

REVISED

**OTAY WATER DISTRICT
FINANCE, ADMINISTRATION AND COMMUNICATIONS
COMMITTEE MEETING
and
SPECIAL MEETING OF THE BOARD OF DIRECTORS**

**2554 SWEETWATER SPRINGS BOULEVARD
SPRING VALLEY, CALIFORNIA
BOARDROOM**

**FRIDAY
January 23, 2009
4:00 P.M.**

This is a District Committee meeting. This meeting is being posted as a special meeting in order to comply with the Brown Act (Government Code Section §54954.2) in the event that a quorum of the Board is present. Items will be deliberated, however, no formal board actions will be taken at this meeting. The committee makes recommendations to the full board for its consideration and formal action.

AGENDA

1. ROLL CALL
2. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

DISCUSSION ITEMS

3. APPROVE PURCHASE ORDERS FOR THE PURCHASE OF VARIOUS FLEET VEHICLES FROM TOYOTA CARLSBAD, IN THE AMOUNT OF \$90,907.88, AND FROM EL CAJON FORD, IN THE AMOUNT OF \$72,914.84; ADDITIONALLY, THE GENERAL MANAGER WILL ISSUE PURCHASE ORDERS UNDER HIS SIGNATORY AUTHORITY TO KEARNY MESA CHEVROLET IN THE AMOUNT OF \$12,052.50 AND TO PEARSON FORD IN THE AMOUNT OF \$19,387.59 (KUBE/DOBRAWA) [5 minutes]
4. REQUEST THE BOARD'S DIRECTION ON THE ONGOING FUNDING OF THE ANNUAL REQUIRED CONTRIBUTION (ARC) TO CALPERS AND THE MEDICAL REIMBURSEMENT REQUESTS FROM CALPERS (BEACHEM) [10 minutes]

5. APPROVE THE MEMORANDUM OF UNDERSTANDING (“ENVIRONMENTAL MOU”) SETTING FORTH CERTAIN TERMS AND UNDERSTANDINGS OF THE PARTIES (OTAY, SYCUAN BAND OF KUMEYAAAY NATION, AND CONSULTANTS) RELATING TO THE PREPARATION OF THE CEQA DOCUMENTS REQUIRED IN CONNECTION WITH THE PROPOSED ANNEXATION; AUTHORIZE THE GENERAL MANAGER TO EXECUTE AND DELIVER THE ENVIRONMENTAL MOU; AUTHORIZE THE GENERAL MANAGER AND THE GENERAL COUNSEL TO NEGOTIATE TERMS OF A MEMORANDUM OF UNDERSTANDING SETTING FORTH CERTAIN TERMS, CONDITIONS, GOALS AND UNDERSTANDINGS OF THE PARTIES IN CONNECTION WITH THE ANNEXATION PROCESS AND ACTIONS/RESPONSIBILITIES OF EACH PARTY INVOLVED (THE ANNEXATION MOU”) (CALDERON/BANUELOS) [10 minutes]
6. APPROVE A CHANGE IN THE HIRING AUTHORITY FOR THE VACANT ASSISTANT DISTRICT SECRETARY POSITION (WILLIAMSON) [5 minutes]
7. REVIEW OF THE WINTER 2009 CUSTOMER PIPELINE NEWSLETTER (BUELNA) [5 minutes]

RECESS TO CLOSED SESSION

8. CLOSED SESSION
 - a) CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION [GOVERNMENT CODE §54956.9(b)]

1 CASE

RETURN TO OPEN SESSION

9. ADJOURNMENT

BOARD MEMBERS ATTENDING:

Jaime Bonilla, Chair
Jose Lopez

All items appearing on this agenda, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

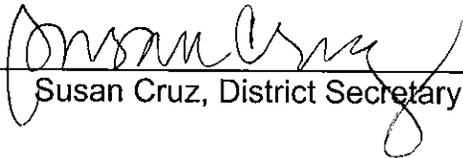
The Agenda, and any attachments containing written information, are available at the District's website at www.otaywater.gov. Written changes to any items to be considered at the open meeting, or to any attachments, will be posted on the District's website. Copies of the Agenda and all attachments are also available through the District Secretary by contacting her at (619) 670-2280.

If you have any disability which would require accommodation in order to enable you to participate in this meeting, please call the District Secretary at 670-2280 at least 24 hours prior to the meeting.

Certification of Posting

I certify that on January 20, 2009 I posted a copy of the foregoing agenda near the regular meeting place of the Board of Directors of Otay Water District, said time being at least 24 hours in advance of the meeting of the Board of Directors (Government Code Section §54954.2).

Executed at Spring Valley, California on January 20, 2009.



Susan Cruz, District Secretary



AGENDA ITEM 3

STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 4, 2009
SUBMITTED BY:	Scott Kube, <i>[Signature]</i> Interim Construction Maintenance Manager Stephen Dobrawa, Purchasing Manager	W.O./G.F. NO:	DIV. NO. All
APPROVED BY: (Chief)	Pedro Porras, Chief, Operations <i>[Signature]</i>		
APPROVED BY: (Asst. GM):	Manny Magaña, <i>[Signature]</i> Assistant General Manager, Engineering and Operations		
SUBJECT:	PURCHASE OF FY-09 VEHICLES		

GENERAL MANAGER'S RECOMMENDATION:

That the Board authorizes the General Manager to issue purchase orders to:

1. Toyota Carlsbad, 5424 Paseo Del Norte, Carlsbad CA 92018 in the amount of \$90,907.88 for the purchase of four (4) Tacoma pickup trucks and one (1) Toyota Matrix vehicle.
2. El Cajon Ford, 1595 East Main Street, El Cajon, CA 92021 in the amount of \$72,914.84 for the purchase of two (2) F-250 and one (1) F150 pickup trucks, and one (1) Escape SUV.

Additionally, the General Manager, under his signatory authority, will issue purchase orders to:

1. Kearny Mesa Chevrolet in the amount of \$12,052.50 for the purchase of one (1) Aveo passenger vehicle.
2. Pearson Ford in the amount of \$19,387.59 for the purchase of one (1) Ranger 4-WD pickup truck.

Taxes and all applicable fees are included in the above prices.

COMMITTEE ACTION: _____

See Attachment "A"

PURPOSE :

To provide bid results and obtain authorization to purchase vehicles for FY-09.

ANALYSIS :

In accordance with District policy, bids were solicited for FY-09 vehicles. Bids received are as follows:

<u>Bidding Dealer</u>	<u>Toyota Vehicles</u>					
	<u>Yaris Lift Back</u>	<u>Tacoma 2WD</u>		<u>Rav 4</u>		<u>Matrix</u>
Toyota Carlsbad	\$14,750.98	\$17,864.95		\$22,821.45		\$19,448.08
Kearny Mesa Toyota	\$15,724.52	\$22,886.86		\$23,879.55		\$20,441.72

<u>Bidding Dealer</u>	<u>Chevrolet Vehicles</u>					
	<u>Aveo</u>	<u>Colorado 2WD</u>	<u>Colorado 4WD</u>		<u>Silverado 1500</u>	<u>Silverado 2500</u>
Kearny Mesa Chevrolet	\$12,052.50	\$19,071.75	\$22,558.27		\$31,247.50	\$24,243.75
Bob Stall Chevrolet	\$14,088.31	\$17,382.23	\$20,869.02		\$21,733.12	\$21,289.24
City Chevrolet	\$12,273.51	\$18,012.54	\$21,050.85		\$22,169.72	\$18,513.42

<u>Bidding Dealer</u>	<u>Ford Vehicles</u>					
		<u>Ranger 2WD</u>	<u>Ranger 4WD</u>	<u>Escape XLS</u>	<u>F150</u>	<u>F250</u>
Carmenita Truck Center		\$17,523.40	\$19,894.44	\$17,654.00	\$19,246.87	\$19,374.54
El Cajon Ford		\$17,091.73	\$19,550.60	\$17,525.65	\$18,849.13	\$18,270.03
Heller Ford		\$17,700.52	\$21,136.67	\$19,130.04	\$20,679.81	\$20,949.78
Pearson Ford		\$16,707.85	\$19,387.59	\$22,167.54	\$19,051.41	\$19,205.49
Fairway Ford		\$18,062.26	\$20,836.83	\$17,809.05	\$20,182.14	\$20,219.90
Villa Ford		\$17,241.49	\$19,605.52	\$17,580.58	\$18,904.07	\$18,928.37
Raceway Ford		\$15,523.54	\$19,849.71	\$17,825.08	\$19,148.25	\$18,687.08
Perry Ford		\$17,288.48	\$19,652.52	\$17,609.58	\$18,951.07	\$18,974.77

Yellow shading indicates selected bid.

The selection of the Toyota Tacoma 4door X-cab 2-WD (\$17,864.95) versus the Ford Ranger 4door X-cab 2-WD (\$15,523.54) was based on the following analyses:

1. The MPG for the Ranger is 15-city and 20-highway, whereas the Tacoma is 20-city and 25-highway
 - a. Based on our Vehicle Replacement Policy of 5-year or 60,000-miles, the fuel cost savings exceeds the initial purchase costs for the Tacoma.
2. Historically the Tacoma has a higher resale value at the end of service. The District may receive a benefit for from this.

The District is monitoring and implementing the 5-year or 60,000 mile replacement program designed to reduce fleet operating costs. Specifically, it is expected that this program will reduce the District's fuel and maintenance costs. Preliminary review for the vehicles purchased last year, when compared to prior vehicle selections, indicates a reduction of 26 percent of fuel used. Once the program matures, the District will evaluate and report on the program's impact in regards to the reduction of vehicle downtime and repairs.

FISCAL IMPACT: 

The total line item budget for vehicles identified in the FY-09 Capital Budget is \$228,000.00. The purchase price of the vehicles is \$195,262.81. If approved, the cost of proposed purchases will be \$19,737.19 less than budgeted.

The FY-09 Capital Purchase Budget is \$293,000. Expenditures to date are \$0.00. Budget balance to date is \$293,000. If authorized, the proposed expenditure of \$195,262.81 will leave a budget balance of \$97,737.19.

STRATEGIC GOAL:

Operate the system to meet demand 24/7.
Meet all of the health-related water standards.

LEGAL IMPACT: _____

None.



General Manager



ATTACHMENT A

SUBJECT/PROJECT:	PURCHASE OF FY-09 VEHICLES
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COMMITTEE ACTION:

The Finance, Administrative and Communications Committee met on January 20, 2009 and supported staffs' recommendation.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for board approval. This report will be sent to the Board as a committee approved item, or modified to reflect any discussion or changes as directed from the committee prior to presentation to the full board.



AGENDA ITEM 4

STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 4, 2009
SUBMITTED BY:	Joseph R. Beachem <i>RJB</i> Chief Financial Officer	W.O./G.F. NO:	DIV. NO. All
APPROVED BY:			
(Chief)			
APPROVED BY:	German Alvarez, Assistant General Manager <i>GA</i>		
(Asst. GM):			
SUBJECT:	Future OPEB (Other Post Employment Benefits) Funding to the CalPERS Trust		

GENERAL MANAGER'S RECOMMENDATION:

That the Board provides direction on the ongoing funding of the Annual Required Contribution (ARC) to CalPERS and the medical reimbursement requests from CalPERS.

COMMITTEE ACTION: _____

See Attachment A.

PURPOSE:

To obtain direction from the Board on the ongoing funding of the Annual Required Contribution (ARC) to CalPERS and medical expense reimbursement requests from CalPERS.

ANALYSIS:

On February 3, 2008, the Board authorized the creation of a CalPERS trust to hold OPEB funds. This trust was set up in conformance with the Governmental Accounting Standards Board (GASB) requirements as outlined in GASB 45.

At the February meeting, the Board authorized a \$5 million dollar initial deposit and ongoing payments of the ARC to the CalPERS trust. At this time, authorization was given to the General Manager and Chief Financial Officer to make withdrawals from the CalPERS trust to reimburse the District for any retiree medical costs made in the future. However, no specific direction was given on how to proceed with the reimbursements. Staff is looking to confirm the prior direction of the Board on the annual ARC payments and on how to proceed with reimbursements from CalPERS.

In Fiscal Year 2007-08 staff established the trust, as directed, and deposited directly to the CalPERS trust the \$5 million initial deposit. In addition, staff made the ARC payment of \$846,000, as directed. Aside from these direct payments, the District has effectively made a deposit to the CalPERS trust by way of funding the retiree medical benefits without making a claim on the CalPERS trust. The District is entitled to make reimbursement requests and has until June 30, 2009 to make the reimbursement request for the Fiscal Year 2007-08 medical costs totaling \$649,007.

All retiree medical expenses are to be paid upfront by the District and then the District may request reimbursement. This is the normal process as outlined by CalPERS. The District uses its internal designated OPEB fund to pay the retiree medical costs, and when and if reimbursements are requested from CalPERS, the funds would be deposited back into the District's OPEB fund. As of September 30, 2008 this fund had a balance of \$5,023,025. The financial impact of the reimbursement is described in the Fiscal Impact section below.

It is worth noting that the overall funding of the OPEB liability totals \$10.3 million as of September 30, 2008. The total liability, as determined in the last actuarial evaluation, was \$11.4 million resulting in a 90% funding level. This funding level is exceptional and rarely seen in other government entities. One important note regarding the balance of funds is that the latest CalPERS balance only takes into account a portion of the stock market crash. Approximately half of the CalPERS funds are invested in equities, which were affected significantly by the crash.

This fund is a very long-term fund focused on payments going far into the future. With this long-term perspective, the District looks at a 30-year funding strategy, spreading out the short term effects of significant market changes.

FISCAL IMPACT:

LAB

The decision of whether or not to fund the full ARC and whether or not to request full reimbursement of retiree medical costs from CalPERS have various financial ramifications.

One of the financial impacts is best summarized in the context of a discussion on risk versus return. The Otay funds are invested in very low risk investments with a secure market rate

of return. CalPERS is invested with moderately higher risk than Otay. Commensurate with this added risk is added return. The higher return from the CalPERS investments means that the total money needed to be considered fully funded is lower than if the District had only maintained its own investment portfolio. This was one of the significant benefits of investing in a PERS trust. The lower liability freed up funds, previously designated to fund the OPEB liability, to be used for additional negotiated employee benefits.

If the District continues to make the full ARC payment then the District will continue to use the higher CalPERS rate of return. Without fully funding the ARC payment the actuary will no longer be able to use the CalPERS rate of return. This would result in a greater unfunded balance and a corresponding higher ARC.

The second financial impact is on cash reserves. If the District uses its own designated OPEB funds to pay for retiree health care without requesting reimbursement from CalPERS, then the District's OPEB funds will be depleted in 2013. If the District does make the requests for reimbursement, the District will be able to maintain a higher fund balance over a longer period of time, maintaining the District's reserves into 2016. Requesting reimbursement has the benefit of maintaining a larger amount of funding in control of the District for a longer period of time. Extending the time that the District maintains its own OPEB funds also delays the upward pressure on rates that will occur when the ARC is fully funded from rates as opposed to the OPEB funds.

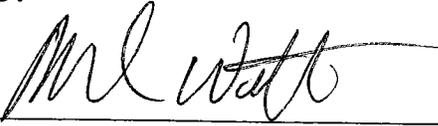
The third financial impact relates to the District's credit rating. A discussion is warranted on this matter, as funding less than the ARC is an option available to the Board. The fact that the District has deposited approximately half of the OPEB liability into a trust is a significant plus for the District's credit rating. However, even more important is that the District has a funding plan that at least pays the ARC. Showing the financial foresight and where-with-all to make the ARC payments on an annual basis is one of many important factors in evaluating the District's credit worthiness. It was the Board's direction to make the ARC payments on an annual basis and staff is looking to reaffirm that position.

STRATEGIC GOAL:

Ensure financial health through formalized policies, prudent investing, and efficient operations.

LEGAL IMPACT: _____

None.

A handwritten signature in cursive script, appearing to read "M. L. Watt", written over a horizontal line.

General Manager

Attachments:

- A) Committee Action Form
- B) OPEB Presentation



ATTACHMENT A

SUBJECT/PROJECT:	Future OPEB (Other Post Employment Benefits) Funding to the CalPERS Trust
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COMMITTEE ACTION:

The Finance, Administration, and Communications Committee recommend that the Board provides direction on the ongoing funding of the Annual Required Contribution (ARC) to CalPERS and the medical reimbursement requests from CalPERS.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for board approval. This report will be sent to the Board as a committee approved item, or modified to reflect any discussion or changes as directed from the committee prior to presentation to the full board.



PERS OPEB FUNDING

Discussion Points

- Update on the OPEB Funds
 - Prior Board Direction
 - OPEB Fund Balances
 - OPEB Liability
 - Direct Transfers
 - Indirect Transfers
- Future Funding Direction

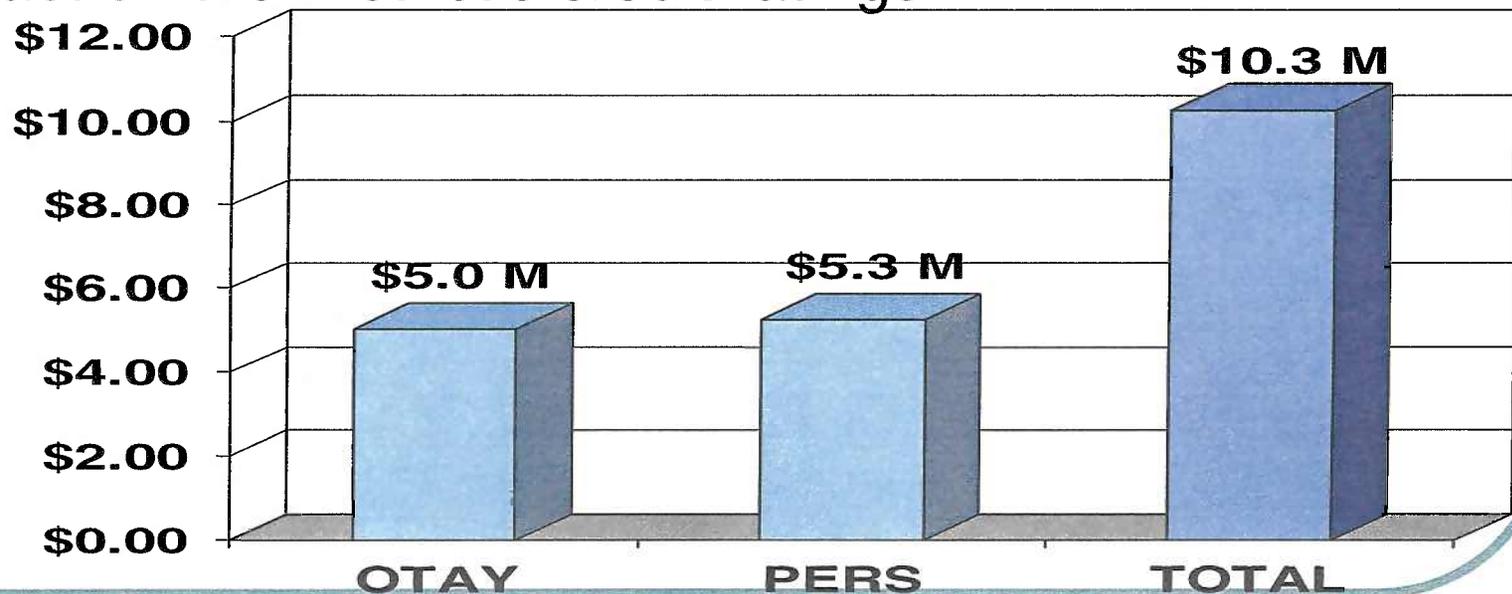
Prior Board Direction

- Establish a PERS trust
- Fund \$5 million
- Fund the ARC on an ongoing basis
 - The ARC (annual required contribution) is the annual amount needed to fully fund the trust over a 30-year period.

OPEB Funds

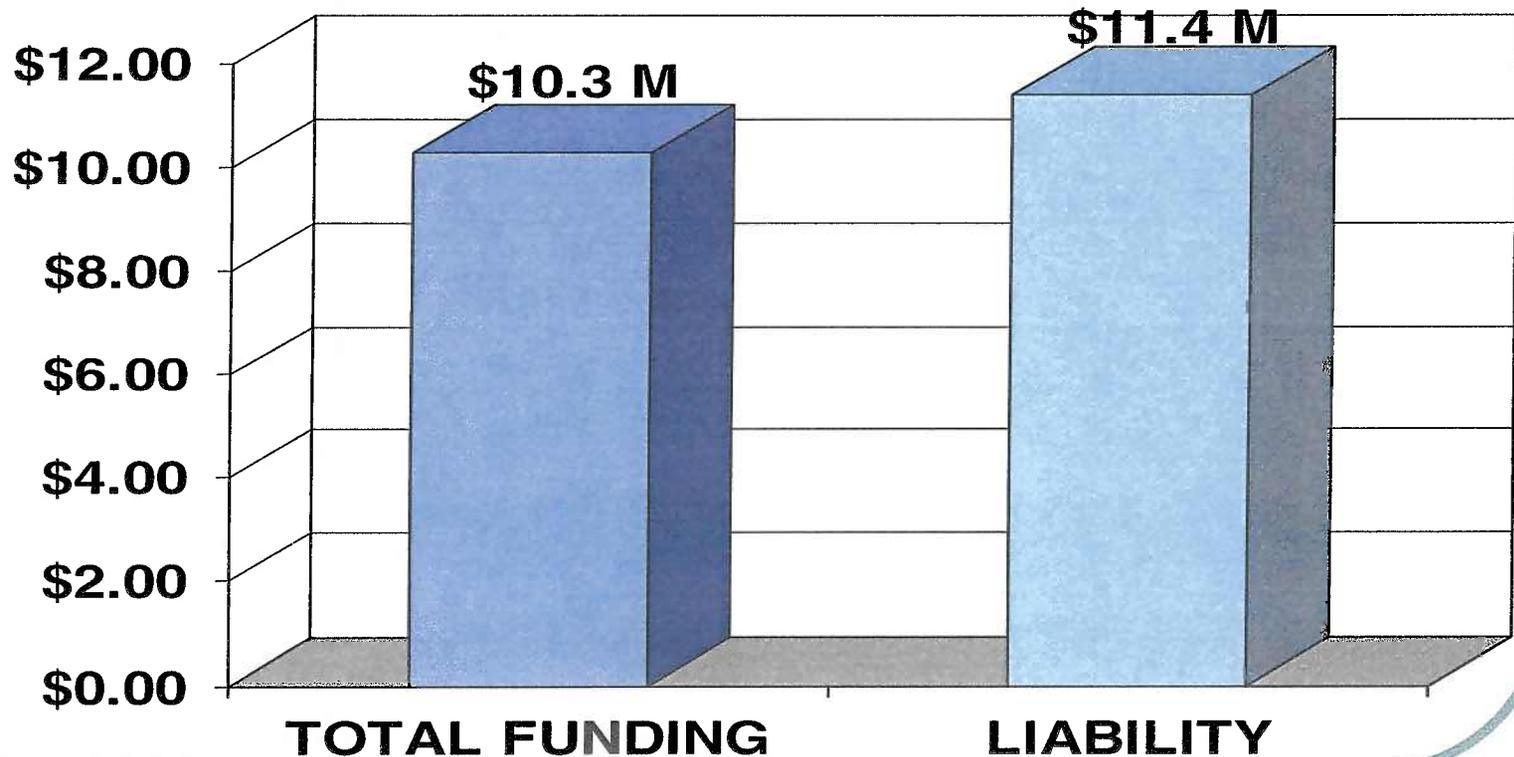
As of September 30, 2008

- Otay's Designated Fund - \$5,023,025
- PERS trust- \$5,263,051
- That the District has had the foresight to set aside these funds is exceptional and has had a positive impact on the District's credit ratings.



OPEB Liability

- Total OPEB Funds - \$10,286,076 (9-30-08)
- OPEB Liability - \$11,408,000 (7-1-07)



Direct Transfers

- Initial PERS funding - \$5.0 million
- Annual PERS funding – Annual Required Contribution (ARC)
 - 2008 “Normal costs” – \$135,000
 - 2008 “Amortization of unfunded liability” - \$711,000
 - Increasing at approximately 3% from 2008 to 2009

Indirect Transfers

Annual payments made by the District for retiree benefits can be reimbursed to the District from the assets in the PERS trust.

The District has paid retiree benefits from its own OPEB Fund in the amount of:

\$649,007 – 2008 Fiscal Year

\$138,367 – 2009 Fiscal Year to date through Sept. 30th

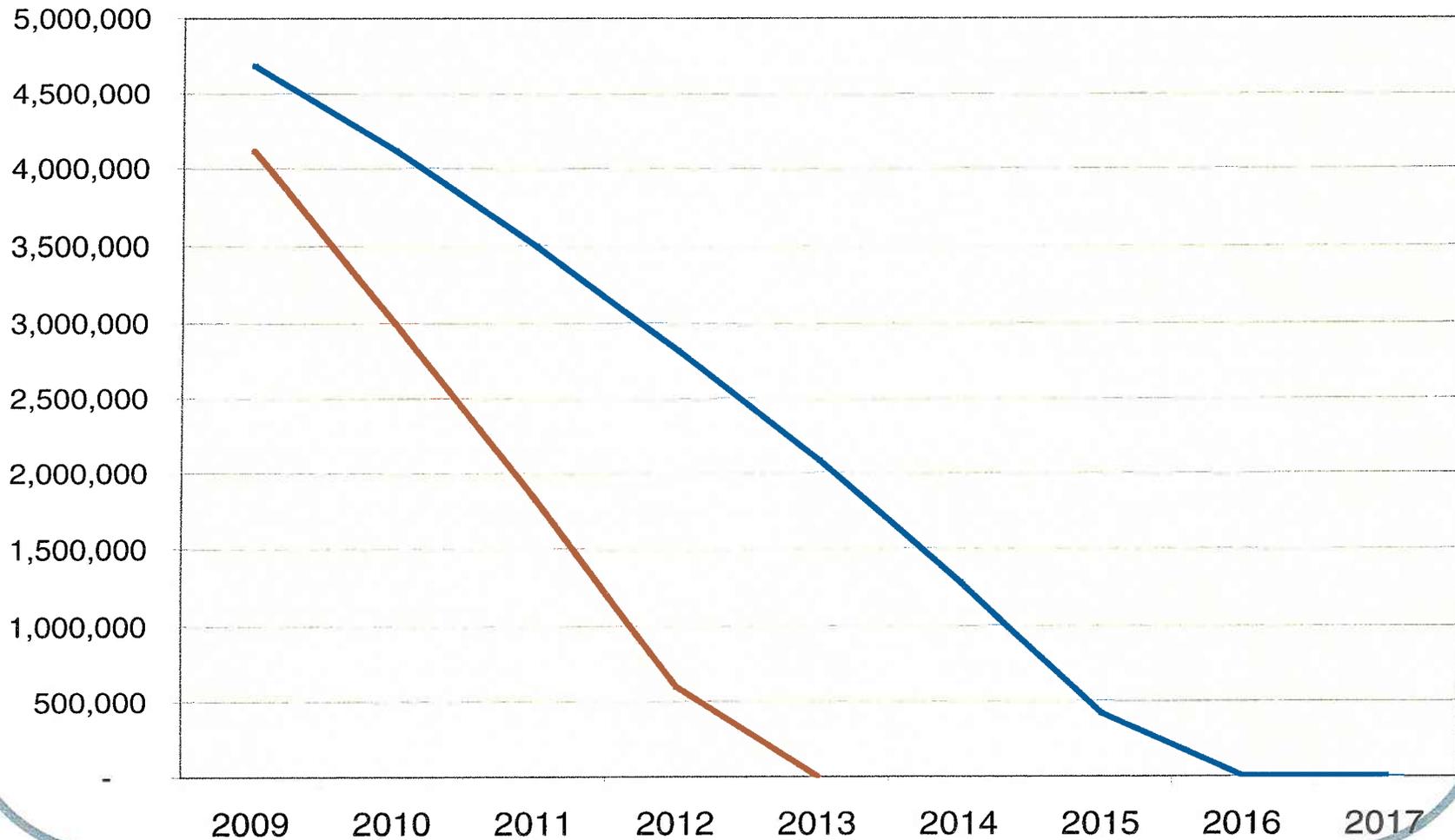
If these are not reimbursed, it is considered an additional contribution to the PERS trust even though the trust would not receive the funding.

Future Funding

- **Medical Reimbursements**

- With annual requests for reimbursement of medical costs from the PERS trust the District's OPEB fund has sufficient money to make the ARC payments into the 2016 fiscal year, approximately 7 years.
- Without annual reimbursements the District's OPEB fund only has approximately 4 years of funds.
- Requesting reimbursements will maintain a higher Otay reserve balance for a longer period of time, delaying the upward pressure on rates.

Otay Fund Balance Scenarios



— Balance With Reimbursement — Balance W/O Reimbursement

Future Funding

- Continuing to fund the ARC has two positive impacts:
 - The credit rating is impacted by the District's continued payment of the ARC. This is viewed as a significant positive as it shows the credit markets that the District has a plan to fund the OPEB liability and that it has the financial where-with-all and discipline to follow through with this plan.
 - With continued ARC payments the actuaries will use the higher CalPERS rate of return to determine a lower District OPEB liability. This in turn lowers the District's ARC payment.

Request for Direction

- Board's direction for staff on the annual request for reimbursement from the PERS trust for the medical costs of retirees
- Board's direction to continue with the full funding of the Annual Required Contribution as previously directed

AGENDA ITEM 5



TYPE MEETING:	Regular Board Open Session	MEETING DATE:	February 4, 2009
SUBMITTED BY:	Yuri Calderon, ^{AS} General Counsel	W.O./G.F. NO:	DIV. NO.
APPROVED BY:	Mark Watton, General Manager <i>[Signature]</i>		
SUBJECT:	Memorandums of Understanding with the Sycuan Band of the Kumeyaay Nation, and its consultants, in connection with the proposed Annexation		

ATTORNEY'S RECOMMENDATION:

Approve the Memorandum of Understanding ("Environmental MOU") presented to the Board of Directors (Board) setting forth certain terms and understandings of the parties (Otay, Sycuan Band of Kumeyaay Nation, and consultants) relating to the preparation of the CEQA Documents required in connection with the proposed Annexation (defined below); Authorize the General Manager to execute and deliver the Environmental MOU; Authorize the General Manager and the General Counsel to negotiate terms of a Memorandum of Understanding setting forth certain terms, conditions, goals and understandings of the parties in connection with the annexation process and actions (the "Annexation MOU").

PURPOSE:

The purpose of the Environmental MOU is to set forth the current understanding and agreement of the parties concerning the role and obligation of each entity directly involved in the preparation and/or approval of the CEQA Documents. The purpose of negotiating terms, conditions and goals for the Annexation MOU is to clarify the role of the parties involved in the Annexation process and to establish guidelines and procedures for the parties to cooperate and work with each other during the process.

BACKGROUND:

On or about April of 2008, the Sycuan Band of the Kumeyaay Nation (Sycuan) submitted a written request and petition for annexation (Petition) to the Otay Water District (Otay). Through the Petition, Sycuan requests Otay to commence annexation proceedings for the Original Sycuan Reservation to have access to water and sewer service, and certain other parcels owned by Sycuan (the Group B Parcels) to have access to sewer services only. Water service is made available by Otay near the geographical area of the parcels through Improvement District No. 20. Sewer service is made available through Improvement District No. 18.

The Original Sycuan Reservation encompasses an area covering approximately 634 acres of developed and undeveloped land and has no entitlement to water or sewer service from any other local agency.

Sycuan currently uses well water to supply all its water needs and wishes to annex to Otay to provide an alternative source of water to reduce its dependency on well water and to possibly stave off the depletion of several wells in the area. If the concurrent annexation of the Original Sycuan Reservation is accomplished, Sycuan will install, at its cost, all required facilities to connect to the Otay water system through a master meter.

The annexation of the Original Sycuan Reservation, which is outside Otay's sphere of influence, will have to be processed and approved through the Local Agency Formation Commission (LAFCO), the San Diego County Water Authority (CWA), and Metropolitan Water District (MWD), all these processes and approvals are collectively referred to as the "Annexation". Dexter Wilson Engineering, Inc. (Dexter Wilson) is working with Sycuan to prepare all documentation required for the Annexation.

The Environmental MOU

The Annexation requires compliance with the California Environmental Quality Act (CEQA), and, in connection with the preparation of the required documentation, Sycuan has retained the services of Dudek, as the environmental consultant (Dudek). The parties agree that Dudek will be primarily responsible for researching all environmental issues, drafting the environmental documents and reports (collectively, "CEQA Documents"), and working with Otay to ensure compliance with CEQA laws, regulations and processes.

Otay, Sycuan, Dexter Wilson and Dudek will execute and deliver the Environmental MOU to clarify each entity's anticipated contribution and involvement to ensure compliance with CEQA and the preparation of adequate CEQA Documents. A few salient points of the MOU are:

- Sycuan and its consultants will be primarily responsible for preparing, in consultation of Otay, as well as CWA, MWD, LAFCO, and other "responsible agencies," as required by law, such environmental documents that are required for CEQA compliance.
- Otay will be the "lead agency" for purposes of meeting CEQA requirements related to the annexation process, including evaluation of all CEQA documents prepared by Sycuan, its consultants.
- Sycuan will complete all acts, pursuant to federal, state, and tribal law, to authorize Sycuan's role and participation in the CEQA process related to the proposed annexation.
- Sycuan will indemnify and hold harmless, Otay, Otay's Board, officers, employees, attorneys and agents against any legal challenges with regard to the sufficiency of the CEQA documents and environmental law compliance associated with the proposed annexation.

The Annexation MOU

During the past months, Sycuan, Dexter Wilson, Syd Morris (a consultant retained by Sycuan to coordinate the Annexation process and provide other consulting services to Sycuan), and Otay have met with representatives of CWA, MWD and LAFCO to discuss the Annexation and obtain preliminary comments, observations and direction from those agencies.

As a result of comments received during these meetings, Dexter Wilson and Syd Morris have recommended that Sycuan proceed only with the proposed annexation of the Original Reservation area to Otay. Other changes on the process of Annexation originally contemplated, an increased level of effort to complete the SAMP and other environmental documents and required revisions to the schedule originally contemplated require the negotiation of a memorandum of understanding to clarify the objectives and goals of the Annexation, the responsibilities of each party involved, and to establish initial terms and conditions for the services currently anticipated to be ultimately required.

FISCAL IMPACT: _____

None anticipated. Sycuan is responsible for all costs and expenses relating to the Annexation.

LEGAL IMPACT: _____ *AD*

The Environmental MOU, if approved and executed, will be a binding contract obligating Otay, Sycuan, Dexter Wilson and Dudek to take certain actions described therein. The Annexation MOU will not be binding until a completed agreement is presented to and approved by this Board.

COMMITTEE ACTION: _____

See attached.



General Counsel

Attachments -

- A. Summary of Committee Action
- B. Environmental MOU



ATTACHMENT A

SUBJECT/PROJECT: D0526-010287	Memorandums of Understanding with the Sycuan Band of the Kumeyaay Nation, and its consultants, in connection with the proposed Annexation; APN 516-040-01
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COMMITTEE ACTION:

The Finance and Administration Committee reviewed this item at a meeting held on January 20, 2009. The Committee supports the Attorney's recommendation.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for Board approval. This report will be sent to the Board as a Committee approved item, or modified to reflect any discussion or changes as directed from the Committee prior to presentation to the full board.

Project Number: D0261-010287
Subject: Water and Sewer Annexation

**MEMORANDUM OF UNDERSTANDING
PREPARATION AND HANDLING OF CEQA DOCUMENTS FOR THE
PROPOSED ANNEXATION AND REORGANIZATION BY OTAY WATER
DISTRICT TO PROVIDE WATER AND SEWER SERVICE TO THE
SYCUAN BAND OF THE KUMEYAAY NATION**

This AGREEMENT, hereinafter referred as the "MOU", is made and entered into by and among the Otay Water District, a municipal water district organized under the laws of the State of California (OWD), Sycuan Band of the Kumeyaay Nation, a federally recognized Indian tribe ("APPLICANT") with jurisdiction over Sycuan Indian country, Dudek, an environmental consultant with an address at 605 Third Street, Encinitas, California 92024 ("ENVIRONMENTAL CONSULTANT"), and Dexter Wilson Engineering, Inc., a California corporation with an address at 2234 Faraday Avenue, Carlsbad, California 92008 ("ENGINEER") for the purpose of establishing rights and responsibilities of all undersigned parties hereto in relation to the preparation and handling of any and all documents required to comply with the California Environmental Quality Act ("CEQA"), which may include, based on the ENVIRONMENTAL CONSULTANT's recommendation and with the consent of OWD, APPLICANT, and ENGINEER, a technical study and an environmental impact report or mitigated negative declaration, all as needed to ensure the compliance of the PROJECT (as defined below) with CEQA.

RECITALS

WHEREAS, OWD is the Lead Agency, as it pertains to CEQA, in connection with the PROJECT (defined below), which is located within federally recognized Indian country (as that term is defined under 18 U.S.C. § 1151) in San Diego County; and

WHEREAS, the APPLICANT has applied to OWD to extend the boundaries of its water service area and its water improvement district to include the Sycuan Indian Reservation ("RESERVATION"), and to reorganize to extend the boundaries of its sewer service area and its sewer improvement district to include the RESERVATION and certain parcels of Sycuan Indian country north of the RESERVATION currently within the sewer service area of the Padre Dam Municipal Water District, which annexations are collectively referred to herein as the "PROJECT"; and

WHEREAS, OWD has determined that the PROJECT proposed by APPLICANT requires compliance with the procedural requirements established by the San Diego Local Agency Formation Commission (LAFCO) under California law for annexation and reorganization of the service area of local agencies; and

WHEREAS, at the request of APPLICANT, OWD has agreed to take a lead role in submitting the required application for annexation to LAFCO and to cooperate

with and assist APPLICANT and ENGINEER to identify and comply with all legal and procedural requirements to complete the LAFCO process, provided that any specific terms and conditions related to that aspect of the PROJECT shall be established in a separate agreement among the APPLICANT, the ENGINEER, OWD and any other interested parties; and

WHEREAS, APPLICANT and ENGINEER have also submitted a required application to the San Diego County Water Authority ("CWA") and to the Metropolitan Water District of Southern California ("MWD") to expand their territories to include the Reservation and the terms and conditions of OWD's assistance and involvement with that part of the PROJECT, as well as specific terms and conditions of the annexation imposed on APPLICANT by OWD, CWA and MWD shall be set forth in a separate agreement; and

WHEREAS, OWD has determined that the PROJECT necessitates compliance with CEQA, including the preparation of documents therefore, which may include a TECHNICAL STUDY, ENVIRONMENTAL IMPACT REPORT, NEGATIVE DECLARATION, or MITIGATED NEGATIVE DECLARATION (as required and appropriate, the "CEQA DOCUMENTS"); and

WHEREAS, APPLICANT and the ENVIRONMENTAL CONSULTANT, each, represents that the ENVIRONMENTAL CONSULTANT is a professional environmental consultant, authorized to do business in the State of California, retained by the APPLICANT to prepare the CEQA DOCUMENTS and to provide environmental services and advice in connection with the PROJECT; and

WHEREAS, the parties hereto agree that the ENVIRONMENTAL CONSULTANT's rights and responsibilities within this MOU extend to any consultant hired to assist with the preparation, distribution or review of the CEQA DOCUMENTS; and

WHEREAS, the APPLICANT, the ENVIRONMENTAL CONSULTANT, and OWD understand and agree that the ENVIRONMENTAL CONSULTANT has the primary responsibility to ensure that the CEQA DOCUMENTS are adequate and that OWD review is for the benefit of the public generally and not for the benefit of the APPLICANT, the ENVIRONMENTAL CONSULTANT, the ENGINEER or any other entity or person retained by APPLICANT in connection with the PROJECT or related to APPLICANT in any way; and

WHEREAS, the APPLICANT represents that it has completed all acts required by any applicable federal, state, and/or tribal law, regulations, and custom to duly authorize the APPLICANT's application, efforts, and actions to extend OWD water and sewer service to its lands; and

WHEREAS, the APPLICANT represents that it has completed all acts required by any applicable federal, state, and/or tribal law, regulations, and customs to duly authorize its representatives to execute this MOU and to participate in the preparation of the CEQA DOCUMENTS; and

WHEREAS, the APPLICANT, the ENVIRONMENTAL CONSULTANT, the ENGINEER and OWD wish to define their relationships and areas of responsibility in the preparation and management of the CEQA DOCUMENTS and the CEQA process.

NOW, THEREFORE, in view of the foregoing, and in consideration of the mutual covenants and agreements contained herein, the APPLICANT, the ENVIRONMENTAL CONSULTANT, the ENGINEER and OWD do hereby agree as follows:

I. NECESSITY OF CEQA DOCUMENTS

OWD has determined that the PROJECT necessitates the preparation of adequate CEQA DOCUMENTS to comply with CEQA requirements.

II. SUBMISSION OF DOCUMENTS AND DISCLOSURE OF INFORMATION

The APPLICANT and the ENVIRONMENTAL CONSULTANT shall be responsible for preparing or causing to be prepared or compiled and for submitting all environmental documents and CEQA DOCUMENTS required for the PROJECT. Such documents shall be prepared pursuant to the terms and conditions set forth in this MOU and in accordance with all applicable CEQA guidelines and regulations. The parties hereto agree that the ENVIRONMENTAL CONSULTANT's rights and responsibilities within this MOU extend to any other consultant hired to assist with the preparation of the CEQA DOCUMENTS and that all references to CONSULTANT rights and responsibilities in this MOU shall be equally enforceable against and by such consultants.

This MOU requires the disclosure of certain information by the APPLICANT, the ENVIRONMENTAL CONSULTANT, and the ENGINEER to OWD. Disclosure may initially be through verbal communication with OWD Project Manager. OWD has the right, upon reasonable notice to the APPLICANT, the ENVIRONMENTAL CONSULTANT and/or the ENGINEER, as deemed appropriate by OWD, to: 1) review draft documents and relevant correspondence; 2) require that it be copied on correspondence subject to the disclosure requirements; and/or 3) require a written or emailed (instead of verbal) report of disclosures.

The APPLICANT, ENVIRONMENTAL CONSULTANT and the ENGINEER, each, individually and collectively, agree to provide to OWD any such documents and correspondence upon written request.

III. CERTIFICATIONS

By executing this MOU:

- A. The APPLICANT, the ENVIRONMENTAL CONSULTANT and the ENGINEER, each, certifies that it has an ongoing obligation and commitment to OWD to disclose all information that is relevant to the environmental consequences of the PROJECT and/or the CEQA DOCUMENTS; and
- B. The APPLICANT and the ENGINEER, each, certifies that no relevant information has been or will be omitted or withheld from OWD, the ENVIRONMENTAL CONSULTANT, or any sub-consultant(s); and
- C. The ENVIRONMENTAL CONSULTANT certifies that it is authorized to provide all required services and it is prepared to undertake all necessary technical and analytical work required in connection with the CEQA DOCUMENTS, either directly and/or through the use of any sub-consultants(s).

IV. APPLICANT'S RIGHTS AND RESPONSIBILITIES

- A. Subject to the terms and conditions of this MOU and applicable CEQA Guidelines, OWD agrees to allow the APPLICANT to select and retain the undersigned ENVIRONMENTAL CONSULTANT for preparation of the CEQA DOCUMENTS. For this purpose, the APPLICANT shall enter into a direct agreement with the ENVIRONMENTAL CONSULTANT, and such agreement shall govern the entire scope of their arrangement. Such agreement shall comply with all terms and conditions set forth in this MOU, and no term therein shall be inconsistent with any provision herein.
- B. The APPLICANT shall be responsible for one hundred-percent (100%) of all costs associated with the ENVIRONMENTAL CONSULTANT's work, including but not limited to, any sub-consultant(s) costs, preparation and document circulation costs incurred by the APPLICANT or ENVIRONMENTAL CONSULTANT, and all costs associated with participation in scoping meetings or community outreach meetings, as necessary. The APPLICANT shall also be responsible for one hundred-percent (100%) of all costs incurred by

OWD related to its independent review of the CEQA DOCUMENTS submitted to OWD in connection with the PROJECT.

- C. The APPLICANT shall ensure that any sub-consultant(s) hired in connection with the preparation of the CEQA DOCUMENTS related to the PROJECT shall comply with all applicable laws, the CEQA Guidelines and all relevant terms and conditions set forth in this MOU.
- D. The APPLICANT shall not enter into any form of confidentiality agreement with the ENVIRONMENTAL CONSULTANT, the ENGINEER or any other consultant hired to assist with, or in any from participate in, the preparation of the CEQA DOCUMENTS, which prohibits disclosure of information related to the CEQA DOCUMENTS to OWD, except where confidentiality is required to protect otherwise privileged or protected information, such as trade secrets. If APPLICANT seeks to protect such information from disclosure, it will inform OWD within ten (10) days that it asserts its right to protect certain information and the legal basis for that assertion.

V. CONSULTANTS' RIGHTS AND RESPONSIBILITIES

- A. The ENVIRONMENTAL CONSULTANT and the ENGINEER, each, shall have an ongoing obligation and commitment to OWD to disclose all information that is relevant to the environmental consequences of the PROJECT and the preparation of the CEQA DOCUMENTS. The ENVIRONMENTAL CONSULTANT and the ENGINEER, each, shall not omit or withhold any relevant information from OWD at the request of the APPLICANT or for any other reason. The ENVIRONMENTAL CONSULTANT shall require any sub-consultant(s) it retains in connection with the PROJECT to certify these same obligations and commitments to OWD as a condition of their contract or by signing a copy of this MOU and shall provide a copy of such certification to OWD within ten (10) days of retaining such sub-consultant(s).
- B. The ENVIRONMENTAL CONSULTANT shall enter into a direct agreement with the APPLICANT for purposes of preparing the CEQA DOCUMENTS, and such agreement shall govern the entire scope of their arrangement. Such agreement shall comply with all terms and conditions set forth in this MOU, and no term therein shall be inconsistent with any provision herein.
- C. It is the ENVIRONMENTAL CONSULTANT's responsibility to provide a complete and accurate CEQA DOCUMENTS. The ENVIRONMENTAL CONSULTANT's accountability under this MOU shall be solely to OWD, and not to the APPLICANT or to any other person or entity.

- D. The ENVIRONMENTAL CONSULTANT shall remain responsible for compliance with, and shall ensure that any sub-consultant(s) hired by the ENVIRONMENTAL CONSULTANT in connection with the preparation of the CEQA DOCUMENTS shall comply with, the applicable CEQA laws, requirements and CEQA Guidelines, all applicable OWD, State and Federal rules, regulations and laws and all relevant terms and conditions set forth in this MOU.
- E. The ENVIRONMENTAL CONSULTANT shall draft the CEQA DOCUMENTS for the PROJECT in accordance with CEQA statutes and laws, the CEQA Guidelines, relevant OWD technical study, content and report formats, and with any directions and specifications set forth by OWD.
- F. The ENVIRONMENTAL CONSULTANT shall verify and ensure that all CEQA DOCUMENTS prepared in connection with the PROJECT utilize accurate and verifiable field techniques and the highest professional and ethical standards applicable to work performance in the industry.
- G. The ENVIRONMENTAL CONSULTANT shall verify and ensure that all CEQA DOCUMENTS prepared under its contract, including any draft EIR (or equivalent document), final EIR (or equivalent document), negative declaration, mitigated negative declaration, TECHNICAL STUDIES, and responses to comments (as applicable), represent its complete and independent professional judgment including all OWD direction and provide an analysis of the specific environmental issues, setting, potential impacts, and mitigation measures associated with the PROJECT. The CEQA DOCUMENTS shall be signed as true, complete and accurate by the ENVIRONMENTAL CONSULTANT.
- H. The ENVIRONMENTAL CONSULTANT shall disclose any revisions made to the draft CEQA DOCUMENTS and specifically identify any revisions made at the request of the APPLICANT. Unless waived by OWD, all revisions to CEQA DOCUMENTS prior to submittal for public review shall be shown in ~~strikeout~~/underline.
- I. The ENVIRONMENTAL CONSULTANT shall maintain a record of communications with the APPLICANT and/or the ENGINEER related to any substantive environmental issues that might concern the PROJECT and the CEQA DOCUMENTS, and such record shall be submitted to OWD for review upon request.
- J. The ENVIRONMENTAL CONSULTANT understands and agrees that OWD has the right to attend, or participate in, meetings (including

conference calls) between or among the APPLICANT and/or the ENGINEER and the ENVIRONMENTAL CONSULTANT when such meetings include discussion of any issues impacting or related to the CEQA DOCUMENTS and has the right to request such meetings. The ENVIRONMENTAL CONSULTANT shall provide OWD with reasonable notice of all such meetings or conference calls as soon as such are scheduled or as soon thereafter as practicable. Upon the request of OWD, the ENVIRONMENTAL CONSULTANT shall disclose all substantive environmental issues discussed at meetings OWD does not attend.

- K. The ENVIRONMENTAL CONSULTANT may not be a subsidiary or division of the APPLICANT or have an ownership interest in the proposed PROJECT or any other property or development in which the APPLICANT has a financial interest. Additionally, the ENVIRONMENTAL CONSULTANT shall not accept performance incentives associated with a certain density, intensity, or configuration of development, environmental finding or form of report. This prohibition does not preclude performance incentives related to PROJECT schedules.
- L. Neither the ENVIRONMENTAL CONSULTANT nor the ENGINEER shall, jointly or individually, enter into any form of confidentiality agreement with the APPLICANT, with each other, or with any other consultants or sub-consultant(s) that prohibit disclosure of information related to substantive environmental issues to OWD, except where confidentiality is required to protect otherwise privileged or protected information, such as trade secrets, as described above in Section IV(D).
- M. The ENVIRONMENTAL CONSULTANT shall immediately disclose to OWD's Project Manager any and all PROJECT related communications (oral or written) between the APPLICANT and/or the ENGINEER and the ENVIRONMENTAL CONSULTANT regarding any issues or information that substantively affects the CEQA DOCUMENTS. Upon request of Project Manager, such disclosure shall be followed by a written report addressed to OWD's General Manager discussing the information, its impact on the PROJECT and/or the CEQA DOCUMENTS and the ENVIRONMENTAL CONSULTANT's recommendations for handling the information in compliance with CEQA and best practices of environmental professionals.
- N. Upon request from OWD, the ENVIRONMENTAL CONSULTANT shall submit all field notes, resource documents and supplemental technical studies used in the preparation of the CEQA DOCUMENTS to OWD.

- O. Upon request from OWD, the ENVIRONMENTAL CONSULTANT shall allow OWD to view its contract with the APPLICANT. OWD maintains the right to require submittal of the contract to OWD. Any cost estimates or hourly rates may be blacked out or omitted.

VI. OWD'S RIGHTS AND RESPONSIBILITIES

- A. In accordance with California Public Resources Code Section 21082.1, it is the responsibility of OWD to provide its independent review and analysis of all documentation for the PROJECT prepared and submitted by the ENVIRONMENTAL CONSULTANT, and sub-consultant(s), and the APPLICANT. This independent review is undertaken for the benefit of the general public and is not intended to relieve the APPLICANT, the ENVIRONMENTAL CONSULTANT or the ENGINEER of any of their respective responsibilities or liabilities.
- B. OWD shall be responsible for evaluating the extent and detail of topic area discussions in the CEQA DOCUMENTS and providing comments and suggestions to the ENVIRONMENTAL CONSULTANT. As the CEQA lead agency, as defined in California Public Resources Code Section 21067, OWD shall be responsible for formal and informal interagency consultation and coordination with responsible agencies, as defined in California Public Resources Code Section 21069. OWD shall also be responsible for scheduling and providing the public notice for the public meetings and hearings related to the PROJECT, and for distributing the draft and final CEQA DOCUMENTS for public comment.
- C. OWD shall have all rights provided for in this MOU, including but not limited to the right to reasonable notice and to attend, or participate in, any and all meetings or conference calls regarding the PROJECT's environmental impact, and the right to request such meetings and be informed of the subject matter.
- D. OWD shall have all rights provided for in this MOU, including but not limited to the right to request copies of any and all correspondence, meeting schedules, minutes, and draft documents generated by the ENVIRONMENTAL CONSULTANT, any sub-consultant(s), the ENGINEER and/or the APPLICANT, in connection with the preparation of the CEQA DOCUMENTS.
- E. OWD shall be responsible for independently reviewing the content of the draft CEQA DOCUMENTS and providing clear and consistent comments on the scope and adequacy of the document in a timely manner. OWD shall strive to provide thorough reviews and comments on initial reviews to avoid raising new issues that should have been known as

the PROJECT progresses. OWD shall inform the APPLICANT, by forwarding comments to the ENVIRONMENTAL CONSULTANT, if at any time additional information or substantive changes to the CEQA DOCUMENTS are required.

- F. In connection with each CEQA Document and related or backup documents submitted to OWD pursuant to this MOU, OWD shall have the right to request and receive, at any time following acceptance by OWD of any such document in final form, separate certifications from the APPLICANT, the ENGINEER and/or the ENVIRONMENTAL CONSULTANT, at OWD's discretion, representing and certifying that, to the best of the signatories' knowledge after diligent review, such document(s) are in conformance with all applicable CEQA requirements, all applicable laws and this MOU.
- G. At the request of the APPLICANT or the ENVIRONMENTAL CONSULTANT and after completion of the PROJECT, OWD will provide an evaluation of the ENVIRONMENTAL CONSULTANT's performance on the PROJECT.

VII. EXPIRATION/TERMINATION

This MOU shall expire upon any of the following:

- A. Thirty (30) days after the PROJECT is completed; provided the PROJECT and the CEQA DOCUMENTS have become final by decision of the authorized OWD decision-maker, all appeal timelines have expired, and all legal challenges associated with CEQA compliance for the PROJECT have been finally adjudicated; or
- B. The PROJECT is withdrawn or denied by LAFCO, MWD or CWA and all appeal timelines have expired; or
- C. Written thirty (30) day notice from OWD or the APPLICANT to all parties to this MOU terminating the MOU.

Notwithstanding expiration or termination of this MOU, all information obtained by the ENVIRONMENTAL CONSULTANT and the ENGINEER prior to expiration or termination shall be disclosed to OWD pursuant to the MOU disclosure requirements and exceptions in paragraph V.L. Neither expiration nor termination of the MOU will relieve the parties of their responsibilities under the MOU for activities that took place prior to the expiration date. In addition, all representations of the ENVIRONMENTAL CONSULTANT and the ENGINEER and the Indemnification provisions of paragraph VIII, below, shall survive any Termination or Expiration and may be invoked by OWD in connection with any

challenge or claim related to the PROJECT, this MOU and/or the CEQA process or Documents.

VIII. INDEMNIFICATION OF OWD

By executing this MOU and submitting CEQA DOCUMENTS to OWD, the APPLICANT agrees to fully indemnify and hold OWD, its board of directors, officers, employees, attorneys and agents (collectively, the "INDEMNITEES") harmless against any claim, action, suit, challenge or procedure, and against loss or damage of any kind resulting from or in any form related to the environmental compliance of the PROJECT, the CEQA DOCUMENTS, or compliance with CEQA and any other applicable environmental laws, procedures, or requirements related to the PROJECT. The duty to indemnify shall include the duty to defend each of the INDEMNITEES, as applicable, with counsel mutually acceptable to OWD and APPLICANT, in the event of any challenge to the CEQA DOCUMENTS (including but not limited to any claim of inadequacy or incompleteness of the documents or any claim of negligence), the CEQA process or approvals or any related actions, including but not limited to any delay in the process or annexation or to any public agency's determination that CEQA DOCUMENTS are not adequate, or are incomplete, inaccurate or not compliant with any requirement of CEQA, LAFCO, CWA, MWD or any other entity with jurisdiction over the PROJECT or any other public agency's decision to separately pursue and determine CEQA compliance.

The APPLICANT also agrees to fully indemnify, hold harmless and defend the INDEMNITEES against any losses, costs, causes of action, claims or litigation in any way related to the LAFCO process, the CWA and/or the MWD annexations arising in connection with the CEQA DOCUMENTS, or CEQA in general. This indemnification and hold harmless agreement shall be in addition to any other indemnifications provided to OWD in other agreements relating to the PROJECT.

IX. ENFORCEMENT

- A. Incorporation of Recitals. The Parties agree that the Recitals to this MOU are true and correct and are an integral part of this MOU and are incorporated herein.
- B. Applicable Law. The Parties agree that any conflict or dispute concerning any provision or requirement of this MOU shall be interpreted in accordance with the laws of the State of California, without regard to any conflicts of laws principles.
- C. OWD acknowledges that APPLICANT, as a federally recognized Indian tribe, retains full sovereign immunity from unconsented suit and legal process. APPLICANT makes the following limited waiver of sovereign immunity, for the sole purpose of resolving any claim by OWD to enforce or interpret this MOU, including any claim that APPLICANT has breached

any obligation under this MOU, and for no other purpose. This limited waiver shall operate only for the benefit of OWD after a 30-day opportunity to meet and confer on the subject of OWD's claim and to exchange offers to resolve such claims, and shall not benefit any third parties, including, but not limited to, OWD's subcontractors, partners, members, managers, officers, directors, shareholders, agents, and employees or CONSULTANT. APPLICANT makes no waiver of its sovereign immunity, or of any other rights APPLICANT may have, concerning disputes that do not arise from this MOU.

- D. APPLICANT and OWD hereby agree that any dispute between the parties arising out of, or in any way related to, this MOU, shall be subject to binding arbitration to be conducted before a single arbitrator in San Diego, California. The Party seeking to enforce or interpret this MOU may choose either the Judicial Arbitration and Mediation Services (JAMS) or the American Arbitration Association (AAA) to administer the arbitration in accordance with the Commercial Arbitration Rules of the AAA in effect on the effective date of this MOU. Judgment on any award rendered by the arbitrator may be entered in the federal court for the Southern District of California. Each Party waives the right to trial by jury to the fullest extent allowed by law. Each Party shall pay one-half of the costs and fees for the arbitration proceeding during the pendency of the proceeding. The prevailing Party shall then be entitled to recover from the other the entire costs of such proceeding, including the arbitrator's fees and costs, and any portion of such costs or fees previously paid by the prevailing Party.

Project Number: D0261-010287
Subject: Water and Sewer Annexation

IN WITNESS WHEREOF, OWD, the APPLICANT, and the ENVIRONMENTAL CONSULTANT and the ENGINEER have caused this agreement to be executed as of the dates indicated below. The APPLICANT, the ENVIRONMENTAL CONSULTANT and the ENGINEER further certify that they have obtained the advice of their respective counsel in connection with this MOU and have taken any and all corporate or governmental action necessary to ensure that this MOU is enforceable when executed and delivered by the persons indicated below.

<p>Otay Water District</p> <p>By: _____ Mark Watton</p> <p>Its: _____ General Manager</p> <p>Date: _____</p> <p>Approved as to Form:</p> <p>_____</p> <p>Of Garcia Calderon Ruiz, LLP General Counsel to OWD</p>	<p>APPLICANT: Sycuan Band of the Kumeyaay Nation</p> <p>By: _____ Daniel J. Tucker</p> <p>Its: _____ Tribal Chairman</p> <p>Date: _____</p> <p>Approved as to Form:</p> <p>_____</p> <p>Of Forman & Associates Counsel to Sycuan</p>
<p>ENVIRONMENTAL CONSULTANT: Dudek</p> <p>By: _____ Frank Dudek</p> <p>Its: _____ President</p> <p>Date: _____</p>	<p>ENGINEER: Dexter Wilson Engineering, Inc.</p> <p>By: _____ Dexter Wilson</p> <p>Its: _____ Principal</p> <p>Date: _____</p>



AGENDA ITEM 6

STAFF REPORT

TYPE MEETING:	Regular Board	MEETING DATE:	February 4, 2009
SUBMITTED BY:	Kelli Williamson <i>[Signature]</i> Human Resources Manager	W.O./G.F. NO:	DIV. NO. All
APPROVED BY:	Rom Sarno, Chief of Administrative Services <i>[Signature]</i> (Chief)		
APPROVED BY:	German Alvarez, Assistant General Manager, Finance and (Asst. GM): <i>[Signature]</i> Administration		
SUBJECT:	Approve Change in Hiring Authority for Assistant District Secretary Position		

GENERAL MANAGER'S RECOMMENDATION:

That the Board of Directors approve a change in hiring authority for vacant Assistant District Secretary position.

COMMITTEE ACTION:

See Attachment A.

PURPOSE:

To request that the Board approve a change in hiring authority for the Assistant District Secretary position.

ANALYSIS:

The District currently has two administrative positions in the General Manager's office that are appointed by the Board of Directors: District Secretary and Assistant District Secretary.

The Assistant District Secretary position is currently vacant. The District's standard practice is to review all vacant positions prior to posting and filling them. After a review of the Assistant District Secretary position, staff is recommending holding the position of the Assistant District Secretary and filling the vacancy with a Confidential Executive Secretary. This position will not be a Board-appointed position as was the Assistant District Secretary and will continue to report and be supervised by the District Secretary. Staff believes this will ensure a clear reporting relationship for the incumbent in the position.

The District conducted a survey of other water agencies and found only one of 17 employers had more than one Board-appointed Secretary.

The District will conduct the same competitive recruitment process as conducted for other positions at the District.

FISCAL IMPACT: _____

None.

STRATEGIC GOAL:

District's FY 09-11 Strategic Plan related to retaining a dedicated workforce.

LEGAL IMPACT: _____

None.



General Manager

Attachment A - Committee Action



ATTACHMENT A

SUBJECT/PROJECT:	Approve Change in Hiring Authority for Assistant District Secretary Position
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COMMITTEE ACTION:

The Finance, Administration & Communications Committee met on January 20, 2009 and the Committee supports staff's recommendations to approve a change in hiring authority for vacant Assistant District Secretary position.

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for board approval. This report will be sent to the Board as a committee approved item, or modified to reflect any discussion or changes as directed from the committee prior to presentation to the full board.



AGENDA ITEM 7

STAFF REPORT

TYPE MEETING:	Finance, Administration and Communications Committee	MEETING DATE:	1/20/09
SUBMITTED BY:	Armando Buelna <i>AS</i> Communications Officer	W.O./G.F. NO:	DIV. NO. All
APPROVED BY:			
SUBJECT:	Review of the winter 2009 Customer Pipeline newsletter		

GENERAL MANAGER'S RECOMMENDATION:

That the Finance, Administration, and Communications Committee review and provide direction on the design of the winter 2009 Customer Pipeline newsletter.

PURPOSE:

To give the Finance, Administration, and Communications Committee the opportunity to review and provide direction on the design of the winter 2009 Customer Pipeline newsletter.

BACKGROUND:

The winter 2009 Customer Pipeline newsletter continues the emphasis of the 2008 newsletters in stressing the increasingly dire water crisis facing Southern California as a result of the drought and court-ordered pumping restrictions. The primary difference with the winter 2009 newsletter will be its size, paper type, and the printing processes utilized.

Our new bill print vendor (InfoSend) has advised staff that the weight of the four-color newsletter has caused bills to exceed the one ounce postage threshold for first class mail, resulting in higher postage costs.

Staff confirmed this was the case as the 100 lb. 11" x 17" glossy paper weighed in at six-tenths of an ounce; two-tenths of an ounce more than the standard offset paper used with the two-color process. Our current bill also weighs six-tenths of an ounce, for a total of 1.2 oz. The offset paper previously used weighed four-tenths of an ounce and when combined with the bill, weighed exactly one ounce.

Upon review, staff has determined that simply moving to a lighter weight paper (80 lb. or even 70 lb. gloss or semi-gloss) did not resolve this issue. Some brands of 70 lb. paper continued to weight a tenth of an ounce too much, while others are known to stretch or flair when going through the printing press.

Only by utilizing a lighter weight paper (60 lb.) could we bring the total weight of the bill and newsletter consistently within the one ounce limit using an 11" x 17" sheet. However, paper vendors cautioned against using a 60 lb. gloss or semi-gloss paper since it will not accept a four-color printing process and is more likely to stretch and flare.

Therefore, the options include:

- Reducing the size of the newsletter from 11" x 17" to 9" x 15" with 100 lb. gloss or semi-gloss.
- Reducing the size from 11" x 17 to 10" x 16" using 70 lb. gloss or semi-gloss.
- Remaining at 11"x 17" but use offset paper with either a four-color or two-color printing process.

Staff would recommend against continuing to use the existing 11" x 17" 100 lb. gloss paper due to the additional postage of \$8,500 per quarter that would be incurred. The postage rate for a two ounce first class letter is .59 cents as opposed to .42 cents for a one once letter.

Even with design changes to the borders of the newsletter, each of the first two options eliminates valuable space.

Utilizing offset paper retains the four-color process and valuable space; however, it also looks less refined to some. Offset paper is also slightly less expensive than gloss or semi-gloss and will result in some savings (approximately \$1,000 per year).

Some additional savings would be accrued by returning to a two-color printing process (\$2,800 annually). With the struggling economy and increasing water rates, this may be appreciated by customers since it would be viewed as a cost saving measure.

In terms of content, the winter newsletter includes a personal message from the general manager urging conservation, and encouraging customers to use the rate calculators on the

district's website. The purpose is to help customers understand how higher rates and Drought Rates will affect their pocketbooks.

The winter newsletter is scheduled for distribution throughout the month of February.

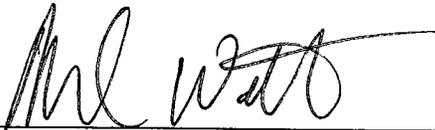
FISCAL IMPACT:



Printing expenses for the customer Pipeline newsletters are included in the Purchasing Division's printing budget and run approximately \$5,500 per quarter, plus tax and delivery charges.

LEGAL IMPACT:

None.



General Manager

Attachment A - Committee Action Report

Attachment B - Draft 2009 Winter Customer Pipeline Newsletter



ATTACHMENT A

SUBJECT/PROJECT:	Review of the winter 2009 Customre Pipeline newsletter.
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COMMITTEE ACTION:

NOTE:

The "Committee Action" is written in anticipation of the Committee moving the item forward for board approval. This report will be sent to the Board as a committee approved item, or modified to reflect any discussion or changes as directed from the committee prior to presentation to the full board.

DRAFT

ATTACHMENT B

THE OTAY WATER DISTRICT · PROUDLY SERVING EAST COUNTY AND THE SOUTH BAY SINCE 1956

pipeline

A NEWSLETTER FOR CUSTOMERS OF THE OTAY WATER DISTRICT



WINTER 2009



January, 2009

RE: Important Message about Water Shortages and Water Prices

Dear Otay Water District Customer:

This coming year has the potential to be one of the most volatile years for water supply in San Diego County's history. Because of the likelihood of a near-term water shortage, conservation may become mandatory and prices could increase dramatically for some customers.

Despite the recent winter rains, water supply in California and the West remain disrupted by drought along the Colorado River and pumping restrictions severely limiting imported water from Northern California. The Colorado River will take years to recover from an eight-year drought and imported water from the State Water Project is predicted to be just 15% of a normal year's allocation due to court-ordered pumping restrictions related to environmental impacts.

During the past year, water agencies have been working to spread the news about this impending crisis using television, radio, print ads and bill messages, and aggressively calling on all customers to conserve. This note is a more personal effort to alert you to this increasingly dire situation and notify you the Otay Water District has adopted new rates and a new Drought Rate structure further designed to promote conservation.

You will note the higher cost of imported water reflected in your monthly bill. This is the result of water wholesalers struggling to find new supplies of water to meet customer demand. As our traditional supplies become increasingly scarce, the cost of alternative supplies including short-term transfers, are much increased. Under the new rate structure, these costs are being passed-on to all consumers equally. In addition, new Drought Rates have been established and will be implemented as water wholesalers pass on the higher price they pay for water purchased on the spot market.

Since June of 2008, the Otay Water District has been in a Level 1 - Drought Watch. A Level II - Drought Alert could be announced by our suppliers anytime. If this occurs, your water rates could increase again. Typical customers, those using fewer than 16 units of water per month, will see only a modest 2% increase. Large water users, those using 27 units or more, will see larger increases in the range of 30% or more. These rates are based on our supplier's efforts to enforce conservation through tiered penalties and market-based pricing.

Now is the time to prepare. We encourage customers to use the coming months to make changes to your landscapes, irrigation schedules, and take advantage of conservation rebates and incentives to minimize the impact of rate increases. To see how the new rates will impact your household or business, use the Rate Calculator on our website at www.otaywater.gov and visit www.20gallonchallenge.org for more ways to help you save money.

Sincerely,

Mark Watton

Mark Watton, General Manager

Otay Water District DROUGHT WATCH

LEVEL IV - DROUGHT EMERGENCY

Stop all landscape irrigation. No new construction, annexations or development. Conservation goal: more than 40%.

LEVEL III - DROUGHT CRITICAL

No new construction, annexations or development. Strict limits on water used for irrigation and non-public health purposes. Conservation goal: up to 40%.

LEVEL II - DROUGHT ALERT

Mandatory water use restrictions. Irrigate no more than 3 days per week, 15 minutes per station. Conservation goal: up to 20%.

LEVEL I - DROUGHT WATCH

Voluntary measures to stop waste. Repair leaks promptly. Wash cars with a bucket and shut-off nozzle. Conservation goal: up to 10%.

Otay Water District Continues Level I Drought Watch

A Level 1 Drought Watch has been declared for the Otay Water District's service area. Customers are strongly urged to reduce their water use by 10%.

RATE COMPARISONS

For a conserving customer (those using 10 units of water per month or 10 HCF, each unit = 748 gallons), Otay is the 3rd lowest cost provider of 24 water agencies in San Diego County.

For a typical customer using 15 HCF, Otay is the 6th lowest cost provider.

District Receives Bond Rating Upgrade

Upgrade reflects commitment to economic and management fundamentals

The credit rating agency Standard and Poor's has upgraded the bond rating of the Otay Water District from AA- to AA. This higher rating reflects increased credit worthiness, and means the district will pay less inter-

est on bonds issued for future capital improvement projects.

This is the second credit rating upgrade the district has received in the last nineteen months. The savings from

both bond rating upgrades will total approximately \$2 million over the life of the future bond sales. For customers, this means the district's water rates will continue to be among the lowest in San Diego County.

Water Conservation Incentives

Smart Controller Rebate - \$350—
Smart irrigation controllers adjust your watering schedule automatically based on local site conditions and can lower your water use by approximately 14,000 gallons per year.

Rotating Sprinkler Nozzle Rebate - \$4.00 per nozzle—
Rotating nozzles can eliminate runoff and use 20% less water than conventional spray heads by applying water more slowly and evenly.

High-Efficiency Washing Machine Rebate - \$185—
High-efficiency clothes washers typically use an average of 40% less water and 55% less energy. Clothes also require 50% less drying time.

High-Efficiency Toilet Rebate - \$100—
High-efficiency toilets use an average of 1.28 gallons per flush, or 20% less than a toilet manufactured after 1994.

Synthetic Turf Rebate - \$1.00 per square-foot—
Synthetic turf requires no watering, no fertilizers or pesticides, looks great and reduces maintenance costs.

Call 1-800-376-3314 for more information or to obtain a rebate.

Otay Approves Rate Increase and Drought Rates

The Otay Water District has adopted an average 12.4% rate increase effective January 1, 2009. The rate increase is the result of increased costs from water wholesalers. Eighty percent of the increase is due to higher water costs. The remaining 20% reflects higher energy and infrastructure costs.

For a typical customer using 15 units of water each month, their water rate would increase by an average of \$5.04 per month. Conserving water customers, those using 10 units of water per month or less, would receive the smallest increases.

The district has also adopted Drought Rates, which will be triggered in the event that a Level II or higher drought stage is declared. When a higher drought stage is declared, water conservation goals becomes mandatory. Drought rates are revenue neutral for the district and will have the least effect on conserving customers.

Visit our Rate Calculator at www.otaywater.gov to see how these new water rates will affect your family and your budget. The Otay Water District offers a number of water conservation programs, tips and water saving information, and encourages customers to take advantage of these ways to save water and save money.

— Otay Receives Award — "BEST OF CALIFORNIA 2008"

The Otay Water District's Information Technology and Strategic Planning Department has been awarded the Center for Digital Government's Best of California, Leadership and Excellence, Award for 2008.

The Center for Digital Government is a

national research and advisory institute on information technology policies and best practices in state and local government. The Center established the award program to salute IT professionals in California state and local government for their contributions to the field.

OTAY WATER DISTRICT - Board of Directors

The Board of Directors meets on the first Wednesday of the month at 3:30 pm in the Board meeting room.

The public is encouraged to attend at 2554 Sweetwater Spring Blvd., Spring Valley, CA.

President

Gary Croucher, Division 3
gcroucher@otaywater.gov

Vice-President

Jose Lopez, Division 4
jlopez@otaywater.gov

Treasurer

Jaime Bonilla, Division 2
jbbonilla@otaywater.gov

Boardmember

Larry Breitfelder, Division 1
lbreitfelder@otaywater.gov

Boardmember

Mark Robak, Division 5
OtayWater@cox.net



High School Senior may Receive up to \$2,000 in Scholarships!

Graduating high school seniors living within the Otay Water District's service area are encouraged to apply for a \$1,000 scholarship. The district's scholarship recipient also becomes eligible to receive another \$1,000 scholarship from the California Special Districts Association - San Diego Chapter or another affiliate organization. Information and applications are available by calling 619-670-2291 or by visiting www.otaywater.gov and clicking on Education then Scholarships. Applications must be mailed or received by March 6, 2009.

For more class information and prices visit www.thegarden.org

Thursday, February 19, 6:30- 8:30 pm

H2O - 911! - Living with the water crisis—Join Vickie Driver for a fast and furious introduction to dealing with the current and future water crisis. Learn simple steps for saving water.

Saturday, February 28, 9:00 am - Noon

Toss Your Turf: Less Water, Less Grass, More Fun!—Tips for a beautiful low-water-use landscape in lieu of lawn!

Saturday, March 14th, 10:00 - 2:00 pm

Free Composting Workshop
Pre-Register at www.solanacenter.org
or (760) 436-7986 ext. 222

Saturday, March 21, 9:00 am - Noon

A New California Garden—Landscape Designer Linda Whitney shares her process for creating her own award-winning, Water Smart landscape from the ground up.

CLASSES
AT THE Garden

Perfect Plant Partners

Our low-water plant palette offers lots of new possibilities for plant combinations that create different looks, different color blends, and different seasonal highlights, all of which take little maintenance.

For a burgundy and soft green year-round color scheme in full sun, try these

- Caribbean copper plant (*Euphorbia cotinifolia*), a tall (15' x 8'), tree-like shrub with a dove-gray trunk, and branches covered in 2-3" round, bright burgundy leaves. If temperatures go down to 30°F or so, leaves drop but resprout in the spring. Avoid getting irritating sap on your skin or in your eyes.
- Giant dracaena (*Cordyline australis*) 'Red Sensation,' 'Dark Star' and other bronze-leaved varieties of this tall, strappy-leaved plant echo the leaf color of the Caribbean copper plant. Evergreen and hardy to at least 15°F. Plants grow slowly to 20' tall.
- Honeybush (*Melianthus major*) is a soft-stemmed shrub with large, palm-like fronds of icy green leaves with serrated edges. Multiple stems grow upright from the plant's center to form a broad (5' tall x 12' wide) plant. Prune off all but three branches to promote a tall, narrow (8' tall x 5' wide) profile. From late winter through spring, each stem sports an 18" tall spire of burgundy flowers that match the giant dracaena and the Caribbean copper plant. Flowers are filled with nectar much beloved by hummingbirds.
- Dune sage (*Salvia africana lutea*) forms a 5' tall and 6' wide shrub. It has tiny, soft-green leaves and small, snapdragon like flowers that open a soft apricot and turn to copper. Their shade compliments the burgundy tones.
- 'Glacier Blue' spurge (*Euphorbia characias 'Glacier Blue'*) is a low (1-2' mound) semi-succulent with blue-green leaves edged in ivory. Early winter flowers are also ivory and last a long time. Stems fade in late summer but are quickly replaced by new ones. Avoid getting irritating sap on your skin or in your eyes.

Rather grow natives? Try this combo of yellow/gold and blue/green in full sun or light shade.

- Variegated century plant (*Agave americana 'Variegata' also sold as Agave americana var picta*) is a tall agave whose succulent green blades are edged in pale yellow. There are other agaves in this color scheme, some in the reverse pattern. Be sure to read the label so you know whether the one that catches your eye grows to 3' tall and wide, or 8' tall and wide. Plant it where there is enough room for its ultimate size.
- Indian mallow (*Abutilon palmeri*) is a mounding shrub (3-6' tall and wide) with broad, green leaves covered in soft, silvery fuzz. Plant it in full sun or light shade, and where you can touch the leaves as you walk by. Deep gold flowers hang from branch tips from spring to fall. Hummingbirds and butterflies are frequent visitors.
- California fescue (*Festuca californica*) is a clumping native grass that forms fountainy, two-foot mounds. Plants are evergreen with greenish blue blades. Good in full sun or part shade.



January, 2008

RE: Important Message about Water Shortages and Water Prices

Dear Otay Water District Customer:

This coming year has the potential to be one of the most volatile years for water supply in San Diego County's history. Because of the likelihood of a near-term water shortage, conservation may become mandatory and prices could increase dramatically for some customers.

Despite the recent winter rains, water supply in California and the West remain disrupted by drought along the Colorado River and pumping restrictions severely limiting imported water from Northern California. The Colorado River will take years to recover from an eight-year drought and imported water from the State Water Project is predicted to be just 15% of a normal year's allocation due to court-ordered pumping restrictions related to environmental impacts.

During the past year, water agencies have been working to spread the news about this impending crisis using television, radio, print ads and bill messages, and aggressively calling on all customers to conserve. This note is a more personal effort to alert you to this increasingly dire situation and notify you the Otay Water District has adopted new rates and a new Drought Rate structure further designed to promote conservation.

You will note the higher cost of imported water reflected in your monthly bill. This is the result of water wholesalers struggling to find new supplies of water to meet customer demand. As our traditional supplies become increasingly scarce, the cost of alternative supplies including short-term transfers, are much increased. Under the new rate structure, these costs are being passed-on to all consumers equally. In addition, new Drought Rates have been established and will be implemented as water wholesalers pass on the higher price they pay for water purchased on the spot market.

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Sincerely,

Mark Watton

Mark Watton
General Manager

pipeline

Distrito de agua de Otay Estado de Vigilancia por Sequia

SEQUIA - NIVEL IV ESTADO DE EMERGENCIA

Alto el riego de jardines Ninguna construcción de anexos o desarrollos nuevos.
Meta de Conservación: Mas de 40%.

SEQUIA - NIVEL III ESTADO CRITICO

Ninguna construcción de anexos o desarrollos nuevos. Límites estrictos de la cantidad de agua utilizada para el riego y otros usos que no incluyen proyectos de salud pública.
Meta de Conservación: Hasta el 40%.

SEQUIA - NIVEL II ESTADO DE ALERTA

Restricciones obligatorias del uso del agua. No riego mas de 3 dias por semanas, y 15 minutos por estación.
Meta de Conservación: Hasta el 20%.

SEQUIA - NIVEL I ESTADO DE VIGILANCIA

Medidas voluntarias para detener los residuos. Reparar las fugas rápidamente. Lavar su auto con una cubeta y una manguera con boquilla de cierre automático. Meta de Conservación: Hasta el 10%.

For specific restrictions visit www.otaywater.gov

Otay Water District Declara Estado de Vigilancia por Sequia Nivel I

En respuesta a la proclamación de sequía del estado de California por el Gobernador Schwarzenegger, Otay Water District (OWD) ha declarado Estado de vigilancia por Sequia Nivel I para su área de servicio. Dentro de este nivel se exhorta a los usuarios reducir su uso del agua por un 10%.



FOR MORE INFORMATION ABOUT THE OTAY WATER DISTRICT CALL 619.676.2222 OR GO TO WWW.OTAYWATER.GOV

The Pipeline Newsletter is published quarterly by the Otay Water District and can also be found online at www.otaywater.gov. If you have questions about the newsletter, please contact us at 2554 Sweetwater Springs Blvd. Spring Valley, CA 91978-2096. Copyright © 2008 Otay Water District. All rights reserved.