

*Rosalia S. Cole*

Secretary

East Bay Municipal Utility District

RESOLUTION NO. 35229-21

DECLARING EAST BAY MUNICIPAL UTILITY DISTRICT'S (DISTRICT) OPPOSITION TO ANNEXING THE TASSAJARA PARKS PROJECT INTO THE DISTRICT'S SERVICE AREA, FINDING THE PROJECT INCONSISTENT WITH THE DISTRICT'S ANNEXATION POLICIES, AND MAKING FINDINGS AND DECLARATIONS REGARDING THE UNAVAILABILITY OF WATER TO SERVE THE PROJECT

Introduced by Director Patterson ; Seconded by Director Mellon

WHEREAS, Contra Costa County (County) is considering approving the Tassajara Parks Project (Project), a proposed 125-unit single family residential development in unincorporated County territory, outside the County's Urban Limit Line; and

WHEREAS, the Project is outside but adjacent to the District's service area, Ultimate Service Boundary (USB), and Sphere of Influence; and

WHEREAS, the USB defines the geographic area within which the District has planned to provide water service to existing and future customers; and

WHEREAS, due to the Project's location outside the USB, the District has not planned to provide it with water service; and

WHEREAS, as set forth in District Policy 3.05 - Considerations for Extension of Water Beyond the Ultimate Service Boundary, it is the policy of this Board of Directors (Board) that the District shall not extend water to areas outside the current USB if such extension would result in a reduction in the quantity or quality of water available to serve present and future customers within the USB or an increase in the costs of service; and

WHEREAS, as set forth in District Policy 3.01 - Annexations, it is further the policy of this Board to oppose annexations outside the current USB unless several enumerated conditions are met; and

WHEREAS, as set forth in District Policy 3.08 - Advisory Election for Annexations Outside the Contra Costa County Urban Limit Line, it is further the policy of this Board to oppose annexations of proposed residential developments of less than 200 units located outside the County's Urban Limit Line that are inconsistent with Policy 3.01; and

WHEREAS, based on these Policies, throughout the County's environmental review process for the Project, the District has stated its opposition to annexing the Project into its service area; and

WHEREAS, despite the District's opposition to annexing the Project, the County has consistently assumed the District would provide water service to the Project; and

WHEREAS, the County's Final Environmental Impact Report (EIR) for the Project, published in September 2020, assumed the District would provide water service to the Project based on a proposed offsite water conservation offset (Proposal), under which the Project would fund water

conservation programs throughout the District's service area to offset the Project's water demand; and

WHEREAS, the Proposal relies on implementation of water conservation programs, a component of the District's water supplies available to meet the needs of current and future customers within the current USB; and

WHEREAS, as a long-time leader in water conservation, the District has engaged in a decades-long, comprehensive effort in water conservation throughout its service area, and its efforts to promote water conservation include, but are not limited to:

- (a) adopting a Water Conservation Master Plan in 1994, specifying water conservation strategies for building on the District's then-existing water conservation efforts and creating a pathway for future water conservation through expanding rebates and incentives and providing conservation information to its customers. The Master Plan was updated in 2011-- to extend the planning horizon to 2040-- and is currently in the process of being updated again;
- (b) sponsoring legislation to ensure that land use planning takes into account the availability of adequate water supplies for proposed new development before the development is approved. These efforts included SB 901 (1995) to require water supply assessments, and SB 221 and SB 610 in 2001 to further improve upon the water supply assessment process;
- (c) adopting its own water efficiency and wise water use requirements through Sections 29 and 31 of its Board-adopted Regulations Governing Water Service to Customers of East Bay Municipal Utility District;
- (d) implementing a long-running water conservation education program, including school education efforts beginning in 1974, writing and publishing large format books promoting water conservation, and engaging with the public regarding water conservation by maintaining water conservation demonstration gardens, staffing water conservation displays at community events, and organizing and sponsoring the annual Water Conservation Showcase since 2004, which event brings together representatives from water agencies, industry, government, and nonprofits to discuss pressing water issues and learn about new water conservation technologies and solutions;
- (e) incentivizing water conservation through a fully staffed, permanent, year-in, year-out water conservation program, with a cumulative budget now totaling over \$100 million, and including measures such as water conservation rebate and incentive programs and distribution of water conservation devices to customers; and

WHEREAS, water conservation has long been a key component of the District's water supply portfolio, pursuant to which the District (1) achieved approximately 46 million gallons per day (MGD) in water conservation savings between 1995 and 2018 and (2) continues to pursue further expansion of its already-robust water conservation program; and

WHEREAS, remaining water conservation potential within the District's USB is an important

tool the District can and does use to address the impacts of water supply deficiencies on its customers; and

WHEREAS, the Final EIR generally failed to analyze the feasibility of the Proposal and specifically failed to assess whether and to what extent depleting the District's remaining water conservation potential would jeopardize the District's ability to meet the needs of current and future customers within the District's current USB; and

WHEREAS, the District submitted to the County detailed comments on the Final EIR, objecting to the County's failure to analyze the feasibility of the Proposal, explaining the Project's inconsistency with the District's Board-adopted Policies regarding annexation of new service territory, and stating the District's opposition to annexing the Project into its service area; and

WHEREAS, following publication of the Final EIR, District staff engaged in discussions with County staff and the Project developer's team regarding the feasibility of Proposal; and

WHEREAS, the Project developer's team prepared an assessment addressing in part the technical and economic feasibility of the Proposal; and

WHEREAS, the Project developer's assessment did not address the effect of the Proposal on the District's ability to serve current and future customers within the current USB; and

WHEREAS, current drought conditions prevailing throughout much of California have highlighted the importance of protecting all of the District's water supplies—including supplies created through water conservation—for current and future District customers within the current USB; and

WHEREAS, 2021 has thus far been the second driest year on record in the Mokelumne River basin, where most of the District's water supplies originate; and

WHEREAS, 2021 has thus far been the driest year on record for the East Bay; and

WHEREAS, the snow depth at Caples Lake, a Mokelumne basin snow survey reference point, was at 52 percent of average as of April 19, 2021 and the California Department of Water Resources' Bulletin 120 forecast of the forecasted runoff on the Mokelumne River is at 42 percent of average; and

WHEREAS, on March 22, 2021, the State Water Resources Control Board sent a warning letter to the District and other water rights holders which noted the unusually dry conditions prevailing throughout California, and urged water rights holders to begin planning for potential water supply shortages by taking actions such as increasing water conservation and diversifying water supply portfolios; and

WHEREAS, on April 27, 2021, based on the projected impact of the prevailing dry conditions on the District's water supplies, this Board declared the District's water supplies deficient for meeting customer demands, declared a Stage 1 drought, established a District-wide ten percent rationing goal, declared the need to purchase supplemental supplies, and directed District staff to take actions to promote customer water conservation; and

WHEREAS, since this Board's April 27, 2021 drought-related actions, the District's water supply projections for this water year have continued to decline, with the District's anticipated end-of-September storage levels now 65-70 thousand acre-feet lower than previously projected; and

WHEREAS, as demonstrated in this year's drought and other droughts in recent years, the District's water supplies are not sufficient to meet customer demand in times of drought, requiring the District to purchase supplemental supplies and impose water rationing requirements on its customers; and

WHEREAS, dry year deficiencies in the District's supplies are expected to persist, and the District's Draft Urban Water Management Plan 2020 identifies both a substantial increase in USB-wide demand over the next thirty years, and several thousand acre-feet in unmet need for water in times of drought in the future; and

WHEREAS, in addition to drought, many other stressors threaten to reduce the amount of water available to District customers now and in the future, including climate change, future regulatory actions, and cutbacks in the availability of water to the District under its Central Valley Project (CVP) contract with the United States Department of Interior Bureau of Reclamation (Reclamation); and

WHEREAS, the District's Urban Water Management Plan 2015 estimated that climate change could result in a several thousand acre-foot increase in the District's unmet need for water by the year 2040; and

WHEREAS, climate change may also result in more frequent and severe droughts in the future; and

WHEREAS, the State Water Resources Control Board's efforts to update the Bay-Delta Water Quality Control Plan have thus far focused on improving Bay-Delta water quality by significantly increasing instream flow requirements on tributary rivers to the Bay-Delta, like the Mokelumne River, where most of the District's water supplies originate; and

WHEREAS, the Bay-Delta Water Quality Control Plan Update is likely to increase the District's Mokelumne River instream flow obligations by tens of thousands of acre-feet per year, adding a significant new constraint on the District's water supplies that could impair its ability to meet customer demands in the future; and

WHEREAS, during the last drought, the State of California directly involved itself in local water management, both by issuing curtailment orders requiring water rights holders like the District to divert less water, and by promulgating emergency regulations dictating reductions in customer demand; and

WHEREAS, 2014 and 2015 curtailment orders required the District to bypass approximately 76 thousand acre-feet of water on the Mokelumne River that would have otherwise been available to serve its customers; and

WHEREAS, the State of California could take similar actions this year and in future droughts,

requiring the District to achieve short-term reductions in water consumption and reducing the availability of Mokelumne River water for District customers; and

WHEREAS, in addition to customer rationing, the District's CVP contract provides a key source of supply to meet customer demands during droughts; and

WHEREAS, during the 2014-15 drought, CVP allocations were cut to only 25% for Municipal and Industrial contractors like the District, significantly reducing the amount of CVP water available to the District and forcing the District to purchase supplemental supplies on the spot water transfers market; and

WHEREAS, securing supplemental supplies on the spot transfers market in 2015 was both challenging and expensive, with spot transfer water prices seven to ten times higher than CVP water prices; and

WHEREAS, on May 26, 2021, Reclamation indicated the District's CVP allocation would again be cut to 25%, thus dramatically reducing the amount of CVP water available to address the District's drought-induced water supply deficiencies this year; and

WHEREAS, because of the late date on which CVP cutbacks were announced, it is very unlikely the District will be able to purchase water on the spot transfers market, as most available water has already been purchased by other parties; and

WHEREAS, CVP allocations could be similarly reduced in future droughts, and there are no assurances that supplemental water will be available on the spot transfers market to replace the District's reduced CVP supplies, potentially leaving the District without adequate supplies to meet customer demands; and

WHEREAS, given the existing and predicted future deficiencies in the District's water supplies during droughts, and other threats and stressors on those supplies, the District must adhere to its policies regarding the annexation of new service territory; and

WHEREAS, offsetting the Project's demand through conservation programs would take "new water" created through those programs away from District customers within the USB, thereby violating Policy 3.05 by reducing the quantity of water available to those customers; and

WHEREAS, the Project is located entirely outside the USB, would result in the addition of more than 100 residential units outside the USB, and is inconsistent with Policy 3.05, such that (1) the Project does not meet Policy 3.01's enumerated conditions for annexation of territory outside the USB, and (2) annexation of the Project would therefore be inconsistent with Policy 3.01; and

WHEREAS, because the Project is less than 200 units in size, is located outside the County's Urban Limit Line, and is inconsistent with Policy 3.01, it also does not comply with Policy 3.08; and

WHEREAS, the District has a legal obligation to provide adequate water service to all members of the community within its service area; and

WHEREAS, given the deficiencies in the District’s water supplies in times of drought, the potential threats to those supplies, and the anticipated growth in water demand within the USB, the District cannot afford to dedicate any water available to it—including new water supplies created through water conservation programs—to a proposed development outside its current service area, and outside the USB;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Municipal Utility District finds, determines and declares the following:

1. The Board finds the above recitals to be true and correct.
2. The Board hereby finds and declares the District has not planned to serve the Project and does not have adequate water supplies to support the proposed annexation of the Project into the District’s service area.
3. The Board hereby finds and declares the District must reserve all sources of water supply available to mitigate water supply deficiencies it experiences during droughts and to address the potential impacts of other stressors and constraints on its water supplies.
4. The Board hereby finds and declares that serving the Project using water created through implementation of conservation programs throughout the District’s service area is not feasible because doing so would take a source of water supply away from existing and future customers within the USB, thereby exacerbating deficiencies in the District’s water supplies during droughts.
5. The Board hereby finds and declares that the proposed annexation of the Project is inconsistent with District Policies 3.01 and 3.05 and does not comply with Policy 3.08.

6. The Board hereby declares the District (a) is opposed to annexing the Project into its service area and (b) does not intend to serve the Project.

ADOPTED this 8th day of June, 2021 by the following vote:

AYES: Directors Katz, Mellon, Patterson, Young and President Linney.


NOES: Director Coleman.

ABSENT: Director McIntosh.


ABSTAIN: None.

  
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President

ATTEST:

  
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Secretary

APPROVED AS TO FORM AND PROCEDURE:

  
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General Counsel