative process;
2. When the information has been placed at issue in a formal dispute between the employer and employee
3. When the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure; or
4. When requested by the DOT or any state or local officials with regulatory authority over the District or any of its safety sensitive employees.

### **9.12 REHABILITATION**

The District encourages employees to use the District-sponsored employee assistance program (EAP) voluntarily to assist them in resolving any alcohol, drug, or controlled substance problems. Employees should contact the Human Resources Manager for additional information, including further information concerning the dangerous effects of alcohol misuse and drug use on an employee’s health, work, and personal life.

The District is committed to providing reasonable accommodation to those employees whose alcohol or drug problem classifies them as disabled under federal and/or state law.

While the District will be supportive of those who seek help voluntarily, the District will be firm in identifying and disciplining those who continue alcohol misuse or drug use and who do not seek help or continue alcohol misuse or drug use even while enrolled in counseling or rehabilitation programs.

Therefore, the District may require employees to use the EAP and in addition to mandatory referrals to an SAP where applicable.

### **9.13 TRAINING**

The District will provide information concerning the District's procedures regarding drug use and alcohol misuse to supervisors and employees. The District will also provide alcohol and substance abuse training as required by state and federal law (i.e. DOT, etc.). The District has designated the Human Resources Manager as the person responsible to answer questions about compliance with these procedures and concerning any materials supplied to employees.

### **9.14 MANAGER AND SUPERVISOR RESPONSIBILITIES**

Managers and supervisors have the following additional responsibilities under this policy:

1. Managers and supervisors are responsible for reasonable enforcement of this policy.
2. Managers and supervisors may request that an employee submit to a medical evaluation, which may include drug and/or alcohol test, when they have a reasonable suspicion, as defined in Section 9.2 - Definitions, that an employee is under the influence of drugs or alcohol while on the job.
3. Managers and supervisors should seek a witness, if feasible, to verify reasonable suspicion. The employee should be approached and given an opportunity to explain the behavior before further action is taken.
4. Managers and supervisors who request an employee submit to a medical evaluation, which may include a drug and/or alcohol test, will document in writing, at the earliest possible opportunity, the facts constituting reasonable suspicion.
5. Where there is reasonable suspicion that the employee is under the influence of alcohol or drugs, managers and supervisors should notify the Human Resources Manager, and get approval to take the employee to a site for a medical evaluation, which may include an alcohol and/or drug test, and then transport the employee home. Managers and supervisors encountering an employee who refuses an order to submit to a drug and/or alcohol analysis upon request shall remind the employee of the requirements and disciplinary consequences of this policy.
6. Managers and supervisors shall not physically search employees, nor shall they search the personal possessions of employees, without the freely given consent of, and in the presence of, the employee and a responsible third party witness.
7. Managers and supervisors shall notify the Human Resources Manager when they have reasonable suspicion to believe that an employee may have alcohol and/or illegal drugs in his or her possession or in an area not jointly or fully controlled by the District. If the Human Resources Manager concurs that there is reasonable suspicion of illegal drug possession, the appropriate law enforcement agency will be notified.

8. Managers and supervisors must notify the Human Resources Manager immediately after an employee reports that he/she was convicted of any workplace drug crime. The District is required to report convictions of employees to the federal government within 10 days.
9. Managers and supervisors have the responsibility to encourage employees to use EAP when deteriorating or unsatisfactory job performance does not respond to usual supervisory action. A supervisor should not attempt to diagnose an employee's problem. The supervisor's role is to monitor job performance.



## STAFF REPORT

Agenda Item: 10

Board Meeting Date: February 3, 2021  
Prepared By: Phil Zamora  
Reviewed By: Marlene Kelleher  
Approved By: Brett Hodgkiss

**SUBJECT:** EXTENSION OF FAMILIES FIRST CORONAVIRUS RESPONSE ACT LEAVE PROVISIONS

**RECOMMENDATION:** Consider voluntary extension of leave provisions and related benefits contained in the Families First Coronavirus Response Act through March 31, 2021.

**PRIOR BOARD ACTION:** None.

**FISCAL IMPACT:** \$3,673 for the period of April 1, 2020 through December 31, 2020.

**SUMMARY:** In response to the COVID-19 pandemic, Congress passed legislation in 2020 to address issues raised by this new public health threat; legislation included the Coronavirus Preparedness and Response Supplemental Act of 2020, Families First Coronavirus Response Act (FFCRA), and the Coronavirus Aid, Relief and Economic Security Act. FFCRA became law in April 2020; it mandated that employers with fewer than 500 employees and certain governmental employers provide emergency paid sick leave and paid expanded family and medical leave to eligible employees. Although the pandemic continues to be a public health concern, Congress did not extend the benefits afforded by FFCRA beyond on December 31, 2020.

**DETAILED REPORT:** On December 27, 2020, Congress signed into law the 2021 Consolidated Appropriations Act, which allows employers, on a voluntarily basis, to continue to provide leave as set forth in the FFCRA through March 31, 2021 in exchange for a payroll tax credit. Under the FFCRA, full time employees are entitled to a one-time allotment of 80 hours of paid sick leave and 12 weeks of expanded family and medical leave (two weeks unpaid or covered by paid sick leave plus an additional 10 weeks of paid family and medical leave). The leave allotments and the calculation of pay do not change if FFCRA leave continues to be offered through March 31, 2021.

While the District (as a governmental agency) is not eligible to receive a payroll tax credit, staff recommends continuing to offer the benefit so that employees that have low or no leave balances (primarily new employees) will be encouraged use this form of leave and not come to work if they have COVID-19 related symptoms. Use of FFCRA leave has been minimal to date because the District allows employees who are symptomatic and/or quarantined (and are able to work) to telecommute until such time they can return to the workplace.

**ATTACHMENT:** Families First Coronavirus Response Act

## **Families First Coronavirus Response Act: Employer Paid Leave Requirements**

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.<sup>[1]</sup> The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that covered employers must provide to **all employees**:<sup>[2]</sup>

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

A covered employer must provide to **employees that it has employed for at least 30 days**:<sup>[3]</sup>

- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

**Covered Employers:** The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.<sup>[4]</sup> Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

### **Qualifying Reasons for Leave:**

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

#### **Duration of Leave:**

**For reasons (1)-(4) and (6):** A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

**For reason (5):** A full-time employee is eligible for up to 12 weeks of leave at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

#### **Calculation of Pay:**[\[5\]](#)

**For leave reasons (1), (2), or (3):** employees taking leave shall be paid at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

**For leave reasons (4) or (6):** employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

**For leave reason (5):** employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave).[\[6\]](#)

**Tax Credits:** Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. For more information, please see the Department of the Treasury's website.

**Employer Notice:** Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements.[\[7\]](#)

**Prohibitions:** Employers may not discharge, discipline, or otherwise discriminate against any employee who takes paid sick leave under the FFCRA and files a complaint or institutes a proceeding under or related to the FFCRA.

**Penalties and Enforcement:** Employers in violation of the first two weeks' paid sick time or unlawful termination provisions of the FFCRA will be subject to the penalties and enforcement described in Sections 16 and 17 of the Fair Labor Standards Act. 29 U.S.C. 216; 217. Employers in violation of the provisions providing for up to an additional 10 weeks of paid leave to care for a child whose school or place of care is closed (or child care provider is unavailable) are subject to the enforcement provisions of the Family and Medical Leave Act. The Department will observe a temporary period of non-enforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, "good faith" exists when violations are remedied and the employee is made whole as soon as practicable by the employer, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.

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[1] Wage and Hour Division does not administer this aspect of the law, but notes that every dollar of required paid leave (plus the cost of the employer's health insurance premiums during leave) will be **100%** covered by a dollar-for-dollar refundable tax credit available to the employer. For more information, please see the Department of the Treasury's website.

[2] Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

[3] Employers of Health Care Providers or Emergency Responders may elect to exclude such employees from eligibility for the leave provided under the Act.

[4] Certain provisions may not apply to certain employers with fewer than 50 employees. See Department FFCRA regulations (expected April 2020).

[5] Paid sick time provided under this Act does not carry over from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.

[6] An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.

[7] The Department will issue a model notice no later than March 25, 2020.

Source: United States Department of Labor website



**Agenda Item: 11**

**STAFF REPORT**

**Board Meeting Date: February 3, 2021**  
**Prepared By: Brett Hodgkiss**

SUBJECT: MATTERS PERTAINING TO THE ACTIVITIES OF THE SAN DIEGO COUNTY WATER AUTHORITY

SUMMARY: Informational report by staff and directors concerning the San Diego County Water Authority. No action will be required.





## **STAFF REPORT**

**Agenda Item: 12.A**

**Board Meeting Date: February 3, 2021**  
**Prepared By: Lisa Soto**  
**Approved By: Brett Hodgkiss**

SUBJECT: REPORTS ON MEETINGS AND EVENTS ATTENDED BY DIRECTORS

SUMMARY: Directors will present brief reports on meetings and events attended since the last Board meeting.



**STAFF REPORT**

**Agenda Item: 12.B**

**Board Meeting Date:** February 3, 2021  
**Prepared By:** Lisa Soto  
**Approved By:** Brett Hodgkiss

**SUBJECT:** SCHEDULE OF UPCOMING MEETINGS AND EVENTS

**SUMMARY:** The following is a listing of upcoming meetings and events. Requests to attend any of the following events should be made during this agenda item.

	<b>SCHEDULE OF UPCOMING MEETINGS AND EVENTS</b>	<b>ATTENDEES</b>
<b>1 *</b>	<b>Vista Chamber of Commerce Business Mixer</b> <i>Feb. 10, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
<b>2</b>	<b>Urban Water Spring 2021 Virtual Conference</b> (Urban Water Institute) <i>Feb. 17-18, 2021; Start times: Feb. 17-1:00 p.m., Feb. 18-12:30 p.m.</i> <i>Registration deadline: 2/12/21</i>	MacKenzie (R)
<b>3 *</b>	<b>CSDA Quarterly Meeting</b> <i>Feb. 18, 2021, 6:00 p.m.</i> <i>Registration deadline: TBD</i>	MacKenzie
<b>4</b>	<b>ACWA DC 2021</b> (Virtual) <i>Feb. 24, 2021, 9:00 a.m.-noon</i> <i>Registration deadline: 2/19/21</i>	
<b>5</b>	<b>Completing Your Form 700 &amp; Spotting Potential Conflicts of Interest</b> (CSDA Webinar) <i>Feb. 22, 2021, 1:00-2:30 p.m.</i> <i>Registration deadline: None</i>	
<b>6</b>	<b>The Future of Water</b> (Groundwater Resources Association) <i>Feb. 23-24, 2021, 8:30 a.m. – 1:00 p.m. Virtual event</i> <i>Registration deadline: 2/20/21</i>	
<b>7</b>	<b>Board Member Best Practices</b> (CSDA Virtual Workshop) <i>Mar. 2, 2021, 9:00 a.m.-12:00 p.m.</i> <i>Registration deadline: None</i>	
<b>8</b>	<b>Building the Board Chair &amp; Manager Connection</b> (CSDA 2-day Virtual Workshop) <i>Mar. 8 and 15, 2021, 9:00 a.m.-12:00 p.m.</i> <i>Registration deadline: None</i>	
<b>9 *</b>	<b>Vista Chamber of Commerce Business Mixer</b> <i>Mar. 10, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
<b>10</b>	<b>ACWA Congressional Staff Panel</b> (Webinar) <i>Mar. 17, 2021</i> <i>Registration deadline: TBD</i>	
<b>11</b>	<b>ACWA Regulatory Landscape</b> (Webinar) <i>Mar. 24, 2021</i> <i>Registration deadline: TBD</i>	
<b>12</b>	<b>Groundwater Law and Legislation</b> (Groundwater Resources Association) <i>Mar. 24, 2021, 9 a.m.-4:00 p.m.</i> <i>Registration deadline: 3/22/21</i>	
<b>13</b>	<b>ACWA First 100 Days Outlook of the Biden Administration</b> (Webinar) <i>Mar. 31, 2021</i> <i>Registration deadline: TBD</i>	

	<b>SCHEDULE OF UPCOMING MEETINGS AND EVENTS</b>	<b>ATTENDEES</b>
14	<b>Is Your District Recession Ready?</b> (CSDA Webinar) <i>Apr.1, 2021, 10:00 a.m.-12:00 p.m.</i> <i>Registration deadline: None</i>	
15	<b>Lessons Learned from 2020 and How They Will Impact Litigation for Years to Come</b> (CSDA Webinar) <i>Apr.6, 2021, 10:00-11:30 a.m.</i> <i>Registration deadline: None</i>	
16	<b>Rate Setting Under Propositions 218 &amp; 26</b> (CSDA Two-day Virtual Workshop) <i>Apr.14 and 15, 2021, 9:00 a.m.-12:00 p.m. each day</i> <i>Registration deadline: None</i>	
17 *	<b>Vista Chamber of Commerce Business Mixer</b> <i>Apr. 14, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
18 *	<b>Council of Water Utilities Meeting</b> <i>Apr. 20, 2021, 8:00 a.m. - 9:30 a.m.</i> <i>Registration deadline: None</i>	
19	<b>Legislative, Legal and Local Responses to PFAS 2021</b> (CSDA Webinar) <i>Apr.20, 2021, 10:00 a.m.-12:00 p.m.</i> <i>Registration deadline: None</i>	
20	<b>ACWA Spring Conference</b> <i>May 12-13, 2021 – Virtual</i> <i>Registration deadline: TBD</i>	
21 *	<b>Vista Chamber of Commerce Business Mixer</b> <i>May 12, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
22 *	<b>CSDA Quarterly Meeting</b> <i>May 20, 2021, 6:00 p.m.</i> <i>Registration deadline: TBD</i>	MacKenzie
23	<b>Special Districts Legislative Days</b> (CSDA Virtual Conference) <i>May 18-19, 2021</i> <i>Registration deadline: 4/16/21</i>	
24	<b>Ask the Experts: Financing Options for Your District</b> (CSDA Webinar) <i>Jun.4, 2021, 10:00-11:30 p.m.</i> <i>Registration deadline: None</i>	
25 *	<b>Vista Chamber of Commerce Business Mixer</b> <i>Jun. 9, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
26 *	<b>Council of Water Utilities Meeting</b> <i>Jun. 15, 2021, 8:00 a.m. - 9:30 a.m.</i> <i>Registration deadline: None</i>	
27 *	<b>Vista Chamber of Commerce Business Mixer</b> <i>Jul. 14, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
28 *	<b>Vista Chamber of Commerce Business Mixer</b> <i>Aug. 11, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
29 *	<b>Council of Water Utilities Meeting</b> <i>Aug. 17, 2021, 8:00 a.m. - 9:30 a.m.</i> <i>Registration deadline: None</i>	
30 *	<b>CSDA Quarterly Meeting</b> <i>Aug. 19, 2021, 6:00 p.m.</i> <i>Registration deadline: TBD</i>	

	<b>SCHEDULE OF UPCOMING MEETINGS AND EVENTS</b>	<b>ATTENDEES</b>
<b>31</b>	<b>CSDA Annual Conference</b> <i>Aug. 30-Sept. 2, 2021 – Monterey</i> <i>Registration deadline: 7/30/21</i>	
<b>32 *</b>	<b>Vista Chamber of Commerce Business Mixer</b> <i>Sept. 8, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
<b>33 *</b>	<b>Vista Chamber of Commerce Business Mixer</b> <i>Oct. 13, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
<b>34 *</b>	<b>Council of Water Utilities Meeting</b> <i>Oct. 19, 2021, 8:00 a.m. - 9:30 a.m.</i> <i>Registration deadline: None</i>	
<b>35 *</b>	<b>Vista Chamber of Commerce Business Mixer</b> <i>Nov. 10, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
<b>36 *</b>	<b>CSDA Quarterly Meeting</b> <i>Nov. 18, 2021, 6:00 p.m.</i> <i>Registration deadline: TBD</i>	MacKenzie
<b>37</b>	<b>ACWA Fall Conference</b> <i>Nov. 30-Dec. 3, 2021 – Pasadena</i> <i>Registration deadline: TBD</i>	
<b>38 *</b>	<b>Vista Chamber of Commerce Business Mixer</b> <i>Dec. 8, 2021; 5:00 p.m. – 6:00 p.m.; virtual via Zoom</i> <i>Deadline: None</i>	
<b>39</b>	<b>Colorado River Water Users Association Conference (CRWUA)</b> <i>Dec. 13-15, 2021</i> <i>Registration deadline: TBD</i>	

\* Non-per diem meeting except when serving as an officer of the organization

The following abbreviations indicate arrangements that have been made by staff:

**R**=Registration; **H**=Hotel; **A**=Airline; **S**=Shuttle; **C**=Car; **T**=Tentative



**Agenda Item: 13**

## **STAFF REPORT**

**Board Meeting Date: February 3, 2021**  
**Prepared By: Lisa Soto**

**SUBJECT:** ITEMS FOR FUTURE AGENDAS AND/OR PRESS RELEASES

**SUMMARY:** This item is placed on the agenda to enable the Board to identify and schedule future items for discussion at upcoming Board meetings and/or identify press release opportunities.

*Staff-generated list of tentative items for future agendas:*

- CSDA Board of Directors Call for Nominations, Seat A (February)
- Flume Replacement Alignment Study consultant selection (February)
- Monthly billing (February)
- Warner Wellfield Assessment (April)
- Request for Proposal for Audit Services (April)



**Agenda Item: 14**

**STAFF REPORT**

**Board Meeting Date: February 3, 2021**  
**Prepared By: Lisa Soto**

SUBJECT: COMMENTS BY DIRECTORS

SUMMARY: This item is placed on the agenda to enable individual Board members to convey information to the Board and the public not requiring discussion or action.



## **STAFF REPORT**

**Agenda Item: 15**

**Board Meeting Date: February 3, 2021**  
**Prepared By: Brett Hodgkiss**

SUBJECT: COMMENTS BY GENERAL COUNSEL

SUMMARY: Informational report by the General Counsel on items not requiring discussion or action.



**Agenda Item: 16**

**STAFF REPORT**

**Board Meeting Date: February 3, 2021**  
**Prepared By: Brett Hodgkiss**

SUBJECT: COMMENTS BY GENERAL MANAGER

SUMMARY: Informational report by the General Manager on items not requiring discussion or action.