



BOARD OF DIRECTORS MEETING AGENDA

**April 7, 2022 Regular Meeting
6:30 p.m.**

Meeting link:

<https://sweetwaterspringswaterdistrict.my.webex.com/sweetwaterspringswaterdistrict.my/j.php?MTID=me5ca6e97b43c5ef81d6a70cfd00b3efa>

Meeting number: 2554 074 3568

Password: j23cJxw5qTM

OR

Join by phone: +1-415-655-0001 US Toll

Access code: 2554 074 3568

Password: 52325995

All guests that join the virtual meeting will be muted with their camera/ video turned off. Guest(s) will be unmuted and video turned on when they are speaking. Proper decorum including appearance is required.

NOTICE TO PERSONS WITH DISABILITIES: It is the policy of the Sweetwater Springs Water District to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. Upon request made at least 48 hours in advance of the need for assistance, this Agenda will be made available in appropriate alternative formats to persons with disabilities. This notice is in compliance with the Americans with Disabilities Act (28 CFR, 35.102-35.104 ADA Title II).

Any person who has any questions concerning any agenda item may call the General Manager or Assistant Clerk of the Board to make inquiry concerning the nature of the item described on the agenda; copies of staff reports or other written documentation for each item of business are on file in the District Office and available for public inspection. All items listed are for Board discussion and action except for public comment items. In accordance with Section 5020.40 et seq. of the District Policies & Procedures, each speaker should limit their comments on any Agenda item to five (5) minutes or less. A maximum of twenty (20) minutes of public comment is allowed for each subject matter on the Agenda unless the Board President allows additional time.

I. CALL TO ORDER ***(Est. time: 2 min.)***

- A. Board members Present
- B. Board members Absent
- C. Others in Attendance

II. CHANGES TO AGENDA and DECLARATIONS OF CONFLICT
(Est. time: 2 min.)

III. CONSENT CALENDAR **(Est. time: 5 min.)**

(Note: Items appearing on the Consent Calendar are deemed to be routine and non-controversial. A Board member may request that any item be removed from the Consent Calendar and added as an “Administrative” agenda item for the purposes of discussing the item(s)).

- A. Approval of the following Minutes:
 - March 3, 2022 Regular Board Meeting
 - March 8, 2022 Special Meeting
 - March 11, 2022 Special Meeting
 - March 21, 2022 Special Meeting
 - March 28, 2022 Special Meeting
- B. Approval of Operations Warrants/Online payments/EFT payments
- C. Receipt of Item(s) of Correspondence.
Note: Correspondence received regarding an item on the Administrative Agenda is not itemized here, but will be attached as back-up to that item in the Board packet and addressed with that item during the Board meeting.
- D. Action to Reconfirm findings of Resolution 21-18 re continuation of remote meetings

IV. PUBLIC COMMENT: The District invites public participation regarding the affairs of the District. This time is made available for members of the public to address the Board regarding matters which do not appear on the Agenda, but are related to business of the District. Pursuant to the Brown Act, however, the Board of Directors may not conduct discussions or take action on items presented under public comment. Board members may ask questions of a speaker for purposes of clarification.

V. ADMINISTRATIVE

- A. Discussion/Action re Water Rights Report (presentation by Matthew Emrick, Esq.)
(Est. time 20 min.)
- B. Discussion/Action re Draft FY 2022-23 Budget and direction on FY 2022-23 Water Rates *(Est. time 15 min.)*
- C. Discussion/Action re Covid-related issues *(Est. time 10 min.)*
- D. Discussion/Action re FY 2020-21 CIP Update *(Est. time 10 min.)*
- E. Discussion/Action re RGS Human Resources Contract update *(Est. time 10 min.)*
- F. Discussion/Action re General Manager Transition Document *(Est. time 10 min.)*
- G. Discussion/Action District Security and Fires in Monte Rio *(Est. time 10 min.)*
- H. Discussion/Action re Formation of Sonoma County Special Districts Chapter of CSDA (Director Holmer) *(Est. time 10 min.)*

VI. GENERAL MANAGER'S REPORT

VII. BOARD MEMBERS' ANNOUNCEMENTS

VIII. ITEMS FOR NEXT AGENDA

IX. CLOSED SESSION

- A. CONFERENCE WITH LABOR NEGOTIATOR (Gov. Code § 54957.6)
Agency Designated Representative: Ed Fortner
Employee Organization: Stationary Engineers, Local 39
- B. PUBLIC EMPLOYMENT (Gov. Code, § 54957)
Title: General Manager
- C. PUBLIC EMPLOYMENT (Gov. Code, § 54957)
Title: Interim General Manager
- D. CONFERENCE WITH LABOR NEGOTIATOR (Gov. Code § 54957.6)
Agency Designated Representative: Rachel Hundley
Title: General Manager
- E. CONFERENCE WITH LABOR NEGOTIATOR (Gov. Code § 54957.6)
Agency Designated Representative: Rachel Hundley
Title: Interim General Manager
- F. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to § 54956.9(d)(2): one case

ADJOURN

Sweetwater Springs Water District Mission and Goals

The mission of the Sweetwater Springs Water District (SSWD) is to provide its customers with quality water and service in an open, accountable, and cost-effective manner and to manage District resources for the benefit of the community and environment. The District provides water distribution and maintenance services to five townships adjacent to the Russian River:

- Guerneville
- Rio Nido
- Guernewood Park
- Villa Grande
- Monte Rio

GOAL 1: IMPLEMENT SOUND FINANCIAL PRACTICES TO ENSURE EFFECTIVE UTILIZATION OF DISTRICT RESOURCES

GOAL 2: PROVIDE RELIABLE AND HIGH QUALITY POTABLE WATER WITH FACILITIES THAT ARE PROPERLY CONSTRUCTED, MANAGED AND MAINTAINED TO ASSURE SYSTEM RELIABILITY

GOAL 3: HAVE UPDATED EMERGENCY PREPAREDNESS PLANS FOR ALL REASONABLE, FORESEEABLE SITUATIONS

GOAL 4: DEVELOP AND MAINTAIN A QUALITY WORKFORCE

GOAL 5: PROVIDE EXCELLENT PUBLIC OUTREACH, INFORMATION AND EDUCATION

GOAL 6: ENHANCE BOARD COMMUNICATIONS AND INFORMATION

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BOARD MEETING MINUTES*

Meeting Date: March 3, 2022

(*In order discussed)

March 3, 2022
6:30 p.m.

Board Members Present:

Tim Lipinski
Gaylord Schaap
Larry Spillane
Sukey Robb-Wilder
Rich Holmer

Board Members Absent:

Staff in Attendance:

Ed Fortner, General Manager
Julie Kenny, Secretary to the Board

Others in Attendance:

Rachel Hundley, Legal Counsel
Keith McDonald

I. CALL TO ORDER (6:35 p.m.)

The properly agendized meeting was called to Order by President Schaap at 6:35 p.m.

II. CHANGES TO AGENDA and DECLARATION OF CONFLICT (6:35 p.m.)

Legal Counsel Rachel Hundley requested that Item IX-B (Closed Session Conference with Labor Negotiator re General Manager) be discussed at a set time of 8 p.m.

Director Robb-Wilder requested that Item V-G (Res. 22-07, Ratifying Amendments to Contract with RGS) and Item V-D (Staffing plan) be moved to be heard first and second during the Administrative portion of the Agenda.

Brief discussion ensued. There were no objections.

III. CONSENT CALENDAR (6:39 p.m.)

President Schaap reviewed the items on the Consent Calendar. Discussion ensued. Director Robb-Wilder requested that Item III-A (Approval of Minutes of February Board meetings) be pulled from Consent Calendar for discussion. Director Holmer moved to approve the Consent Calendar Items B, C, and D. Director Lipinski seconded the motion. Motion carried 5-0. The following items were approved:

- A. (Pulled for discussion)

- B. Approval of Operations Warrants/Online payments/EFT payments
- C. Receipt of items of Correspondence (None)
- D. Action to Reconfirm findings of Resolution 21-18 re continuation of remote meetings

V. ADMINISTRATIVE (6:42 p.m.) *

**in the order discussed*

- III-A. (6: 43 p.m.) Approval of the Minutes of the February 3, 2022 Board Meeting, the February 9, 2022 Special Meeting, and the February 15, 2022 Special Board Meeting.** Director Robb-Wilder amended the Item IV-A portion of the February 15, 2022 Special Board Meeting Minutes. She then moved to approve the February 15, 2022 Special Board Meeting Minutes as amended. Director Spillane seconded. Director Holmer moved to approve the February 3, 2022 Minutes amended to reflect “February 3” instead of “January 6”. He also moved to approve the February 9, 2022 Special Meeting Minutes. Director Lipinski seconded. Both motions carried 5-0.

IV. PUBLIC COMMENT (6:47 p.m.)

None.

V. ADMINISTRATIVE (6:48 p.m.) *

**in the order discussed*

- V-G. (6:48 p.m.) Discussion/Action re Resolution 22-07, Ratifying Amendments to Contract with Regional Government Services (RGS). Actual v. Budgeted report – 2Q.** Legal Counsel Rachel Hundley provided an overview of this item. Ad Hoc Subcommittee Members Directors Robb-Wilder and Schaap provided further overview. Board discussion ensued. A March 8 Special Meeting was set for 5 p.m. and a second Special Meeting for March 21 tentatively scheduled. Discussion ensued. Director Robb-Wilder moved to approve Resolution 22-07, Ratifying Amendments to Contract with Regional Government Services (RGS). Director Holmer seconded. Motion carried 5-0.
- V-D. (7:40 p.m.) Discussion/Action re Staffing plan.** The GM provided an overview of this item. Further overview was provided by Director Holmer. Board discussion ensued. No action was taken.

IX. CLOSED SESSION (7:56 p.m.)

At 7:56 p.m., President Schaap announced the Closed Session item for discussion at this time. At 8:01 p.m. the Board went into Closed Session. At 8:40 p.m. the meeting reconvened and the following action was announced:

- B. CONFERENCE WITH LABOR NEGOTIATOR (Gov. Code Section 54957.6)
Agency Designated Representative: Edward Kreisberg, Esq.
Unrepresented Employee: General Manager**
No action was taken.

V. ADMINISTRATIVE (cont. 8:40 p.m.) *

**in the order discussed*

- V-A. (8:41 p.m.) Discussion/Action re Draft FY 2022-23 Budget.** The GM provided an overview of this item. Board discussion ensued. No action was taken.
- V-B. (8:50 p.m.) Discussion/Action re Reinstating Disconnection for Non-Payment.** The GM and staff provided an overview of this item recommending reinstatement of the District's pre-pandemic disconnection policies. Board discussion ensued. Public comment was made by Keith McDonald. No formal action was required for this item.
- V-C. (9:12 p.m.) Discussion/Action re Covid-related issues.** The GM provided an overview of this item. Board discussion ensued. Public comment was made by Keith McDonald. Further discussion ensued. No formal action was taken.
- V-D. (Discussed earlier in the meeting.)**
- V-E. (9:43 p.m.) Discussion/Action re County coordination on information request re Monte Rio Bridge project.** The GM provided an overview of this item. Board discussion ensued. No action was taken.
- V-F. (9:50 p.m.) Discussion/Action re Update on CIP 2020-21.** The GM provided an overview of this item. Board discussion ensued. No action was taken.
- V-G. (Discussed earlier in the meeting.)**

VI. GENERAL MANAGER'S REPORT (9:54 p.m.)

The GM provided a report on the following items:

1. Laboratory testing / Regulatory Compliance
2. Water production and sales
3. Leaks
4. Guerneville rainfall
5. In-House Construction Projects
6. Drought Grant
7. Gantt Chart
8. Economic Impact of No Disconnects for Non-payment

VII. BOARD MEMBERS' ANNOUNCEMENTS/COMMENTS (9:57 p.m.)

(None.)

VIII. ITEMS FOR THE NEXT AGENDA (8:13 p.m.)

1. FY 2022-23 Budget
2. Covid update
3. Recruitment update and HR Services update
4. Homeless security on District tank properties

IX. CLOSED SESSION (10:01 p.m.)

There was no Closed Session for the reasons noted below:

A. Pursuant to Gov. Code Section 54957(b)(1) – Public Employee Performance Evaluation

Title: District Counsel

This item was removed from the Agenda.

B. Pursuant to Gov. Code Section 54957(b)(1) – Public Employee Performance Evaluation

Title: General Manager.

This item was Adjourned for discussion on March 8 at 5 p.m.

**C. Conference with Legal Counsel – Anticipated Litigation. Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9
Number of cases: 2**

This item was posted to the April Board meeting.

ADJOURN

At 10:05 p.m. the meeting was adjourned until March 8, 2022 at 5 p.m.

Respectfully submitted,

Julie Kenny
Clerk to the Board of Directors

APPROVED:

Gaylord Schaap:	_____
Sukey Robb-Wilder:	_____
Tim Lipinski:	_____
Rich Holmer	_____
Larry Spillane	_____



SPECIAL BOARD MEETING MINUTES*

Meeting Date: March 8, 2022

(*In order discussed)

March 8, 2022
5 p.m.

Board Members Present:

Tim Lipinski
Larry Spillane
Rich Holmer
Gaylord Schaap
Sukey Robb-Wilder

Board Members Absent:

(None)

Staff in Attendance:

Ed Fortner, General Manager
Julie Kenny, Board Secretary

Others in Attendance:

Rachel Hundley, Legal Counsel
Keith McDonald
Nicole King
Brian Grant

I. CALL TO ORDER (5:02 p.m.)

The March 8 meeting was called to order and began by President Schaap re-opening the March 3 adjourned meeting at 5:02 p.m.

CLOSED SESSION (from March 3 Adjourned Meeting) (5:02 p.m.) *

**in the order discussed*

At 5:02 p.m., President Schaap announced the Closed Session items from the March 3 Adjourned Meeting. Public comment was made Keith McDonald. Discussion ensued. At 5:10 p.m. the Board went into Closed Session. At 6:02 p.m. the meeting reconvened and the following action was announced:

A. CONFERENCE WITH LABOR NEGOTIATOR (Gov. Code § 54957.6)

Title: General Manager

No action was taken.

B. CONFERENCE WITH LABOR NEGOTIATOR (Gov. Code § 54957.6)

Agency Designated Representative: Edward Kreisberg

Unrepresented Employee: General Manager

President Schaap read the following statement into the record:

"The Board of Directors unanimously voted in Closed Session tonite to approve a written separation agreement with General Manager Ed Fortner. This was a mutual decision and

agreement under which the District will pay Fortner six (6) months base pay severance at the time of his separation consistent with the severance due for a separation without cause under the terms of his current contract. Fortner will continue to serve as General Manager while the District commences a search for an interim and/or permanent successor.

The General Manager will not accrue further sick leave or vacation but will be entitled to cash out his accrued sick leave at the time of his separation at 50 percent of his hourly rate save 96 hours that shall have no cash out value. He will also be entitled to cash out his accrued vacation

The Board reserves the right to terminate the General Manager's employment at any time or for any reason. The General Manager agrees to provide 30 days' notice should he wish to end his District employment."

At 6:04 p.m. the Board adjourned out of the March 3 meeting and re-opened the March 8 Special Meeting.

II. PUBLIC COMMENT (6:04 p.m.)

Public comment was made by Keith McDonald, requesting in item be added to the April Board Meeting.

Public comment was made by Brian Grant. Brief discussion ensued.

III. ADMINISTRATIVE (6:08 p.m.)

III-A. (6:08 p.m.) Discussion/Action re General Manager job description and recruitment timeline. President Schaap provided an overview of this item. Discussion ensued. A Special Meeting was scheduled for March 11, 2022 at 3 p.m. A Special Meeting was scheduled for March 21, 2022 p.m. at either 1 or 2 p.m. Further discussion ensued.

IV. CLOSED SESSION (6:46 p.m.) *

**in the order discussed*

The Closed Session item was removed from the agenda:

- A. PUBLIC EMPLOYMENT (Gov. Code Section 54957)
Title: General Manager

ADJOURN

The meeting adjourned at 6:46 p.m.

Respectfully submitted,

Julie Kenny
Clerk to the Board of Directors

APPROVED:

Gaylord Schaap:

Sukey Robb-Wilder:

Tim Lipinski:

Rich Holmer

Larry Spillane



SPECIAL BOARD MEETING MINUTES*

Meeting Date: March 11, 2022

(*In order discussed)

March 11, 2022
3 p.m.

Board Members Present: Tim Lipinski
Larry Spillane
Rich Holmer
Gaylord Schaap
Sukey Robb-Wilder

Board Members Absent: (None)

Staff in Attendance: Ed Fortner, General Manager
Julie Kenny, Board Secretary

Others in Attendance: (None.)

I. CALL TO ORDER (3:02 p.m.)

The properly agendized meeting was called to Order by President Gaylord Schaap at 3:02 p.m.

II. PUBLIC COMMENT (3:02 p.m.)

(None.)

III. ADMINISTRATIVE (3:02 p.m.)

III-A. (3:02 p.m.) Discussion/Action re General Manager job description and recruitment timeline. President Schaap provided an overview of this item. Extensive discussion ensued. A Special Meeting was tentatively scheduled for March 28, 2022 to approve the job description.

ADJOURN

The meeting adjourned at 4:07 p.m.

Respectfully submitted,

Julie Kenny

APPROVED:

Gaylord Schaap: _____

Sukey Robb-Wilder: _____

Tim Lipinski: _____

Rich Holmer _____

Larry Spillane _____



SPECIAL BOARD MEETING MINUTES*

Meeting Date: March 21, 2022

(*In order discussed)

March 21, 2022
2 p.m.

Board Members Present:

Tim Lipinski
Larry Spillane
Rich Holmer
Gaylord Schaap
Sukey Robb-Wilder

Board Members Absent:

(None)

Staff in Attendance:

Julie Kenny, Board Secretary

Others in Attendance:

Sophia Selivanoff, RGS
Jack Bushgen
Keith McDonald
Ryan Wilson
Nicole King
Victor Mendez
Andrea Crites
Ben Douglas

I. CALL TO ORDER (2:05 p.m.)

The properly agendized meeting was called to Order by President Gaylord Schaap at 2:05 p.m.

II. PUBLIC COMMENT (2:05 p.m.)

(None.)

III. ADMINISTRATIVE (2:05 p.m.)

III-A. (2:05 p.m.) Discussion/Action re General Manager job description and recruitment timeline. District stakeholders will discuss critical needs and priorities and identify important screening approaches for recruiting a new General Manager. President Schaap provided an overview of this item. Sophia Selivanoff, Deputy Executive Director of Regional Government Services, made a presentation regarding the recruitment process. Discussion ensued, including discussion with stakeholders present at the meeting. No formal action was taken.

At 3:30 p.m. a brief recess was taken. The meeting reconvened at 3:40 p.m.

IV. CLOSED SESSION (3:40 p.m.) *

**in the order discussed*

At 3:40 p.m., President Schaap announced the Closed Session item for discussion. At 3:41 p.m. the Board went into Closed Session. At 5:28 p.m. the meeting reconvened and the following action was announced:

A. PUBLIC EMPLOYMENT (Gov. Code Section 54957)

Title: General Manager

No action was taken.

ADJOURN

The meeting adjourned at 5:31 p.m.

Respectfully submitted,

Julie Kenny
Clerk to the Board of Directors

APPROVED:

Gaylord Schaap:	_____
Sukey Robb-Wilder:	_____
Tim Lipinski:	_____
Rich Holmer	_____
Larry Spillane	_____



SPECIAL BOARD MEETING MINUTES*

Meeting Date: March 28, 2022

(*In order discussed)

March 28, 2022
4 p.m.

Board Members Present:

Tim Lipinski
Larry Spillane
Gaylord Schaap
Sukey Robb-Wilder

Board Members Absent:

Rich Holmer (arrived app. 5 p.m.)

Staff in Attendance:

Ed Fortner, General Manager
Julie Kenny, Board Secretary

Others in Attendance:

Richard
Rachel Hundley

I. CALL TO ORDER (3:02 p.m.)

The properly agendized meeting was called to Order by President Gaylord Schaap at 4:06 p.m.

II. PUBLIC COMMENT (4:06 p.m.)

(None.)

III. CLOSED SESSION (4:07 p.m.) *

**in the order discussed*

At 4:07 p.m., President Schaap announced the Closed Session item for discussion. At 4:09 p.m. the Board went into Closed Session. At 6:23 p.m. the meeting reconvened and the following action was announced:

A. PUBLIC EMPLOYMENT (Gov. Code Section 54957)

Title: General Manager

No action was taken.

B. PUBLIC EMPLOYMENT (Gov. Code Section 54957)

Title: Interim General Manager

No action was taken

IV. ADMINISTRATIVE (6:24 p.m.)

The two Administrative Items were combined for discussion:

VI-A. (6:24 p.m.) Discussion/Action re General Manager job description and recruitment timeline.

VI-B. (6:24 p.m.) Discussion/Action re General Manager recruitment materials and process.

President Robb-Wilder presented an overview of this item, including a summary of changes made to the job description. There was no public comment. Director Holmer moved to approve the General Manager job description. Director Lipinski seconded. Motion carried 5-0.

Further discussion ensued. A Special Meeting was calendared for Thursday May 26 (time not specified) to review candidates. A second Special Meeting was calendared for Monday, June 13 to interview candidates.

ADJOURN

The meeting adjourned at 6:33 p.m.

Respectfully submitted,

Julie Kenny
Clerk to the Board of Directors

APPROVED:

Gaylord Schaap:	_____
Sukey Robb-Wilder:	_____
Tim Lipinski:	_____
Rich Holmer	_____
Larry Spillane	_____

SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors

AGENDA NO. III-D

FROM: Ed Fortner, General Manager

Meeting Date: April 7, 2022

SUBJECT: Reconfirming circumstances of COVID-19 state of emergency, Resolution 21-18 findings, and authorizing continued remote meetings

RECOMMENDED ACTION: Staff recommends the Board make a motion to reconfirm the findings made in Section 2 of Resolution 21-18 adopted September 30, 2021, and continue authorizing remote meetings pursuant to emergency procedures under the Brown Act.

FISCAL IMPACT: none

SUMMARY:

On September 30, 2021, the Board adopted Resolution 21-18 (attached to this report), which made certain findings related to the COVID-19 pandemic and its impact on the District's ability to meet safely in person. Specifically, by Section 2 of Resolution 21-18, the Board made the following findings: The Board of Directors has considered the circumstances of the state of emergency; and

The states of emergency, as declared by the Governor and County of Sonoma continue to impact directly the ability of the District's legislative bodies, as well as staff and members of the public, to meet in person safely; and Meeting in person would present imminent risks to the health and safety of members of the public, members of the District's legislative bodies, and District employees due to the continued presence and threat of COVID-19. Section 54953 of the Government Code, as amended by Assembly Bill 361 (2021), requires the Board to reconsider the circumstances of the state of emergency and make certain findings every thirty days in order to meet remotely under special teleconference rules. The Board may make these findings by motion, which would be recorded in the meeting minutes. If this item is approved as a part of the consent calendar, a "motion to approve" would, in effect, approve the staff recommendation described above.

Resolution No. 21-18

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT FINDING PROCLAIMED STATE OF EMERGENCY AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF LEGISLATIVE BODIES

WHEREAS, all meetings of the legislative bodies of the Sweetwater Springs Water District (“District”) are open and public, as required by the Ralph M. Brown Act, Government Code Section 54950, *et seq*, and any member of the public may observe, attend, and participate in the business of such legislative bodies; and

WHEREAS, on March 4, 2020, Governor Newsom declared a State of Emergency as a result of the rapid spread of the novel coronavirus disease 2019 (“COVID-19”); and

WHEREAS, on March 4, 2020, the Board of Supervisors of the County of Sonoma ratified a Proclamation of a Local Emergency and Declaration of Local Health Emergency due to COVID-19; and

WHEREAS, on March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act (“Brown Act”) in order to allow local legislative bodies to conduct meetings telephonically or by other means, after which District staff implemented virtual meetings for all meetings of legislative bodies within the District; and

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which terminated the provisions of Executive Order N-29-20 that allows local legislative bodies to conduct meetings telephonically or by other means effective September 30, 2021; and

WHEREAS, on September 16, 2021, Governor Newsom signed Assembly Bill 361 (2021) (“AB 361”), which amended the Brown Act to allow local legislative bodies to continue to conduct meetings by teleconference under specified conditions and pursuant to special rules on notice, attendance, and other matters; and

WHEREAS, AB 361, pursuant to Executive Order N-15-21, took full effect on October 1, 2021 and requires the Board of Directors to make specific findings to continue meeting under special teleconference rules; and

WHEREAS, such findings include that the Governor has declared a State of Emergency pursuant to Government Code section 8625 and that the legislative body determines meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, the Board of Director hereby finds a proclaimed state of emergency and that the presence of COVID-19 and the increase of cases due to the Delta variant would present imminent risks to the health or safety of attendees, including members of the public and District employees, should meetings of the District’s legislative bodies be held in person; and

WHEREAS, the Board of Directors and the General Manager shall ensure meetings of the District's legislative bodies comply with the special teleconference rules under the Brown Act, as amended by Assembly Bill 361.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Sweetwater Springs Water District as follows:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Findings. In compliance with the special teleconference rules of Section 54953 of the Government Code, as established by Assembly Bill 361 (2021), the Board of Directors hereby makes the following findings:

The Board of Directors has considered the circumstances of the state of emergency; and

The states of emergency, as declared by the Governor and County of Sonoma continue to impact directly the ability of the District's legislative bodies, as well as staff and members of the public, to safely meet in person; and

Meeting in person would present imminent risks to the health and safety of members of the public, members of the District's legislative bodies, and District employees due to the continued presence and threat of COVID-19.

Section 3. Remote Teleconference Meetings. The District's legislative bodies may continue to meet remotely in compliance with the special teleconference rules of Section 54953 of the Government Code, as amended by Assembly Bill 361 (2021), in order to protect the health and safety of the public. The General Manager is hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution.

Section 4. Review After 30 Days. The Board of Directors will review these findings and the need to conduct meetings by teleconference within thirty (30) days of adoption of this resolution

Section 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

[Continued on next page.]

I hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted and passed by the Board of Directors of the Sweetwater Springs Water District, Sonoma County, California, at a meeting held on September 30, 2021, by the following vote:

Director	Aye	No
Sukey Robb-Wilder	_____	_____
Tim Lipinski	_____	_____
Richard Holmer	_____	_____
Gaylord Schaap	_____	_____
Larry Spillane	_____	_____

Sukey Robb-Wilder
President of the Board of Directors

Attest: Julie A. Kenny
Clerk of the Board of Directors

SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors

AGENDA NO. V-A

FROM: Ed Fortner, General Manager

Meeting Date: April 7, 2022

SUBJECT: Water Rights

RECOMMENDED ACTION: Receive report from the General Manager and Matt Emrick on District Water Rights.

FISCAL IMPACT: N/A

DISCUSSION:

I have been in discussions with Matt Emrick with the Law Offices of Matthew Emrick and Steve Mack about the District's water rights in light of the temporary urgency change to Sonoma County Water Agency's (SCWA) water rights that lowered the flows in the lower Russian River to 35 cfs, and the soon to be issued Emergency Curtailment Order by the State Water Conservation and Resources Board (SWCRB) for the Upper and Lower Sections of the Russian River due to the current third year of drought conditions.

In light of these recent events, the District needs to better understand our water rights and our path forward to protect our rights. Sonoma County Water Agency (SCWA) has postured such that they threaten our water rights during low flow conditions. These issues are complex and require expert council. Matt Emrick has consulted with the District before, in 2016 and 2017, and understands our water rights issues.

Matt, Steve Mack, and I have met multiple times. Matt and I explored historical documents and maps with promising results. Matt has focused on California Public Utilities Commission (CPUC) records to connect the water rights transfers of the private water companies that supplied water in the District service area. Matt has completed his work, including research dating from the 1920s to 1992, when Sweetwater Springs Water District (SSWD) was formed. I focused my research on two historical books that detail the formation and history, including the water use of the Guerneville and Monte Rio areas. "Out of the River Mist" by C. Raymond Clar and "Guerneville Early Days, A History of the Lower Russian River" by John C. Schubert are full of historical references to water usage for the lumber mills, to fight the many

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fires that occurred over the years, and for potable use. These records date back to original water usage in Guerneville in 1885. This usage can also be corroborated by fire insurance maps that detail the water storage and distribution system used in that time period.

Matt and I completed the historical documentation. This documentation is cited in a legal opinion and report by Matt on behalf of the District to strengthen our Water Rights further.

Another critical element of the scope of work by Matt is striving for a "County Solution" to the issues around SCWA threats to force SSWD to contract for water purchase in low flow conditions. We started this conversation with Supervisor Hopkins on August 19 and hope to make further progress with that goal. Supervisor Hopkins' initial discussion was not met with enthusiasm; she mentioned she is but one member of the five-member Board of Sonoma Water.

Tonight, Matt will deliver a presentation on his findings and report.

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MEMORANDUM

TO: Ed Fortner, Sweetwater Springs Water District
FROM: Matthew L. Emrick
DATE: March 10, 2022
RE: Pre-1914 Appropriative Rights to the Russian River

A. SUMMARY OF FINDINGS

Sweetwater Springs Water District has valid pre-1914 appropriative rights to divert water from the Russian River underflow.¹ The Railroad Commission (a predecessor to the California Public Utilities Commission) made certain determinations and findings as to the existence of such water rights in published decisions in the early 1900s. These decisions, in connection with other evidence and facts, validate the District's claim to pre-1914 appropriative rights to divert the underflow of the Russian River.

B. OVERVIEW OF DISTRICT'S CLAIMED PRE-1914 RIGHTS

1. Pre-1914 Appropriative Water Rights

Before 1914, rights to divert water from a surface stream did not require a permit from the State Water Resources Control Board ("SWRCB") as required today. Prior to 1914, appropriative rights to water were acquired by an actual

¹ The Opinions set forth in this memorandum are based primarily on documents and information obtained by this office. It is possible that additional information and documents exist that could result in the modification of the opinions in this memorandum (even substantial modification of such opinions).

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diversion of water and the application of that water to a reasonable beneficial use (domestic/drinking use, agricultural use, industrial use, etc.). Although appropriators frequently posted or recorded a notice of intent to appropriate the water, such notice was not required. Only actual diversion and beneficial use was required.

In 1914, California adopted the present water rights permitting system. In so doing, the State recognized pre-existing, non-permitted rights initiated (vested) prior to 1914 (“pre-1914 appropriative water rights”). Pre-1914 water rights are generally considered to have special value for the following reasons: 1) they generally are outside the regulation of the SWRCB (with exceptions); 2) they can be relocated without the need for a permit; 3) they can (under certain circumstances) be expanded and 4) they generally have a higher priority to divert water over rights permitted by the SWRCB after 1914.

2. The District’s Claim to Pre-1914 Appropriative Water Rights

The District presently claims two (2) pre-1914 appropriative rights to the underflow of the Russian River in addition to the District’s permit from the SWRCB. These pre-1914 rights are summarized below based on the District’s filings of Statements of Diversion and Use with the State Water Resources Control Board (“SWRCB”):

a. **Statement of Diversion and Use No S009055** (“Guerneville Right”)

- Claimed date of priority: 1901.²
- Location: Guerneville system. El Bonita Wells (#2 and #3). Russian River Underflow
- Claimed Scope of Right: 445-592 acre feet annually. (**Exhibit 1**)



² The applicable documents, including the Sanborn maps, indicate the date of priority for the pre-1914 “Guerneville Right” should be *at least* 1897 (and likely earlier). The claimed priority date should be modified to 1897 when used on future District SWRCB filings instead of 1901.

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b. **Statement of Diversion and Use No.009054** (“Monte Rio Right”)

- Claimed date of priority: 1905.
- Location: Monte Rio System (Monte Rio Well #2). Russian River Underflow
- Claimed Scope of Right: 36 to 157 acre feet annually (**Exhibit 2**)



NOTE: The information in the District’s Statements of Diversion appears to be derived from Citizen’s Utilities’ research provided to the State Water Resources Control Board in about 1975 to 1976 in relation to the application for a permit to the SWRCB. ³

C. FACTUAL BACKGROUND SUPPORTING THE DISTRICT’S PRE-1914 WATER RIGHTS

The following section summarizes in chronological form the evidence and facts supporting the District’s pre-1914 water rights. As noted above, pre-1914 appropriative water rights are based on the actual diversion and use of water from a surface stream prior to 1914. The factual summary section outlines the evidence supporting such diversion and use. The summary also sets forth facts connecting the early development of water

³ The filing of Statements of Diversion and Use for the claimed pre-1914 water rights was initiated by the District’s predecessor water supply entity Citizen’s Utilities in about 1976. There was a **third claimed** pre-1914 right initially filed for the “**Vacation Beach Well**” with a priority of 1910. This right however appears to have been abandoned for unknown reasons.

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in the lower Russian River to the District's present system and claim of pre-1914 water rights.

1. 1860's to 1900- The Beginnings of Water Development in Guerneville, Monte Rio and Rio Nido Areas

In the 1860's through the 1890s, the area of Guerneville and Monte Rio experienced growth from mining, the timber industry and the railroads that extended into the area. Towns grew primarily around the mills. See *Tales of the Russian River, Stumptown Stories, John Schubert, 2013; Images of America, the Russian River, Simone Wilson, 2002*. By the end of the 1890s, the area had become a popular summer resort area resulting in the construction of numerous vacation homes along this area of the river as well as increasing the local population. *Id.*

The development of local water supplies soon followed. It appears that the earliest water systems relied on local springs and seasonal streams using gravity flow systems to fill small reservoirs. The evidence and historic accounts indicate that water from the Russian River was being used in the Guerneville area starting in about 1888.

Below is an outline prepared by District Manager Ed Fortner summarizing two written histories regarding the development of local water supply systems. These "histories" document the beginnings of water use in the District's service area over 120 years ago:

- a. From *Out of the River Mist, A Guerneville Area History* by C. Raymond Clar:
 - Guerne and Murphy sawmill was established in 1880. (p. 18)
 - Guerne and Murphy Lumber Company constructed a general water service in 1885 for fire protection and domestic use. (p. 48)

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- In 1882, in front of the Joost and Starrett saloon was the town water trough. (p. 54)
 - In 1894 indoor plumbing with toilets were installed. (p. 98)
 - In 1904 Guerneville Electric Co. was formed to provide power, gas, water, bottled mineral water, and wine. (p. 99)
 - In 1923 a legally organized, tax-funded Guerneville Fire Department was created. (p. 59)
- b. From *Guerneville Early Days, A History of the Lower Russian River* by John C. Schubert:
- General water used to ease the movement of skids in the lumber business in the area. (p. 48)
 - In 1875, potable water was brought into Guerneville from nearby springs. (p. 70)
 - Fires were documented in 1874 and 1875. Damage was minimized by water use. This water use signified the beginnings of the Guerneville Volunteer Fire Department. (p. 71)
 - In 1883 Guerne and Murphy Lumber Mill developed a water line fed from a reservoir/ tank three-quarters of a mile from town, 300 feet up a hill. Water mains were two- and one-half inches in diameter. A test was conducted, and the water traveled forty feet. (p. 128)
 - In 1886 another fire occurred that was put out in part by running a water pump at the Fife Creek Lumber Mill. (p. 147)
 - In 1889 a fire occurred, and the fire suppression was described as using plenty of hose with little pressure due to hydrants that were turned on to fill buckets. (p. 150)

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- Redwood Township, later renamed Guerneville, was officially formed in 1892, dedicated by creating a local Post Office and election of a County Board of Supervisors District. (p. 171)
- In 1894, a fire occurred. The water supplied to fight this fire was described as “On the hills were large water tanks of the lumber company to supply the town with water for household purposes. This supply was sufficient under normal circumstances. The mill had enough steam power to pressurize the pipelines...” (p. 179)
- A photo from 1900 shows a horse-drawn water wagon. (p. 245)

Additionally, Sanborn Maps of Guerneville area indicate steam pumps on Russian River began providing water to townships as early as 1888 and 1897. **Exhibit 3** – Sanborn Map excerpts.⁴

2. 1901 to 1922 – The Development of Local Privately-Owned Water Companies and Associated Water Rights

During the early 1900s, certain private water and land development companies were established in the area from Rio Nido to Monte Rio primarily to meet the growing demand for vacation homes in the area. Available information indicates that these companies acquired certain

⁴ The 1897 Sanborn Map of Guerneville indicates water being provided from a Steam Pump in the Russin River.

“Founded in 1867 by D. A. Sanborn, the Sanborn Map Company was the primary American publisher of fire insurance maps for nearly 100 years. Sanborn maps were created to assist fire insurance companies as they assessed the risk associated with insuring a particular property. They include information such as the outline of each building, the size, shape and construction materials, heights, and function of structures, location of windows and doors – and water supply sources for firefighting purposes.” *MIT Libraries* <https://libguides.mit.edu/maps/sanborn>

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existing water systems and water rights in the area – likely including the early systems described above. See **Exhibit 4** – Railroad Commission Decisions. It appears that by about 1911, these companies were mostly under common ownership, with the name T C Mellersh commonly mentioned. These companies included: *Russian River Heights Water Company*, *North Shore Land Co.*, *Mt. Jackson Water and Power Co.*, *Guernewood Park Development Company*, and *Russian River Water Company*. These water companies are further described below.

Although initially operated separately, decisions of the California Railroad Commission indicates that by 1920, these companies had interconnected facilities and common ownership. See **Exhibit 4** – Railroad Commission Decisions:

It was brought out in the testimony that this utility is now owned and controlled by the same interests which own and operate Mount Jackson Water and Power Company, Russian River Heights Water Company and Russian River Water Company, public utilities supplying summer resorts in this vicinity. The four utilities are managed and operated jointly and by means of certain pipe connections have recently been consolidated into two operating districts, thereby rendering improved service. Further, it was developed that there is a movement on foot to make application to the Commission for authority to transfer the properties of all of said companies to the Russian River Water Company.

See **Ex. 4** - Decision 8311

Further, while certain of the early water systems initially relied on small feeder streams and springs as their sources (most likely in order to rely on gravity-based supply systems), wells were developed in the Russian River bed to pump underflow in order to meet demand as the area grew in population (likely using steam pumps). In sum, during the early 1900s, water rights to the underflow of the Russian River were further developed by local private water companies that appear to be the successors in interest to the earlier developed appropriative rights to the

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Russian River. At least four of these private systems were apparently interconnected and operated together under common ownership.

3. 1916 to 1922 – The California Railroad Commission Validates the existence of the Private Water Companies' Water Rights

a. Background and Overview

The California Railroad Commission was formally constituted in 1911 to regulate transportation companies. It was the predecessor agency to the California Public Utilities Commission. In 1912, the Legislature passed the Public Utilities Act, expanding Railroad Commission authority to regulate utilities such as gas, water, electric and telephone companies. In 1913, California enacted the Water Commission Act requiring a permit from the State Water Commission (a predecessor to the SWRCB) in order to appropriate water after 1914 in California. See Water Code section 1225. Water rights established prior to 1914 were exempted from the permitting requirement and were initially not subject to regulation by the Water Commission. See generally Hutchins, *The California Law of Water Rights* (1956) p. 86 et seq.; *North Kern Water Storage District v. Kern Delta Water District* (2007), 147 Cal.App.4th 555 (fn. 1).

The decisions of the Railroad Commission have been determined to be legal precedent. *Napa Valley Elec. Co. v. Railroad Comm'n*, 251 U.S. 366, 373 (1920); *E. Clemens Horst Co. v. Railroad Comm'n*, 175 Cal. 660, 166 P. 804 (1917). However, the Railroad Commission determined in an early decision that it did not have the power to “adjudicate” water rights finding that power being left to the courts and the Water Commission (now the SWRCB). *William Wax v Sierra and San Francisco Power Company* (1922) Railroad Commission D-10589.

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Based on the foregoing, while the Railroad Commission might not have had the power to *adjudicate* the validity of pre-1914 appropriative rights, the factual findings in these decisions do establish the existence, nature and significant dates of the various Russian River water diversions sufficient to establish the validity of the District's pre-1914 appropriative rights *Rincon EV Realty LLC et al v. CP III Rincon Towers, Inc.*, (2019) 43 Cal.App.5th 988; *Orange County Water Dist. v. Alcoa Global Fasteners, Inc.* (2017) 12 Cal.App.5th 252, 355 [factual findings are determinative and binding on a party in an action]

b. Summary of Applicable Railroad Commission Decisions Establishing the Factual Basis for a Pre-1914 Water Rights Claim

The following Railroad Commission Decisions address the various water companies established in the Rio Nido, Guerneville and Monte Rio areas between about 1901 and 1911 mentioned above. These decisions are significant because, in general, the Railroad Commission Decisions identify the water sources, dates and location of use of the water provided by these companies. Also, as noted above, by the time of these decisions, these water systems were interconnected to some extent and operating jointly (owned or co-owned by the Mellersh family).

In sum, these decisions establish the validity of Sweetwater's claimed pre-1914 Appropriative Rights.

- **Russian River Heights Water Company** - *Railroad Comm D 6509 (1919); Railroad Comm D 9170 (1921); Drake v. Russian River Land Co. (1909)*

Water Source: "Springs, small seasonal streams" and a well in the Russian River "bottom."

Service Area: Russian River Heights and surrounding area.

Scope of Use: 82 connections

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Formed: 1904

- **North Shore Land Co.** - *Railroad Comm D 7269 (1920); Railroad Comm D 2528 (1916)*

Service areas: Monte Rio, Mesa Grande, Sheridan

Water Source: Water from “Springs and feeder streams”

Scope of Use: 300 residential connections and 4 hotels

Formed: 1902.

- **Mt. Jackson Water and Power Co.** - *Railroad Comm A-621 (1916); Railroad Comm D 9170 (1921)*

Water Source: Wells diverting water from Russian River underflow.

Scope of Use: 197 Connections

Service Areas: Rio Nido, El Bonita

Formed: 1908

- **Guernewood Park Development Company** - *Railroad Comm D 9170 (1921)*

Water Source: An “existing water” system. Company was a real property development company that operated a water system in connection with their land development business.

Formed: 1918 to buy *existing water system*.

Scope of Use: 210 connections

Service areas: Guernewood and Guerneville areas (incl. McLane and Guernewood Heights).

- **Russian River Water Company** – *Railroad Comm D 7269 (1920); Railroad Comm D 9170 (1921); See also 1921 Guerneville Sanborn Map*

Formed: 1917 by T C Mellersh. Mellersh’s family associated with the railroads. Also owned Russian River Heights Water Company and Mt. Jackson Water and Power.

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Scope of Use: 379 connections

Service area: Monte Rio and Guerneville.

Water Source: Wells in Russian River (and water from other water companies via interconnected systems).

4. 1921 to 1927 – Russian River Water Company Acquires the Other Privately Owned Water Companies in the Guerneville and Monte Rio areas

In 1921, as noted above, the Russian River Water Company purchased and consolidated the other water companies in the Guerneville and Monte Rio areas into a single water company. The acquisitions included the various water systems and water rights to the Russian River. *Railroad Comm D 7269 (1920); Railroad Comm D 9170 (1921); 1921 Guerneville Sanborn Map.*

5. 1928 to 1992 – Russian River Water Company to Citizen's Utilities to Sweetwater Springs Water District

a. Russian River Water Company is acquired by Citizens Utilities

The *Reports of the Railroad Commission: 1928-1929*, indicate that the Russian River Water Company was acquired and merged with Citizens Utilities Company in or about 1928 (**Exhibit 5**). Citizens Utilities Company of California was first registered as being formed with the California Secretary of State in 1927 (headquartered in Stamford CT). From about 1927 through the 1970s, Citizens Utilities acquired rural utilities in California (as well as in Arizona, Hawaii, Illinois, Indiana, Ohio, and Pennsylvania). The majority of the utilities acquired by Citizens were small water utilities. See *International Directory of Company Histories*, Vol. 7. St. James Press, 1993. "Citizens Utilities Company," Harvard Business School Case Study, 1959.

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Documents from the SWRCB indicate that during the early 1950s, Citizens was involved in protecting its water rights during the approval process involving the application to appropriate water from the Russian River by the Potter Valley Irrigation District. Citizens filed a protest claiming potential harm from low river flows if the SWRCB approved the permit. (**Exhibit 6**). At this time, Citizens claimed riparian water rights for its Russian River wells – as well as a right based on beneficial use (presumably pre-1914 appropriative rights) – sufficient to supply 2400 connections. The SWRCB dismissed Citizens’ protest finding that there was adequate water available in the Russian River for the Potter Valley Irrigation District permit at that time.

b. Citizens Utilities Applies to SWRCB for a Permit but preserves pre-1914 water rights

The available record of Citizens’ activities and its associated water rights is scarce until the 1970s. In or about 1975, Citizens decided to construct new wells to supply an additional amount of Russian River water to the Guerneville and Monte Rio areas. In order to increase its use of Russian River water supply, Citizens applied for a permit from the SWRCB in 1975 (**Exhibit 7**). Citizens appears to have made clear that the permit was in *addition to* its existing pre-1914 rights to water. (**Exhibit 8** – SWRCB Documents).

Of note, the SWRCB asked Citizens to provide information regarding its claim of pre-1914 rights, and it appears that Citizens did provide such information to the SWRCB and begin submitting Statements of Diversion and Use as to these rights based on the request of the SWRCB. (**Exhibit 8** – SWRCB Documents). This office has inquired into Citizens’ presentation of information to the SWRCB as to its pre-1914 rights but it appears these documents have been

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destroyed.⁵ Significantly, the SWRCB in its 1994 Order (D-1604) approving Citizens' permit application acknowledges Citizens claim to its pre-1914 water rights (**Exhibit 9**):

These wells are to provide additional service to the communities of Guerneville, Monte Rio and others provided with service along the Russian River. The proposed diversion is in addition to 2.32 cfs the applicant diverts from the wells currently in use under a claimed pre-1914 appropriative right. The requested additional diversions are intended to be used to meet the increasing water needs of the service area through 1990. All points of diversion will be connected to a distribution system that enables the water to be commingled.

While this is not necessarily a binding determination, it does show that the SWRCB acknowledged Citizens' claim of pre-1914 rights and that the permit was separate from these claims. The SWRCB documents also indicate that the SWRCB did a bit of its own research on Citizens' claimed pre-1914 rights by requesting information from Sonoma County Water Agency regarding Citizens' water rights (with the Agency responding that they had no information (See **Exhibit 8**).

In 1992, Citizen's transferred all of its facilities, property and water rights to Sweetwater Springs Water District. (**Exhibit 10**) While this office was able to obtain a copy of the CPUC Order approving the transfer, the documents detailing the facilities and rights transferred have not been located and the indications are that these documents no

⁵ This office contacted both Citizen's former attorney's office and the general counsel of Citizen's successor in interest, California-American Water, and was informed any such documents no longer exist.

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longer exist.⁶ Sweetwater has continued to file Statements of Diversion and Use on the pre-1914 water rights with the SWRCB.

6. Conclusion

The foregoing confirms the establishment of the District's pre-1914 appropriative water rights to the Russian River back to at least 1888 (and likely before). There are sufficient facts and evidence establishing the legal elements of a valid pre-1914 water right (*Simons v. Inyo Cerro Gordo Mining & Power Co.* (1920) 48 Cal.App. 524, 537):

(1) An intent to apply water to some existing or contemplated beneficial use.

Comment: The evidence set forth in this Analysis demonstrates an intent to create a water supply for local communities such as Guerneville and Monte Rio.

(2) An actual diversion from the natural channel by some mode sufficient for the purpose prior to 1914.

Comment: The documents and evidence set forth in this Analysis demonstrate the establishment of wells in the Russian River bed to divert the underflow of the river prior to 1914.

(3) An application of the water within a reasonable time to some beneficial use.

Comment: The evidence indicates that water diverted from the Russian River underflow was put to use as drinking water supply for local towns such as Guerneville and Monte Rio prior to 1914.

⁶ This office contacted the CPUC, Cal Am Water (successor to Citizens Utilities), the SWRCB and the office of Citizens former water rights attorney. It appears that the documents detailing the transfer have been destroyed or else in a location that has yet to be determined.

D. OVERVIEW OF APPROPRIATIVE RIGHTS IN CALIFORNIA

In light of the foregoing discussion, the following is an overview of appropriative rights to surface streams in California that might be useful in analyzing the scope of the District's pre-1914 water rights.

In general, an appropriative right is the right to divert and use an amount of water in a particular location. Unlike riparian water rights, an appropriative water right can be used on lands located away from the stream from which the water is taken, including lands outside of the watershed. *Gallatin v. Corning Irrigation Company*, (1912) 163 Cal. 405, 413. This makes appropriative water rights generally more flexible in their use than riparian water rights.

Acquiring Appropriative Water Rights

Before 1914, appropriative rights were acquired by an actual physical diversion of water and the application of that water to a "reasonable beneficial use." Although appropriators frequently posted or recorded a notice of intent to appropriate the water, such notice was not required. Only actual diversion and beneficial use was required.

To constitute a valid appropriation of water prior to 1914 (before the state permitting system was instituted), three elements had to exist: (1) An ***intent*** to apply it to some existing or contemplated beneficial use; (2) an ***actual diversion*** from the natural channel by some mode sufficient for the purpose; and (3) an application of the water within a reasonable time to some ***beneficial and reasonable use***. *Simons v. Inyo Cerro Gordo Mining & Power Co.* (1920) 48 Cal.App. 524, 537.

After 1872, the California Civil Code prescribed an alternative procedure that allowed the acquisition of appropriative rights (in addition to the elements listed above) by way of the posting and

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recording of a written notice (known as “statutory appropriation”). *Lower Tule River Ditch Co. v. Angiola Water Co.* (1906) 149 Cal. 496, 498. The statutory appropriation supplemented, but did not replace the common law non-statutory appropriation. Neither procedure required a permit or license from the state. These water rights, both statutory and non-statutory, are known today as “pre-1914 water rights.” Pre-1914 water rights are considered the most valuable water rights due to their flexibility of use and because they do not require a permit from the state.⁷

In 1914, the state implemented the present permit/licensing system to appropriate surface water. Water Code §1200 et seq. This permitting system is presently administrated by the SWRCB. *Id.*

Scope of Appropriative Rights

Appropriative water rights are subject to certain limitations and requirements. Some of these limitations and requirements vary depending upon whether the appropriative right is a pre-1914 or post-1914 right.

All appropriative rights (pre and post-1914 rights) are subject to a time-based priority system in which the earlier established rights take priority over later established rights. Generally, the earlier the right is established in time, the higher the priority. *Joerger v. Pacific Gas & Electric Co.* (1929) 207 Cal. 8, 26. In times of shortage (e. g. drought), water is generally allocated among all appropriative users along a stream according to this time-based priority system:

⁷ Pre-1914 water rights holders and riparian rights holders are, however, required to file a written report to the state each year known as a Statement of Diversion and Use. Water Code section 5100 et seq. These statements include the amount of water diverted, the point of diversion, place of use and the source of the water taken.

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As between appropriators . . . a prior appropriator is entitled to take all the water he needs, up to the amount that he has taken in the past, before a subsequent appropriator may take any. *Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 926.

Pre-1914 water rights therefore have higher priorities than post-1914 permitted water rights. Riparian water rights, however, generally have a higher priority than appropriative rights including pre-1914 water rights but lack the scope and flexibility of pre-1914 rights. Public agencies such as the District generally do not possess riparian rights (there are limited exceptions).

Reasonable and Beneficial Use

As with all water rights in California, the use of water under an appropriative right must be reasonable and not wasteful. Water Code § 100. The law requires that both the use and the method of diversion be reasonable and non-wasteful. *People ex rel. State Water Resources Control Board v. Forni* (1976) 54 Cal.App.3d 743, 749-752. What is considered a reasonable use of water in California is ***dynamic*** over time and depends on the facts of each particular circumstance:

What may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is considered a beneficial use at one time may (due to changed conditions) become a waste of water at a later time. *Tulare Irrigation District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489, 567.

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In California, there is no vested right to use water unreasonably⁸ and, as indicated above, what is reasonable can change over time. Further, some courts (and legal scholars) have indicated that a right to use water can be divested without compensation if determined to be unreasonable. *Joslin v. Marin Municipal Water District*_(1967) 67 Cal.2d 132. As a result, the reasonable use doctrine is one of the most dynamic and controversial elements of water law in California. It can allow, under certain circumstances, a redistribution of water regardless of the type of water right or alter the priority of a water right.

Not only must each use of water be reasonable, it must be used for a beneficial purpose. Water Code §§ 100, 106. Specifically recognized beneficial purposes include domestic, irrigation, and industrial uses. Water Code § 106. Domestic use generally is considered the highest use followed by irrigation for agricultural purposes. *Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245, 1270. Where two or more appropriators have the same priority of right, the appropriator using the water for domestic purposes has priority over an appropriator using the water for irrigation. *Lake Don Pedro CSD v. Merced Irrigation District (Mariposa County Sup. Ct. (1992) No. 7066)*.

For a time, the modern trend in appropriative rights appeared to be moving away from the rigid priority system based on time and towards priority system based on the superiority of the respective

⁸ In *Imperial Irrigation District v. State Water Resources Control Board*_(1990) 225 Cal.App.3d 548, 563-564, the court held:

Put simply, IID does not have the vested rights which it alleges. It only has vested rights to the 'reasonable' use of water. It has no right to waste or misuse water.

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beneficial uses (“equitable apportionment”).⁹ In other words, in times of shortage domestic purposes would take priority over agricultural purposes and agricultural purposes over industrial uses regardless of the time-based priority. However, for now, the time-based priority system is still regarded as an essential element of the appropriative water right and was recently upheld by the California Supreme Court against challenges based on the concept of equitable apportionment. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224. The *Mojave* case is significant as it reaffirmed the importance of the priority system for appropriative rights.

Nevertheless, as seen in 2020 and again in 2021, even this reaffirmed priority system can be potentially altered (at least temporarily) in a situation where the SWRCB determines certain emergency conditions exist such as critical low flows in a stream during a severe drought. *Stanford Vina Ranch Irrigation Co. v. State of California*, (2020) 50 Cal.App.5th 976. The basis of such power (including the SWRCB’s emergency rules and powers) emanates from the rule of reasonable use and the Public Trust doctrine.¹⁰

⁹ See Prof. Brian Gray, *In Search of Bigfoot: The Common Law Origins of Article X, Section 2 of the California Constitution*, 17 Hastings Const. L. Q. 225 (1989).

¹⁰ The Court in *Stanford Vina* upheld imposing limitations on all users regardless of priority holding:

“Nor did the Board violate the rule of priority. Unlike *El Dorado Irrigation Dist. v. State Water Resources Control Bd.* (2006) ...relied upon by *Stanford Vina*, the Board in this case did not subvert the rule of priority by imposing a condition on a senior appropriator that it did not also impose on more junior appropriators. Here, the Board declared all diversions of water from Deer Creek unreasonable during certain time periods, and when protected fish were present in the creek, where such diversions threatened to drop the flow of water below the minimum flow required to allow the fish to survive their migration through the creek. The Board then implemented this unreasonableness determination by curtailing all diversions that threatened to violate the minimum-flow requirements. *Stanford Vina* does not argue any water rights holders junior to it were not similarly

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Amount of Water Diverted Under a Pre-1914 Water Right

Appropriators are limited to diverting a specific quantity of water. *Felsenthal v. Warring* (1919) 40 Cal.App. 119, 133. The amount of water established for pre-1914 rights is generally determined by historic use and by the principals of beneficial and reasonable use. The specific quantity of water allowed to be diverted for post-1914 water rights is determined by the SWRCB and specified in the applicable permit or license (“permit”) required for such rights.

Unlike riparian rights, appropriative rights can be used on lands that do not abut the water source and that are outside the watershed of the water source. *Gallatin, supra*, 163 Cal 405, 412-414. In fact, there is no requirement that an appropriator own land at all in order to acquire an appropriative right. *Joerger v. Pacific Gas & Electric Co.* (1929) 207 Cal. 8, 34. Although as a practical matter, permits for post-1914 rights specify a particular property as the place of use.

Change in Use and Location of Use

One of the primary differences between pre-1914 and post-1914 permitted water rights related to changing the purpose of the use and the location of the place of use or point of diversion in the stream. Pre-1914 water rights holders – such as the District - may change the purpose of use (e.g., from agricultural to domestic use), the location of the use or the location of the diversion point as a matter of right so long as the change does not adversely impact other users. Water Code § 1706. Post-1914 appropriators however must obtain the permission of the State Water Resources Control Board in order to change location

restricted by curtailment orders, but instead argues the Board was not authorized to "elevat[e] public trust uses of water," i.e., survival of threatened fish, "to a super-senior priority."

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of use, location of diversion or type of use. Water Code § 1701. The ability to change the purpose of use, the location of use, and the location of the diversion makes pre-1914 appropriative rights (such as the District's) highly valuable.

Loss of Appropriative Rights

It is important to keep in mind that appropriative rights can be lost or terminated. The following summarizes some of the ways even pre-1914 water rights can be lost:

- An appropriative right can be abandoned. *Smith v. Hawkins* (1895) 110 Cal. 122, 126.
- Appropriative rights can be forfeited by mere non-use. *Smith, supra* 110 Cal. 122, 126. In California, all appropriative rights, both pre-1914 and post-1914 rights, are subject to forfeiture where the rights are not used for a period of five consecutive years. Water Code §§ 1240, 1241.¹¹
- It is not entirely clear whether appropriative rights to surface water can be lost by Prescription (e.g. the open and adverse use of another person's water rights for a period of five years). Early court cases recognized the right to acquire surface water by prescription. *E.*

¹¹ Water Code section 1241 provides:

When the person entitled to the use of water fails to use beneficially all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of five years, such unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water. Such reversion shall occur upon a finding by the board following notice to the permittee and a public hearing if requested by the permittee.

MEMORANDUM

Clemens Horst Co. v. Tarr Mining Co. (1917) 174 Cal. 430, 438-440. However, recent case law has cast doubt on the doctrine's continued application to appropriative rights. In *People v. Shirokow* (1980) 26 Cal.3d 301, the court indicated that there is no right to prescript water that belongs to the state (e.g. any unappropriated water). But the *Shirokow* court went further indicating that one of the primary elements of prescription with respect to appropriative water rights, an open and notorious use, is not met until the potential prescripting party first obtains a Permit from the state. As a result, the issue of prescription in California with respect to surface water rights is unsettled.¹²

- Appropriative rights may be severed from the land on which they are used and transferred to other properties. *Mc Donald & Blackburn v. Bear River & Auburn Water & Mining Co.* (1859) 13 Cal. 220, 232.¹³
- Under California law, the water rights to a specific stream can be determined by court adjudication or by a procedure known as Statutory Adjudication. Water Code § 2500 et seq.
- Appropriative rights may be lost by condemnation. *San Joaquin & Kings River Canal Co. v. Stevinson* (1912) 164 221, 225-227.

¹² SWRCB staff still appears, however, to recognize the potential for prescription of surface water rights. See Reference by the SWRCB in the case of *Rieck v. Caton*, Shasta County Superior Court, Case No. 115049 (1995).

¹³ As discussed, *supra*, a transfer of a pre-1914 right must not adversely impact other users. The transfer of a post-1914 right would require approval by the SWRCB.

SWEETWATER SPRINGS PRE-1914 APPROPRIATIVE RIGHTS INVESTIGATION

Overview of Assignment

Confirm the District's claim of Pre-1914 Water Rights

The District claims two such rights – one for Guerneville and one for Monte Rio

Conclusion

Sweetwater Springs has valid pre-1914 appropriative rights to divert Russian River underflow supported by substantial evidence.

Significance

California water law is a priority-based system. Rights with highest priority have first right to divert.

Pre-1914 Water Rights have very high priority to surface water during times of shortage (droughts)

Pre-1914 Rights are the most flexible water right (e.g. can change purpose and place of use)

Overview of Findings

Significant diversions in Guerneville area begin in about the 1870s

Original diversions are from “Springs” on the hillsides as well as from tributary streams.

By the 1880's steam pumps are used to pump Russian River underflow.

Guerneville and Monte Rio had water distribution systems for fire protection purposes by the 1880s

In the early 1900s, several private companies from Rio Nido to Monte Rio took over existing water rights and further developed such rights serving water to local communities.

In 1922, all private water systems consolidated into the Russian River Water Company.

In 1928, Russian River Water Company transfers all facilities and water rights to Citizens Utilities Company.

In 1975, Citizens Utilities applies for a permit from the SWRCB to expand Russian River Diversions.

In 1976, Citizens Utilities claims “pre-1914” rights for existing diversions in Guerneville and Monte Rio.

In 1992, Citizens Utilities transfers all water rights (including pre-1914 water rights) and facilities to Sweetwater Springs Water District

Significant Supporting Evidence

Sanborn Maps

Local Histories

Railroad Commission Decisions

SWRCB Files and Decisions

Secretary of State Filings

Court cases

Missing Evidence

Citizens Utilities’ files

Citizens Utilities analysis of their pre-1914 water rights

Evidence of water rights and water facilities transferred to Sweetwater Springs in 1992

Russian River Water Company files from CPUC

Potential next steps

Continue to identify documents supporting the District’s pre-1914 water rights.

Recorded Notices of Diversions (if any)

Why Pre-1914 Rights are Important to District

Drought orders from the SWRCB limiting diversions are initially based on priority

SWRCB has been discussing an entire stream Adjudication of the Russian River. Priority is important in adjudications.

Questions?

SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors

AGENDA NO. V-B

FROM: Ed Fortner, General Manager

Meeting Date: April 7, 2022

SUBJECT: DRAFT FY 2021-2022 BUDGET

RECOMMENDED ACTION: Receive a report on the Draft District FY 2022-2023 Budget, including the District's proposed water rates based on a 0% increase, review of the Draft Budget, and provide direction to staff and the *ad hoc* Budget Committee.

FISCAL IMPACT: Provides financial direction for FY 2022-2023.

DISCUSSION:

The *ad hoc* Budget Committee met before the April Board meeting to discuss the draft FY 2022-2023 Budget, presented at this meeting (the line-item draft Budget is attached as Exhibit A). Among the issues we discussed (and shared with the Board at the March meeting):

Proposed FY 2022-2023 Water Rates

At the March meeting, the Board received the draft budget showing 0%, 3%, 4%, and 5% increases for District water rates. The 2020 Bartle and Wells Cost of Service Study recommended 5% yearly rate increases to develop sustainable capital funding. However, with \$1.6 Million grant funding, the Budget Committee and GM recommend no rate increase this year. If revenues fall below expectations, a rate increase could be considered next year. Table 2 shows the proposed water rates, and Table 3 shows a comparison of water bills with current and proposed rates for typical customers. The District is on schedule to mail out Proposition 218 notices by April 18 to District property owners if the Board recommends a rate increase.

Fiscal Year 2022-2023 Budget

The draft FY 2022-2023 Budget detail is attached as Exhibit A. Figures 1 and 2 show the relative total expenses and revenues projected for the Operating and Capital Budget. The *ad hoc* Budget Subcommittee has discussed the draft Budget.

Assumptions used to develop the Operating section of the Budget include:

- Water Usage, Base Rate, and Capital Debt Reduction Charges are not raised.
- Water Usage revenues are based on flat water sales and mid-year water sales projections. Thus, the FY 2022-2023 water usage revenues are the amount budgeted in FY 2021-2022.

- Salaries and Retirement have been adjusted at a 3% increase as we go into our third year of the five-year labor agreement. With a full-time Account Clerk and part-time Account Clerk, additions of Maintenance Trainees at lower salaries, and increases in other benefits generally, wages increased by \$30,550, and benefits increased by \$16,554.
- Staffing changes include two new Maintenance Trainees to fill those vacancies. A full staff, step increases for positions, and the 3% wage increase agreed to in the new MOU have raised wages.
- In the FY 2022-2023 Budget year, the District has a debt reduction of \$283,000. This reduction will help capital funding and may allow lower rate increases in the future.

Highlights of the Draft FY 2022-2023 Operating Budget include:

- FY 2021-2022 CIP, Water Main Replacement of ~5,400' on Old River Rd. and Woodland Drive at \$1,650,000.
- The Capital Improvement Reserve Fund (CIRF) transfer is \$325,000.

Uncertainties with the FY 2022-2023 Budget include:

- Covid-19 Pandemic has created many uncertainties for revenue collection and potential operations staffing shortages.
- The third year of drought may lower water sales, although last year did not.

Capital Project funding: In last year's annual budget discussion, we planned on a significant Capital Project in FY 2022-2023 that includes replacing 5,400 linear feet of aging water main with HDPE main on Old River Road Woodland Drive. The design and planning of this project are completed, and construction starts in April 2022.

We have applied for CDBG funding for the design and planning for the replacement of 6,400' of water main, replacement of the Edgehill booster, and tank on Wright Drive. We also have the Lower Harrison Tank replacement and design of the Monte Rio Bridge water main attachment budgeted for FY 2022-2023.

District Reserves

The FY 2021-2022 Budget lists the District Reserve Policy amounts approved in September 2009:

- Operating Budget Cash Reserve – a reserve based on 15% of the Operating Budget expenses to allow for prompt payment of District bills at the start of a fiscal year.

- Operating Reserve – 25% of the Operating Budget expenses for economic downturn or other economic crisis, and emergencies and disaster-related expenses.
- Debt Repayment Reserve - 25% of the annual debt payments to ensure funding is available to repay existing District debt.
- Capital Reserve – 25% of the nominal Capital Budget of \$1 million for similar capital program issues.

The draft Budget shows FY 2021-2022 District Reserve Policy of \$1,397,467 and \$1,570,268 in Reserves Above Policy at the end of the fiscal year.

Proposition 218 Notice

If the Board approves a rate increase, proposition 218 requires that a 45-day notice be given to all property owners in the area affected by a proposed rate increase. The proposed water rate increases notice will need to be mailed to all property owners by April 18, 2022. The notice would increase the Base Rate and Water Usage Charges and Capital Debt Reduction Charge for FY 2022-2023 and include the proposed rate schedules.

Table 1. FY 2022-2023 Budget Preparation	
Reviewed/Approved Capital Improvement Program	February 2022
Introduce Budget Process	January 6, 2022
Budget Committee meetings	March 2022
Draft Budget to Board for Discussion/Action, Including Direction on Water Rates	March 3, 2022 April 7, 2022
Prop 218 Mailing for Water Rate Increase, if necessary	April 18, 2022
Draft Budget to Board for Discussion/Action	May 5, 2022
Approve Budget <ul style="list-style-type: none"> • Prop 218 Public Hearing on Rates, if necessary 	June 2, 2022

Table 2.
Proposed (No Change) Bimonthly Water Rates

	Base Rates \$/account	CDRC ¹ \$/account	Volume Rates (\$/hcf) \$/hcf	# units
Single Family Residential			\$1.65	Tier 1 (0-8 hcf)
All Users	\$71.94	\$13.17	\$3.96	Tier 2 (9+ hcf)
Multi Family (by # Dwelling Units)²				All Water Use
2 DU's	\$111.50	\$20.41	\$3.68	
3 DU's	\$151.07	\$27.66		
4 DU's	\$190.64	\$34.90		
Commercial (by meter size)				All Water Use
5/8"	\$71.94	\$13.17	\$3.68	
1"	\$179.87	\$32.93		
1 1/2"	\$358.59	\$65.85		
2"	\$575.51	\$105.36		

hcf = hundred cubic foot, 748 gallons

1 - Capital Debt Reduction Charge

2 - Multi Family unit multiplier = 0.55 for every extra unit; no meter multiplier

		<u>Bi-Monthly</u>	<u>Monthly</u>						
<u>Typical Bi-Monthly Bill</u>	<u>Total</u>	<u>Difference</u>	<u>Difference</u>						
0%	\$101.21	\$0	\$0						
3%	\$109.43	\$8.22	\$4.11						
4%	\$110.52	\$9.31	\$4.66						
5%	\$111.53	\$10.32	\$5.16						

How will this impact a typical Single-Family bill?

Sweetwater Springs utility rates are among the lowest in the area and will continue to be low with the proposed rate increases.

Currently, a typical single family using 10 units of water bimonthly has a bill of \$101.21.

The proposed rates will increase the typical bill by 5%, or \$10.32 bimonthly, for 10 units of water use.

Greater water conservation will result in lower water bills.

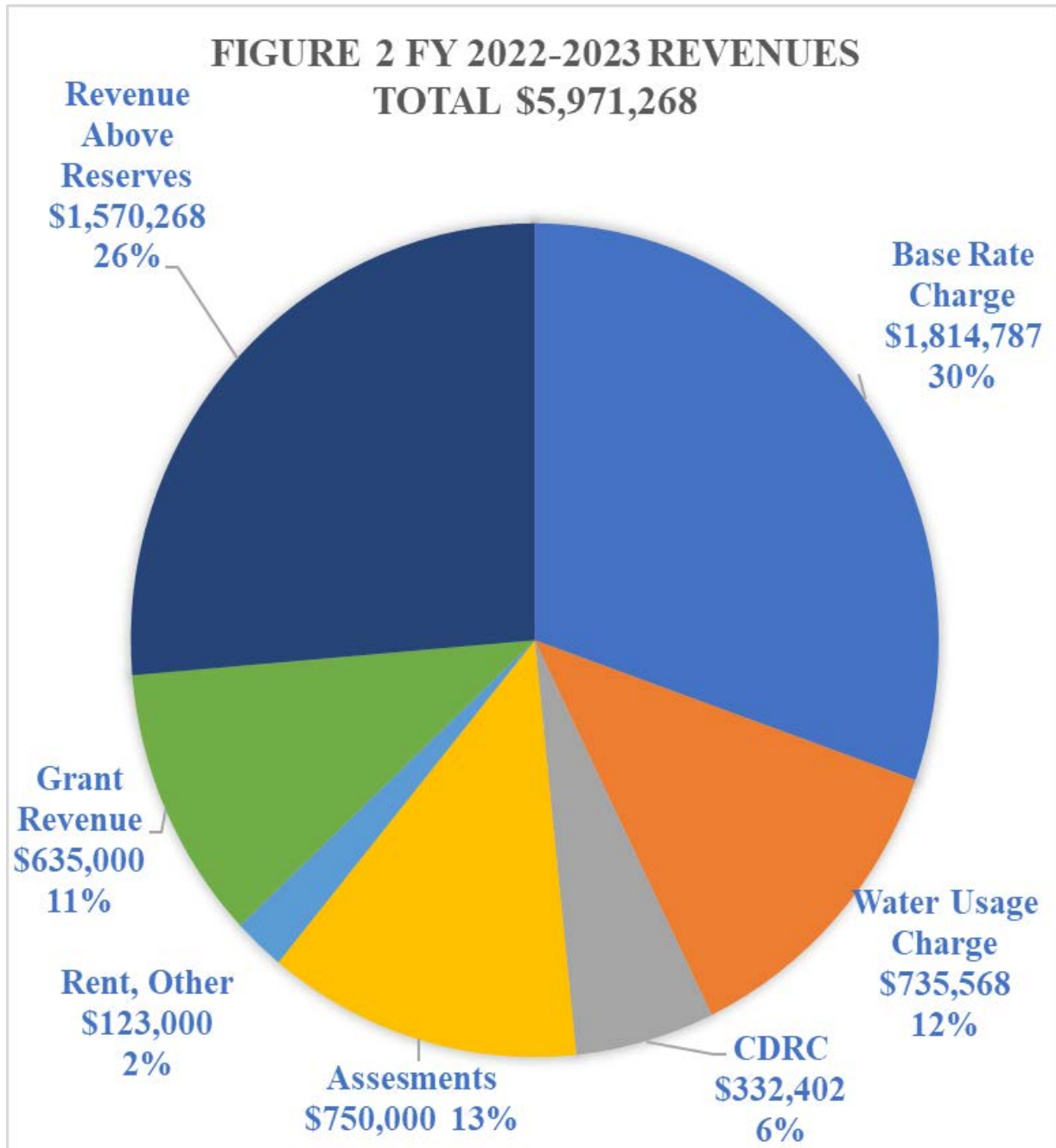
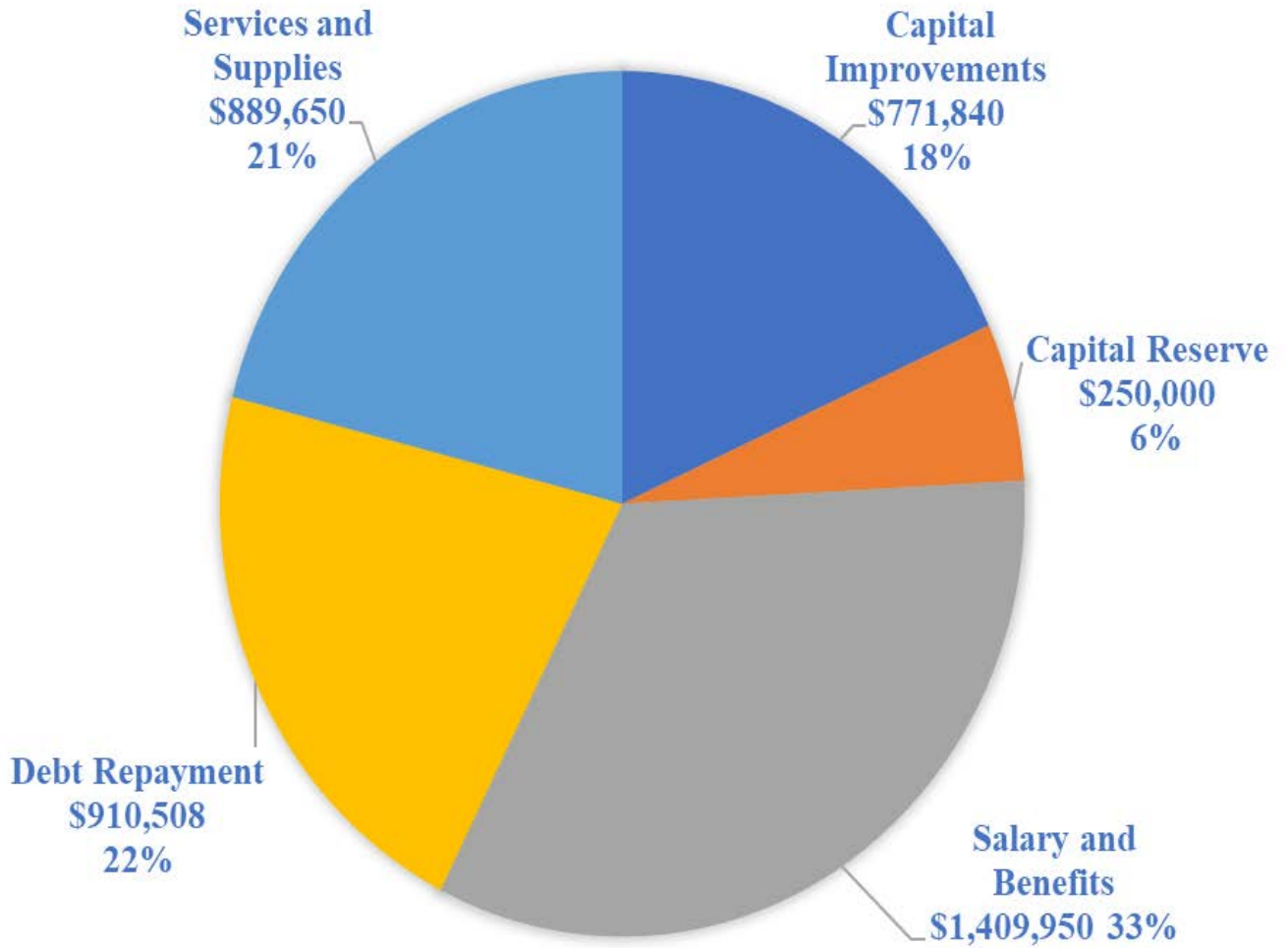


FIGURE 1 FY 2022-2023 EXPENSES
TOTAL \$4,231,948



FY 2022-2023 DRAFT CAPITAL BUDGET		0%	FY 20-21 FINAL (CASH)*	FY21-22 BUDGET	FY 21-22 Projected	FY 22-23 BUDGET	Difference FY22-F23 Budgets	FY 2022-23
REVENUE/SOURCES OF FUNDS								
1002 - Construction Flat Charges			93,155	27,000	27,000	30,000	3,000	
1001 - CY Direct Charges			732,360	710,000	710,000	710,000	-	
1061 - PY Direct Charges			22,682	40,000	40,000	40,000	-	
1700 - Interest			10,722	25,000	25,000	10,000	(15,000)	
4620.2 - Tfers from Operations (In-House Constr.)			25,000	25,000	25,000	25,000	-	
4620.2 - Tfers from Operations (CDR)			316,573	332,402	296,383	332,402		Populated from Water Sales revenue above.
4620.2 - Tfers from Operations (Surplus)			270,000	430,000	450,000	325,000	(105,000)	
Grant Revenue			93,283		827,000	635,000		DWR Grant Agreement not yet executed
Guernewood Park proceeds			5,000		23,637			
TOTAL CAPITAL REVENUE			1,568,775	1,589,402	2,424,020	2,107,402	518,000	
EXPENSES								
DEBT PAYMENTS								
Gen. Obligation Bonds Principal			53,278	54,950	54,950	54,950	-	
Cap One Revenue Bond Principal			368,000	368,000	368,000	368,000	-	
State Loan Principal			282,727	-	-	-	-	
Private Placement Loan Principal			170,814	167,650	167,650	167,650	-	
Interest Expense			266,752	319,908	319,908	319,908	-	
TOTAL DEBT PAYMENTS			1,141,570	910,508	910,508	910,508	-	
2019 CIP			0	-				
2021 CIP			114,958	1,326,000	1,750,000		25,000	Old River Rd, Woodland Drive, Monte Rio Well Rehab
2022 CIP						746,840		Harrison Tank, MR Bridge Design, Wright Drive Design
In-House Construction Projects			30,937	25,000	25,000	25,000	25,000	
Moscow Rd Project				-	4,545			
Guernewood Park			1,080	25,000	-		25,000	
Main St MR Emergency Line			129,222	25,000			25,000	
TOTAL CONSTRUCTION EXPENSES			276,198	1,401,000	1,779,545	771,840	(629,160)	
TOTAL CAPITAL EXPENSES			1,417,768	2,311,508	2,690,053	1,682,348	(629,160)	
SURPLUS/DEFICIT			151,007	-722,106	-266,033	425,054	1,147,160	
FUND AND LOAN BALANCES (EOY)								
Beg Funds above District Reserve Policy			2,330,240	2,330,240	2,211,247	1,495,214	(835,026)	
Policy Reserves			1,402,661	1,352,081	1,356,846	1,397,467	45,386	
Ending Funds ab District Policy (DP)			2,211,247	1,178,134	1,495,214	1,595,268	417,134	
Funds ab DP and Debt Payments			1,069,677	1,153,134	1,470,214	1,570,268	417,134	

SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors

AGENDA NO. V-C

FROM: Ed Fortner, General Manager

Meeting Date: April 7, 2022

SUBJECT: DISCUSSION/ACTION RE: DIRECTION FOR COVID RELATED GUIDELINES

RECOMMENDED ACTION: Discussion and direction from the Board.

FISCAL IMPACT: none

DISCUSSION:

The District has followed Public Health direction from Federal, State, and Local Health Agencies. These guidelines are referenced in our Emergency Response Plan and Resolution 21-06. California relaxed many guidelines on June 15, including relaxing mask requirements. The California Cal OSHA met on June 17 and approved similar relaxed requirements for the workplace. Vaccinated employees could then choose not to wear masks outside or inside. Non-vaccinated employees must continue to wear masks outside when near others and wear masks in the office. The District has documented vaccination status through self-attestation. The District continues to navigate these new guidelines and apply them to the District workplace and workforce.

Among these issues is virtual vs. in-person Board meetings. The Governor issued an Executive Order that ends the waiver of Brown Act Public Meeting requirements on September 30. In consideration of Board meetings being held at the District offices, space is quite limited for social distancing. AB 361 allows the District to continue virtual Board meetings while the State is under a declared Covid disaster.

Staff feedback on reopening the office space has ranged from deferring to office staff to open support of full reopening with no masking.

On July 27, the CDC made recommendations for everyone to wear masks inside. The County and State made indoor masking for everyone mandatory due to the spread of the Delta variant.

Also, our Emergency Response Plan Covid section 15 allowed a one-time use of 14 days of administrative leave if someone is positive for Covid or has been in contact with someone positive. *Previously the Board considered ending the 14 days leave policy.*

Reopening Plan: The office is now fully open.

The California Department of Public Health issued guidance on July 26, 2021, requiring State employees and all medical personnel to be vaccinated or be tested weekly if they are not vaccinated. The Governor also asked private businesses to follow suit on this new mandate. These orders were due to the many-fold increases in cases, hospitalizations, and deaths due to the Delta variant. On December 28, 2021, the Sonoma Health Officer recommended mandatory vaccinations, including boosters, with twice-weekly testing as an alternative for all workplaces.

The District has closely followed the County policies on COVID. On August 18, 2021, Paul Gullickson, the County Spokesperson, stated that the Board of Supervisors approved a policy that all County employees, including Sonoma County Water Agency, must show proof of vaccination or be tested for COVID weekly. *The Pfizer Covid vaccine was given full Federal FDA approval on August 23, 2021. Both the Pfizer and Moderna vaccines are fully approved now. The Omicron variant is now the prevalent strain. This variant is more resistant to the vaccine and is much more contagious. OSHA issued an Emergency Order on September 9 requiring all employers with over 100 employees to show vaccination proof or be tested weekly. The latest Federal The Supreme Court ruled against this OSHA mandate. Adherence to Federal, State, and County guidelines are referenced in our Emergency Response Plan and Resolution 21-06. The board may consider following the County policy on vaccination proof with an option for employees to submit weekly negative Covid testing results. This County policy is likely to change to bi-weekly testing.*

On December 16, 2021, CalOSHA issued an Emergency Temporary Standard (ETS) requiring the employer to provide paid time for Covid testing and testing opportunities. It also defines acceptable face covering. (8) *"Face covering" means a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers. A face covering has no visible holes or openings and must cover the nose and mouth. A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric.* The fact sheet describing the ETS Title 8 sections 3205, 3205.1, 3205.2, 3205.3, 3205.4 is attached.

All these measures taken and under consideration have the goal of maintaining a safe workplace and not exposing anyone in our work. We have a Fulgent contract to consider facilitating Covid testing during outbreaks, voluntarily, or when vaccines become mandatory. I have an approved FEMA/ CalOES grant to cover the costs of this program. The Fulgent contract is

DIRECTION FOR COVID RELATED GUIDELINES

April 7, 2022

2

executed, and the first tests have arrived. The 50 antigen quick tests I ordered have also arrived.

On February 15, 2022, Sonoma County rescinded the workplace mask guidance. Only unvaccinated personnel must now wear masks in the workplace.

Sonoma County lifted mandatory mask mandates in March, and the office was reopened to foot traffic.

SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors

AGENDA NO. V-D

FROM: Ed Fortner, General Manager

Meeting Date: April 7, 2022

Subject: FY 2020-2021 CIP PROJECT UPDATE

RECOMMENDED ACTION: Receive report; give any needed direction.

FISCAL IMPACT: \$1,650,301.00

DISCUSSION:

Replacement of aging water main infrastructure is an important activity of the Sweetwater Springs Water District. Toward that end, the District has developed a multi-year capital improvement program that has prioritized the capital infrastructure that needs to be replaced or improved. The District is currently working on the FY 2020-2021 CIP, replacing approximately 5,400 ft of existing main and 58 services on Old River Rd and Woodland Drive, including 16 lead goosenecks. The new HDPE water main will replace old galvanized, steel, and cast iron pipe.

This construction project was advertised in December of 2021, and five bids were received and opened on January 18, 2022, at 2:30 pm, in accordance with bid instructions. The project had an Engineer's Estimate of Probable Cost of \$1,601,944. After careful review and analysis of the bid by Piazza Construction (Piazza), the bid was awarded to Piazza. Piazza has done good work for the District in the past, and the bid amount is below the Engineer's Estimate of Probably Cost.

The work authorized under this contract is scheduled to begin on March 30, 2022; according to the contract, it will be completed within 70 working days of the notice to proceed. The work involves repair, replacement and/or reconstruction of existing water main distribution lines, and the installation of water "services" and fire hydrants. The work is in the same general location as existing facilities and will result in no expansion of system capacity. The work is part of the District's Capital Improvement Program and will provide important and necessary improvements to the District distribution system.

The Board approved the award in the amount of \$1,353,421.00 by Piazza Construction, and authorization for the General Manager to approve up to \$135,000 in total change order authority for work not anticipated by the contract, and construction management and inspection costs by Coastland Engineering for the project estimated at \$161,880.00. This puts the entire project cost at \$1,650,301.00 including the total change order amount.

This project will be self-funded by the District and with CDBG funds of \$705,000. As such, the Project Award must be approved by CDC staff. District staff have been in communication with CDC and the District has informed the CDC of the award of the contract.

Piazza has submitted the fully executed contract and required supporting documentation. These have been distributed to our Engineers and CDC. A notice to proceed is being drafted by Coastland. Preconstruction meeting was held on March 8, attended by CDC staff, Piazza, Coastland, Jack, and I. Tentative start date is the second week of April 2022.

SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors

AGENDA NO. V-E

FROM: Ed Fortner, GM

Meeting Date: April 7, 2022

SUBJECT: DISCUSSION/ACTION REGIONAL GOVERNMENT SERVICES (RGS)

RECOMMENDED ACTION: Receive report.

FISCAL IMPACT: Up to \$15,000 under the Third Amendment for recruitment services and up to \$10,000 under the Fourth Amendment for on-call human resources services.

DISCUSSION:

The District has contracted with the Regional Government Services Authority (RGS) for human resources services dated October 18, 2021 (the Agreement).

The subcommittee appointed to work on this matter, consisting of President Schaap and Director Robb-Wilder, will update the Board and the public regarding the recruitment process and other matters related to the services RGS will provide pursuant to the amendments.

SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors

AGENDA NO. V-F

FROM: Ed Fortner, GM

Meeting Date: April 7, 2022

SUBJECT: DISCUSSION/ACTION GM Transition Document

RECOMMENDED ACTION: Receive report.

FISCAL IMPACT: N/A

DISCUSSION:

The GM will present a spreadsheet transition document for Board review.

<u>REGULATIONS</u>	<u>NEEDS</u>	<u>GRANTS/ FUNDING</u>	<u>CAPITAL</u>	<u>PROJECT</u>	<u>STATUS</u>	<u>CONTACTS</u>	<u>HISTORY</u>	<u>NEXT STEPS</u>	<u>DOCUMENTS</u>
		CDBG 2020	FY 2020-2021 CIP; Old River Rd. and Woodland Drive	FY 2020-2021 Design and Planning; 5,400' HDPE water main replacement on Old River Rd and Woodland Drive.	Completed	CDC; Valerie Johnson <Valerie.Johnson@sonoma-county.org>	\$116,000 received.	Completed	Grant Agreement, Draw Request Forms; Final Design and Planning Documents
		CDBG 2021	FY 2020-2021 CIP; Old River Rd. and Woodland Drive	FY 2020-2021 Construction; 5,400' HDPE water main replacement on Old River Rd and Woodland Drive.	Grant Agreement executed, Construction end of 03/2022	CDC; Valerie Johnson <Valerie.Johnson@sonoma-county.org>	\$705,000 Grant approved.	Draw requests due upon invoices received.	Grant Agreement, Draw Request Forms
		CDBG 2022	FY 2022-2023 CIP; Wright Drive, Natoma Tank	FY 2022-2023 Design and Planning; Wright Drive water main replacement	Application submitted; CDC approved full amount in annual plan.	CDC; Valerie Johnson <Valerie.Johnson@sonoma-county.org>	Applied for \$169,472; Board of Supervisors make final funding decision in June 2022	Attend CDC and BOS meetings to advocate. March 16th next CDC meeting.	Application
		DWR Drought Grant 2021	2024 Monte Rio Bridge Water Main Attachment Project, Monte Rio Well Station Project, Lower Harrison Tank Project	Monte Rio Bridge Water Main Attachment Project, Monte Rio Well Station Rehab Project, Lower Harrison Tank	Application submitted, Draft Grant Agreement under final approval.	Jackson Cook Jackson.Cook@water.ca.gov	Applied for \$800,000 for entire project but will amend to only construction costs.	Finalize Grant Agreement	Pending Grant Agreement
		California Water Resources Control Board State Revolving Fund	2024 Monte Rio Bridge Water Main Attachment Project	Monte Rio Bridge Water Main Attachment Construction Project	Application pending County EIR and Coastland design that is underway after delay with County Engineer's CAD files. Coastland completed design, submitted with County plans to FEMA. FEMA has declined and County is proceeding without	Ngai, Michael@Waterboards <Michael.Ngai@waterboards.ca.gov>	Applied for \$169,472; Board of Supervisors make final funding decision in June 2022	Submit EIR and final design to complete application	https://www.waterboards.ca.gov/drinking_water/services/funding/SRFfor.ms.html
		Sonoma County FEMA?	Moscow Rd slide	Water Main attachment Project to proposed County Bridge		Steven Hunter and Madji/ stevan hunter@sonoma-county.org and ijajdi@adko-inc.com	Notified late but got design in for FEMA submittal. County needs EIR for FEMA. Unsure if our water main attachment is	Get funding or wait for FEMA to determine if our water main attachment is approved for funding.	emails

<u>REGULATIONS</u>	<u>NEEDS</u>	<u>GRANTS/ FUNDING</u>	<u>CAPITAL</u>	<u>PROJECT</u>	<u>STATUS</u>	<u>CONTACTS</u>	<u>HISTORY</u>	<u>NEXT STEPS</u>	<u>DOCUMENTS</u>
		FEMA	Mt. Jackson Debris Removal	Mt. Jackson Debris Removal	FEMA has now declined funding	Marcia Burchiel, Marcia@CalOES <Marcia.Burchiel@CalOES.ca.gov>	Applied after Walbridge Fire, ultimately declined due to lease arrangement. Volunteers, County and CalFire did remove a	Completed/ Rejected for FEMA funds	
		CalOES		Covid Tests 4482DR; Project # 333901	Approved	Cheshire, Brian@CalOES <Brian.Cheshire@CalOES.ca.gov>	Ordered Fulgent Tests and Self Rapid Tests	Submit Invoices for reimbursement	

SCADA Upgrade

\$300,000 to \$400,000

Obsolete

Upgrade

<u>REGULATIONS</u>	<u>NEEDS</u>	<u>GRANTS/ FUNDING</u>	<u>CAPITAL</u>	<u>PROJECT</u>	<u>STATUS</u>	<u>CONTACTS</u>	<u>HISTORY</u>	<u>NEXT STEPS</u>	<u>DOCUMENTS</u>
	Billing Software				\$300,000 to \$500,000		Obsolete	Replace	
	GIS Mapping				\$100,000 to \$200,000		Doesn't exist	Build with Coastland's guidance	
	AMI meters				\$500,000 to \$1,000,000		Doesn't exist	Purchase and Integrate with new Billing system with Coastland's guidance	
	Training				I have asked managers to schedule these trainings.		Very little	Address training needs of all staff including 1 hour sexual harassment prevention training, IIPP training and job related safety training. Provide feedback to the Board regarding all staff meetings and any issues affecting the District with regard to staff morale.	
	Staff Meetings				Feedback has been delivered to the Board during my tenure.				
	Coaching Supervisors				Clear Need.			Coach supervisors on providing performance reviews for their staff and insure that these reviews are carried out. Develop a plan for updating and, where needed, providing standard operating procedures. Insure that staff training on	
	SOPs				I have asked many times for SOPs from staff.		None available		

<u>REGULATIONS</u>	<u>NEEDS</u>	<u>GRANTS/ FUNDING</u>	<u>CAPITAL</u>	<u>PROJECT</u>	<u>STATUS</u>	<u>CONTACTS</u>	<u>HISTORY</u>	<u>NEXT STEPS</u>	<u>DOCUMENTS</u>
	Probation				The existing MOU has six months probation. This needs to be changed to one year due to certifications.		Six Months	Insure that all employees have adequate certifications by the end of probation in order to ensure success on the job and	
	Open Office Policy				My office has always been open and available to staff and that has been clearly communicated.		Yes	Develop a clear "open office" policy which communicates to staff their ability to contact the General Manager.	
Water Conservation Reports					Monthly	DRINC Portal > Home (ca.gov)	Annual Reports are submitted through EIR portal for our two systems, CA4910004-	Hand off to Jack, who should be doing these	
Electronic Annual Reports					Annual Reports	DRINC Portal > Home (CA4910028- Monte	Hand off to Jack, who should be doing these	
Water Rights Diversion Reports						eWRIMS RMS (ca.gov)	A024929, S009054, S0C	Hand off to Jack, who should be doing these	
Consumer Confidence Reports					Annual Report		Jack compiles these and I review. They are then mailed out to all our customers.		

SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors

AGENDA NO. V-G

FROM: Ed Fortner, GM

Meeting Date: April 7, 2022

SUBJECT: DISCUSSION/ACTION District Security and Fires in Monte Rio

RECOMMENDED ACTION: Receive the report.

FISCAL IMPACT: N/A

DISCUSSION:

There have been numerous fires in the Monte Rio area over the past several months. Many have been in or near District property in the Terraces. I have discussed the issue with Jack, and he does not feel that cameras are a solution as they often get stolen. We were contacted by the community members asking us to purchase security cameras. I welcome Board input on the issue.

SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors

AGENDA NO. V-H

FROM: Ed Fortner, GM

Meeting Date: April 7, 2022

SUBJECT: DISCUSSION/ACTION CSDA Sonoma County Chapter

RECOMMENDED ACTION: Receive the report.

FISCAL IMPACT: N/A

DISCUSSION:

CSDA organized a meeting to establish a Sonoma County District branch of CSDA. Rich Holmer attended and will give a brief report.

SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors

AGENDA NO. VI

FROM: Ed Fortner, General Manager

Meeting Date: April 7, 2022

Subject: GENERAL MANAGER'S REPORT

RECOMMENDED ACTION: Receive report from the General Manager.

FISCAL IMPACT: None

DISCUSSION:

- 1. Laboratory Testing/ Regulatory Compliance:** Water quality tests confirm that all SSWD water meets all known State and Federal water quality standards.
- 2. Water Production and Sales:** Water sales in February were 11,236 units (25.8 AF Monte Rio cycle), and production was 40.9 AF. One year ago, sales were higher, and production was higher (29.5 AF and 46.9 AF, respectively). Figure 1 shows sales, production, and % difference for the combined systems; the water loss trend was down this month as a running twelve-month average (23.2%). Drought restrictions and potential curtailments may become mandatory in April. Looking at the data over the last ten years, water production has dropped approximately 29%, and sales have dropped 18%, although water sales and production are up during the COVID period. The water loss percentage was around 30% and now is in the 15-20% range.
- 3. Leaks:** We had three total leak repairs in February with nine hours on them. All three leaks were in Guerneville. All leaks were in older lines. That is fewer leaks and person-hours than the prior month and fewer leaks and person-hours than February one year ago (5 and 39). Figure 2 shows service and main leaks separately with a total leak line. For Calendar Year 2021, total leaks were 85, down from 99 in 2020. We have experienced two consecutive drought years followed by ~26" of rain since October of 2021, and many of the repairs were due to ground shifting. Also, 47 leaks were on mains, and 38 were on service lines. In 2020, 51 leaks were on mains, and 48 were on service lines. Looking at the leaks chart over the last ten years, we have come down from around 300 leaks per year

to under 100 - quite a difference and very noticeable in what the field crews are able to do - address ongoing issues with in-house projects instead of chasing leaks every day.

- 4. Guerneville Rainfall:** February rainfall was 1.01", lower than the long-term average month, and the yearly total (26.97") above the long-term annual average. We hope for more rain to recover from the two-year drought. The rain year 2021 was the lowest recorded precipitation for the District, below the 17.7" from 1977. Governor Newsom declared a drought emergency for Sonoma and Mendocino Counties, and Sonoma County has issued a drought emergency also. SSWD was not given a curtailment order in 2021. After the atmospheric river, we experienced in October of 2021, the curtailment orders were temporarily removed for the entire Russian River. The Water Boards announced that curtailments would not occur until May 1, 2022.
- 5. In-House Construction Projects:** There was no in-house construction project in February.
- 6. Drought Grant:** On November 5, I signed a Grant Commitment Letter with the Drinking Water Resources for \$735,000 to design the Monte Rio Bridge Water Main Attachment Project, the Monte Rio Well Rehab and Electric Upgrade Project, and the Lower Harrison Tank Replacement Project. The Grant Agreement is pending, but we are authorized to expend funds now. We awarded Pump Man for the Well Project and informed Coastland of the design funding for the Bridge Project. We will wait until the Grant agreement to work on the Lower Harrison Tank Project. We are working with our DWR contact to keep the grant process moving. We now have a final executed grant agreement in place. After receiving the executed grant agreement, I signed the task order with Coastland to begin the design work on the Lower Harrison Tank replacement project.
- 7. Gantt Chart:** The Gantt Chart is updated for April 2022.
- 8. Economic Impact of no Disconnects for Non-payment:** The total uncollected amount in this Monte Rio billing cycle due to non-payment with the non-Disconnect Executive Order is **\$7,160.33**. This amount is tracking up from the last billing period. We will continue to follow this amount. The District can now disconnect service for uncollected billing under our water disconnect policy. Notices have been sent out, and the disconnect policy will restart in the April Guerneville cycle.

**Figure 1. Water Production and Sales 12 Month Moving Averages
 Sweetwater Springs Water District Since September 2008**

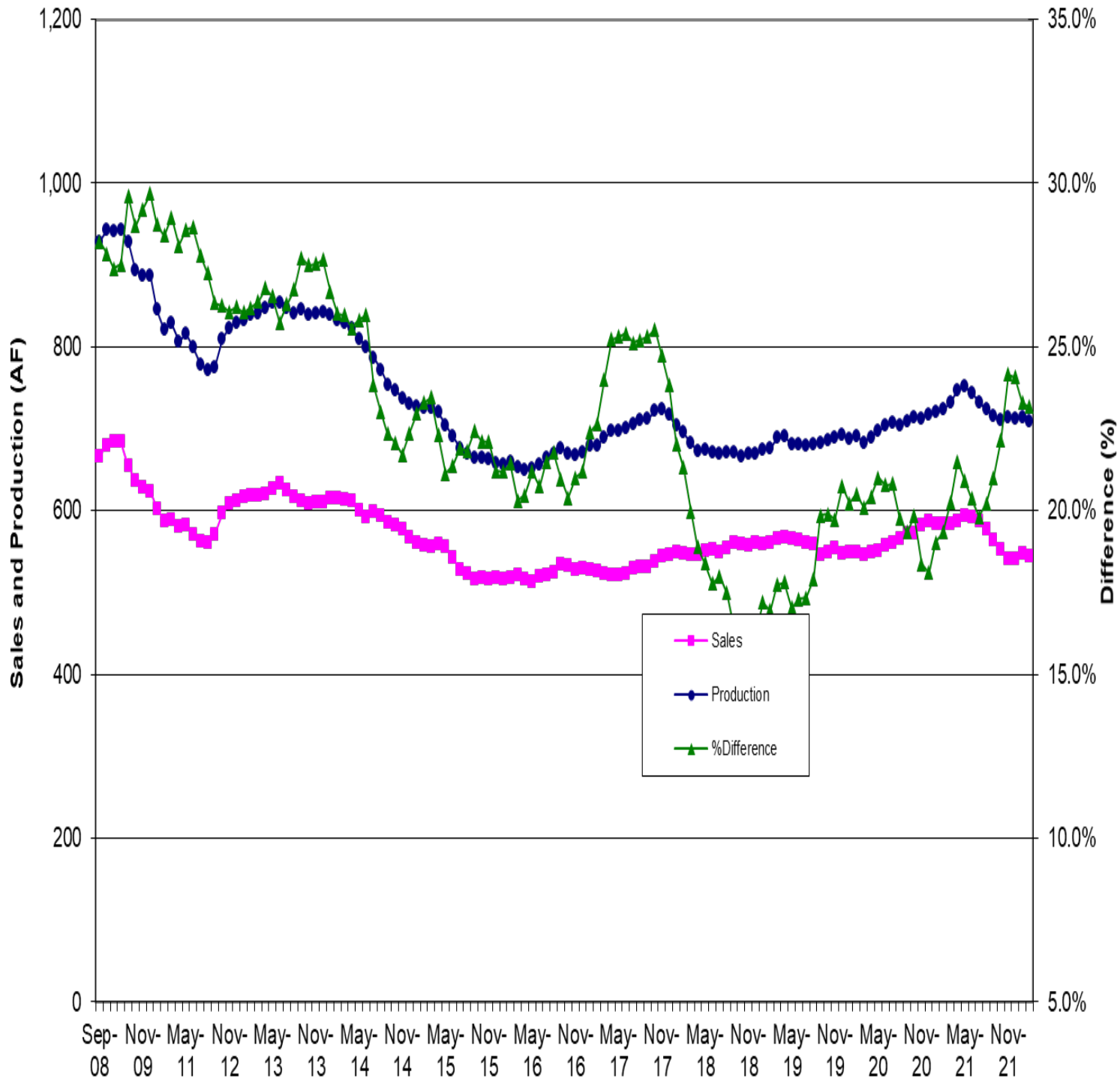


Figure 2. Sweetwater Springs Water District Main and Service Pipeline Breaks Moving Annual Average Since September 2008

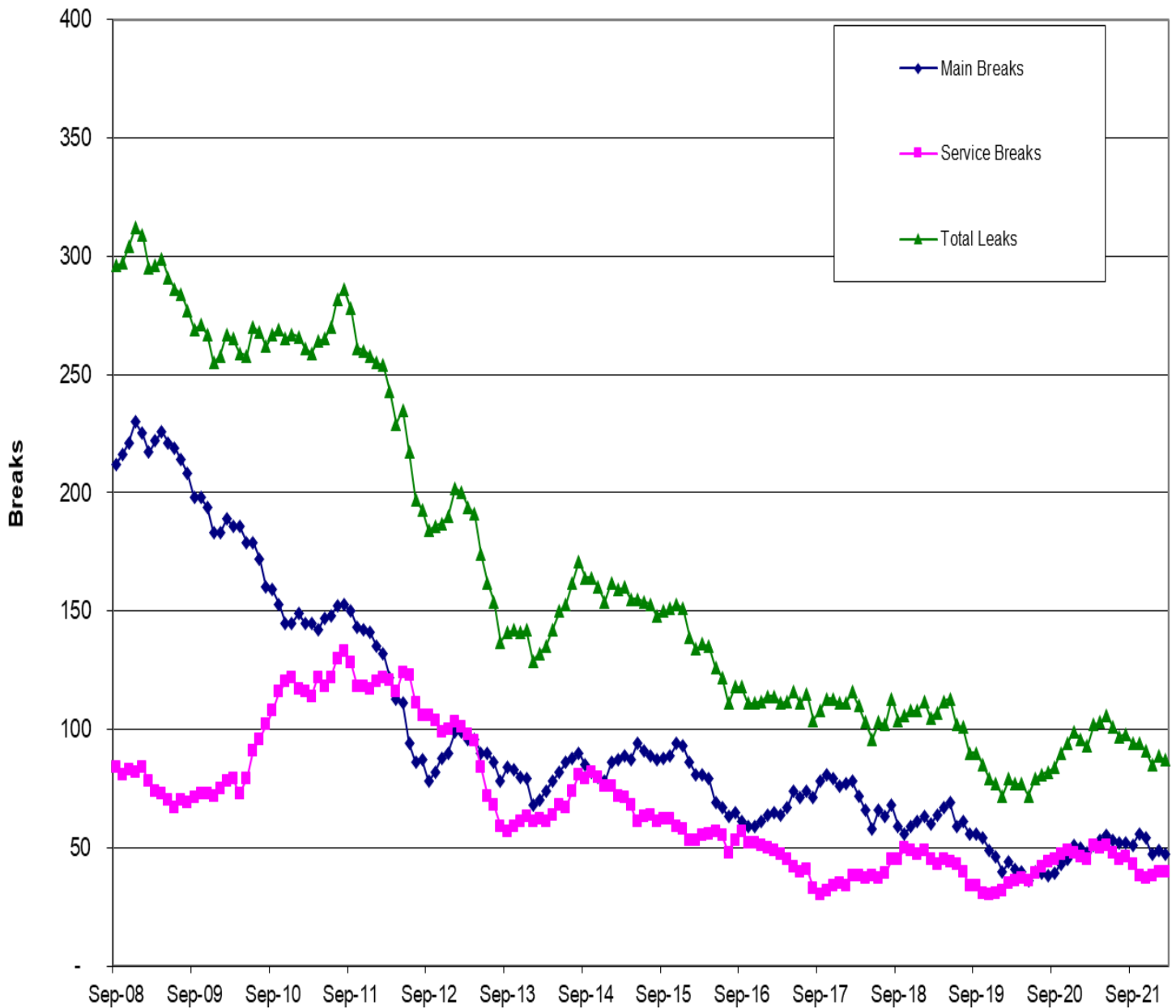
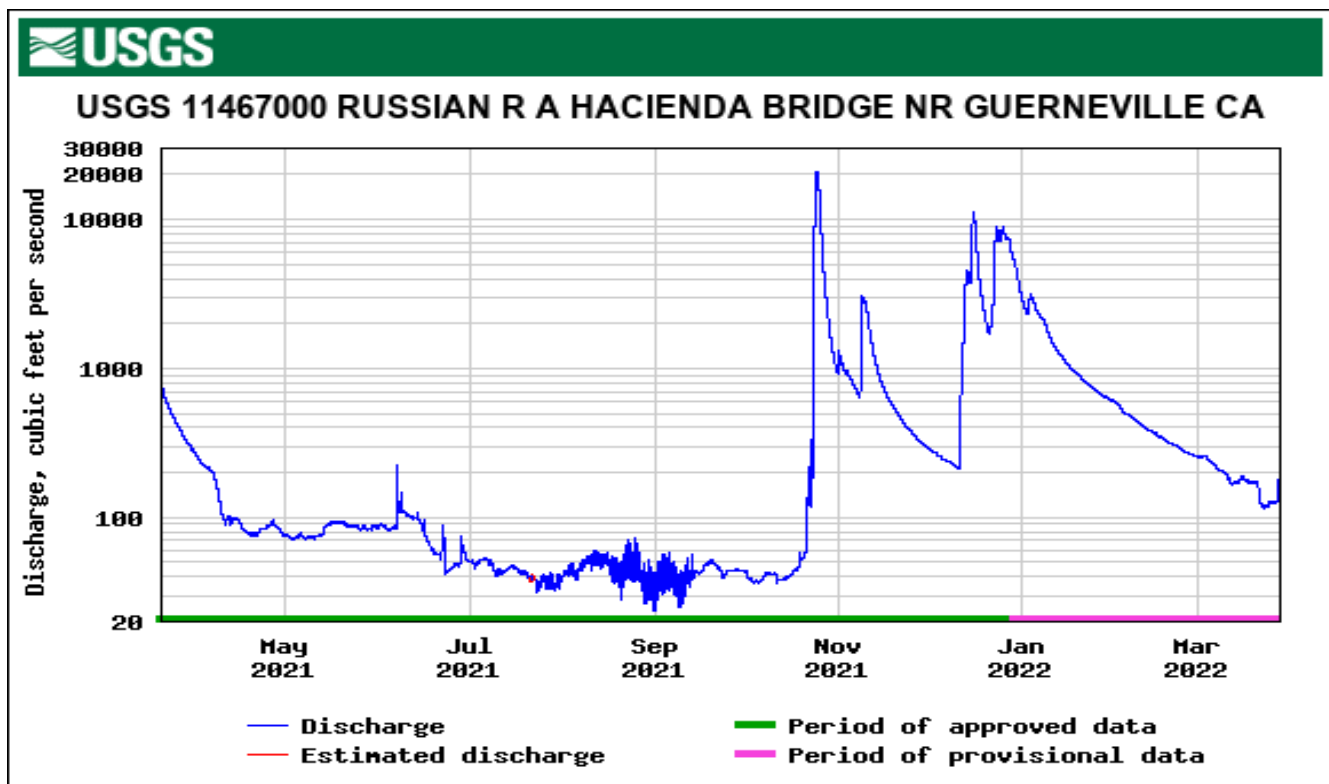
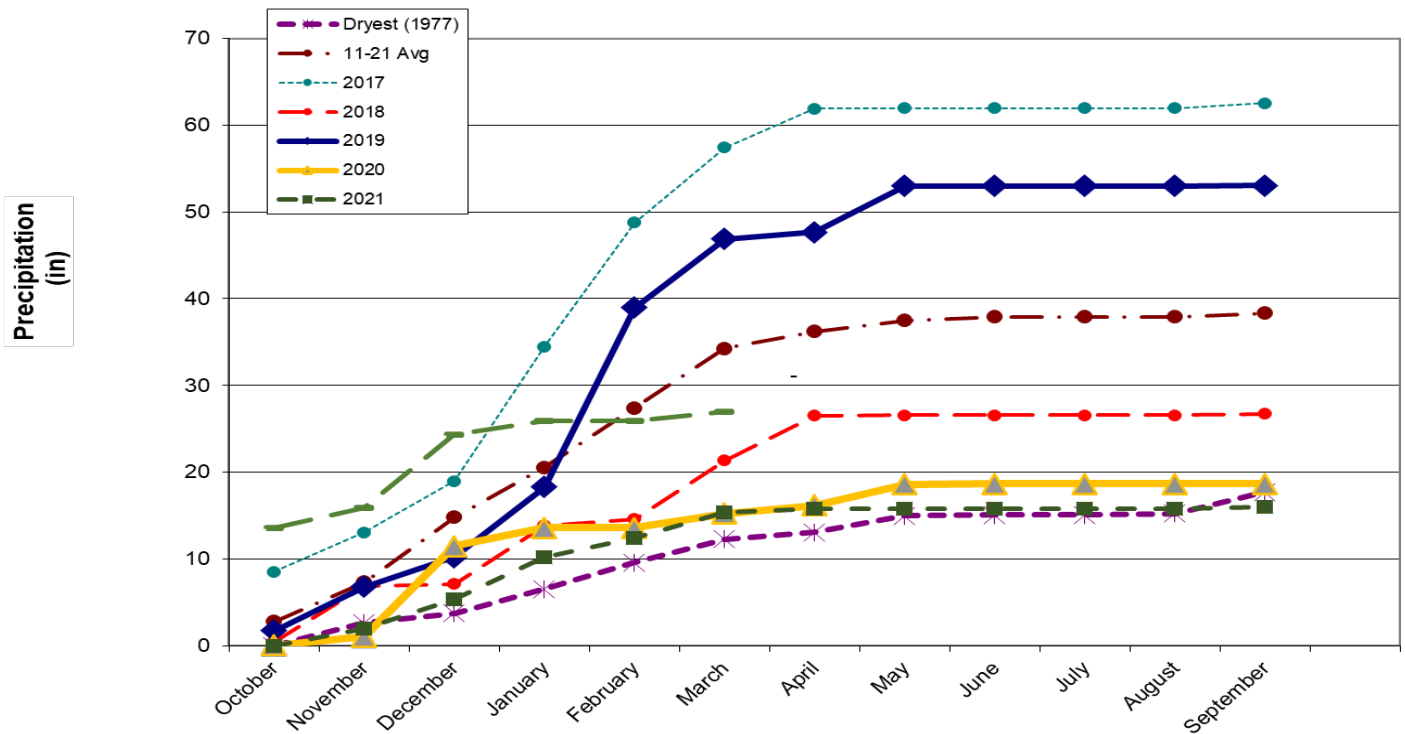


Figure 3. Guerneville Cumulative Monthly Rainfall



Tracking the Economic Impact of Suspending Water Disconnects for Non-payment					
EVEN CYCLE (Guerneville)			ODD CYCLE (Monte Rio)		
Billing Date	# of Customers whose prior bill was still unpaid when next bill mailed	\$ Value of Past Due Amounts** (including unpaid customer deposits)	Billing Date	# of Customers whose prior bill was still unpaid when next bill mailed	\$ Value of Past Due Amounts** (including unpaid customer deposits)
2/15/2020 (Historical disconnect procedure)	0	\$0	3/15/2020 (SB 998 extends time before disconnect)	10	\$1,565
4/15/2020 (Exec. Order N-42-20: Disconnects completely suspended)	24	\$4,096	5/15/2020	5	\$594.02
6/15/2020	9	\$2,947.56	7/15/2020	8	\$1,261.02
8/15/2020	7	\$2,464.32	9/15/2020 (Suspended delinquency process due to wildfire.)	57	\$7,646.52
10/15/2020	16	\$5,094.43	11/15/2020	18	\$4,406.13
12/15/2020	23	\$7,260.48	1/15/2021	20	\$3,766.59
2/15/2021	35	\$11,140.50* (\$3,555 of this total is one customer)	3/15/2021	18	\$6,203.05
4/15/2021	28	\$11,762.54	5/15/2021	16	4040.58
6/15/2021	19	\$8,670.96	7/15/2021	7	\$3,542.24
8/15/2021	14	\$6,835.88	9/15/2021	9	3,513.03
10/15/2021	24	10,889.52	11/15/2021	20	7,532.19
12/15/2021	13	9,210.45	1/15/2022	14	6,359.86
2/15/2022	22	12,239.42	3/15/2022	14	7160.33

As of 03/15, 10 customers are in COVID-19 Agreements. These customers are not included in the numbers above if their COVID Agreements are in good standing.

