



September 18, 2014



Presiding Judge Winifred Y. Smith  
Alameda County Superior Court  
1225 Fallon Street, Department One  
Oakland CA 94612

Dear Judge Smith:

This letter is the response of the East Bay Municipal Utility District ("EBMUD") to the Final Report issued by the Alameda County Grand Jury on June 23, 2014. The Grand Jury found that while EBMUD is a well-run agency delivering high quality water and wastewater treatment services in a professional manner, the Grand Jury had concerns regarding the transparency of reports to the public with regard to rate increases. The Grand Jury made the following recommendations:

**Recommendation 14-26.** EBMUD should provide the public with a complete and objective analysis in connection with future rate increases, including all factors that drive the recommended increases. The analysis should contain the financial impact of the proposed rate increase on a broader range of water or sewer consumers (for example, the 25<sup>th</sup> percentile point, the 50<sup>th</sup> percentile point and the 75<sup>th</sup> percentile point) as opposed to just a district-wide average. The analysis should also include a history of prior rate increases.

**Recommendation 14-27.** EBMUD must provide live streaming of board meetings, televise on public access channels, and have online access of past meetings available on the EBMUD website.

**Recommendation 14-28.** EBMUD must make it more convenient for the public to attend its meetings, which may include holding meetings in the evening and at other locations throughout the district.

On behalf of EBMUD's Board of Directors and staff, I want to commend the Grand Jury for its diligent efforts to assess and evaluate the work of public agencies and to make findings and recommendations in the public's interest. We have taken a great deal of time and effort to carefully reflect on the information we provided and the Grand Jury's assessment, and we have responded in this nine-page letter.

#### **14-26: COMPLETE AND ACCURATE RATE INFORMATION**

In Recommendation 14-26, the Grand Jury recommended that EBMUD provide the public with a complete and objective analysis in connection with future rate increases, including all factors that drive the recommended increases. The analysis should contain the financial impact of the proposed rate increase on a broader range of water or sewer consumers (for example, the 25<sup>th</sup> percentile point, the 50<sup>th</sup> percentile point and the 75<sup>th</sup> percentile point) as opposed to just a district-wide average. The analysis should also include a history of prior rate increases.

This recommendation will be implemented as part of EBMUD's next budget cycle (Spring 2015). We will include more information explaining rate impacts to a broader range of customers, such as the impacts suggested by the Grand Jury, in the next budget cycle in public Board workshops on budget and rates. We will also continue our current practice of posting all Board presentations, documents presented at workshops, and Board meetings to the EBMUD website.

EBMUD shares the Grand Jury's goal of transparency in connection with rate setting and other work we conduct on behalf of our ratepayers and believe we accurately represent costs and appropriately provide information about prior rate increases. In the interest of achieving our shared goals and objectives, EBMUD respectfully observes that some statements in the Grand Jury Final Report leading to the overall conclusion in Finding 14-25 – that EBMUD failed to sufficiently explain to the public the underlying reasons for the June 11, 2013 rate increase – were based on factually incorrect assumptions about household and per-person water use.

Cost Information Presented to Customers. The Grand Jury Final Report says that while EBMUD presented 246 gallons per day (gpd) as the average single family customer water use, the 246 gpd also included multi-family use, which in turn lowered average use and the corresponding average monthly cost to households. In fact, the figure does not include multi-family use: 10 CCF per month or 246 gpd is the average use for a single-family residential (SFR) home as commonly understood and described by the Grand Jury: "a single house on its own lot, with a yard, etc."

Approximately 325,000 of EBMUD's 386,000 accounts are single-family residential homes. In addition, approximately 29,000 are multi-family residential and 32,000 are commercial/industrial. (These figures are referenced in materials we provided to the Grand Jury on January 28, 2014—see Chapter 6, Tables 1A and B of the Biennial Report and Recommendation of the General Manager, FY14-15.) We regret that a typographical error in a February 14, 2014 letter from EBMUD to the Grand Jury incorrectly stated total SFR as 340,000. We sincerely apologize for this error, which we believe is the basis for the Grand Jury's conclusion that EBMUD did not correctly present the impact of the rate increase on the average SFR bill. Using the correct figure of 325,000 SFRs does result in the 246 gpd figure included in EBMUD's June 11, 2013 rate increase presentation. This in turn leads to the \$3.96

and \$4.19 impacts over the two years shown in EBMUD's June 11, 2013 rate increase presentation.

The Grand Jury Final Report correctly points out the variation in water use by region, noting that EBMUD recognizes the distinction between water use in the areas east and west of the Oakland-Berkeley hills. SFR customers in the cooler west of hills areas use about 8 CCF per month and customers east of hills use about 20 CCF per month. Consequently, EBMUD generally shows SFR rate impacts for both 10 CCF and 20 CCF, as in the June 11, 2013 rate increase presentation. The Grand Jury Final Report asks that information on the rate increase impacts at the 25<sup>th</sup>, 50<sup>th</sup> and 75<sup>th</sup> quartiles be presented as well. While the concept of showing the distribution of rate impacts in more detail to further customer understanding makes good sense, EBMUD will need to consider if these additional data points would augment the average customer's understanding of proposed rate increases. EBMUD has contracted with a rate consultant expert to review and update its costs of service and we will explore alternative ways to present rate information that may aid our customers as they seek to understand the costs of service and projected rates.

The Grand Jury Final Report mentions multi-family residential (MFR) units in its discussion of the cost of the rate increase. These accounts usually have one meter for an entire building. EBMUD consequently does not collect data pertaining to the number of individual units in each MFR and could not include data based on this statistic in the average SFR use calculation. Further, we would not combine MFR and SFR accounts to generate a "typical" SFR figure because, as the Grand Jury observes, it would be inaccurate and misleading. Additionally, we note that the average we use does not include elevation charges because nearly 60 percent of SFR customers do not pay an elevation charge. Our figures are based upon true SFR accounts, as understood and described by the Grand Jury.

The Grand Jury Final Report also used the figures 280 gpd for west of hills, 360 gpd in the central area and 580 gpd east of hills (EBMUD 2014-2015 Biennial Budget p.54) and compared these to the average 246 gpd per SFR use figure from the rate increase calculation. These figures are not directly comparable. The former (280, 360, 580 gpd) are averages used to determine system capacity charges (SCCs) for new single family homes built in three sub-regions of the service area and the latter is average water sales across all SFRs. The reason we use a higher figure to calculate water use for SCCs is that new SFR homes are, on average, larger in square footage and in lot size and have higher peak water demand than existing older homes in our service area. We attempted to clarify the difference between the two averages in our February 14, 2014 letter, but given the typographical error in that letter the explanation may not have been sufficient.

Another point of clarification relates to the Tier 1 break point of 7 CCF per month. The Grand Jury correctly notes that the typical SFR would not have all use billed in Tier 1. The Tier 1 break point reflects average indoor water use across the service area, which is 7 CCF per month. The \$3.96 and \$4.19 two-year rate impacts are based on average SFR use of 246 gpd, which includes 7 CCF at Tier 1 and 3 CCF at Tier 2.



One final point of clarification about cost information relates to gallons per capita per day (gpcpd). We believe some confusion may have arisen from a newspaper report referenced in the Grand Jury Final Report. The newspaper article cites "the average single family home in the East Bay Municipal Utility District used 135 gallons of water per person per day." Gallons per capita per day is a metric used in the water industry to compare one water purveyor's water use to another's on an apples-to-apples basis. It is a way to compare, for example, San Francisco's water use to that of Los Angeles. This number is derived by taking the total of all water used annually and dividing it by the population served. It reflects water used to wash dishes at restaurants and flush toilets at work and at the movies, water used by local employers and by car washes and water used by large landscape irrigators such as golf courses, parks, cemeteries, etc. This figure is different from the average amount of water used by the single family dwelling account in any jurisdiction and while 135 gpcpd is the EBMUD total average use for purposes of this industry water metric, it is not the average amount of water used by our average household. This news report misunderstanding may also have contributed to the conclusion that the 246 gpd average use per SFR could not be correct. We regret this misunderstanding. Media reports are a primary source of information about water issues for many customers, and we work diligently with journalists to help them understand and accurately convey water demand and supply information to lay audiences.

In summary, after carefully reviewing both our own materials and the Grand Jury Final Report, EBMUD believes it did not misrepresent or downplay the future costs of the rate increases to customers. We appreciate the Grand Jury's perspective, apologize for any confusion and will redouble our efforts to ensure that we present clear and comprehensive information about the impact of rate increases to our customers.

Rate History and Bond Ratings. EBMUD hopes that clarifying the accuracy of our bill impact cost information has addressed the comments in the Grand Jury Final Report under the section "Transparency Concerns with Public Pronouncements". In the event that transparency concerns remain, however, EBMUD would like to respond to some of the issues raised.

EBMUD is committed to clearly and consistently presenting the impact of proposed rate increases to consumers. Board budget materials, presentations and memos consistently present bill impacts to both our average SFR customer at 10 CCF per month and to our average warmer climate and larger lot customers at 20 CCF per month. That said, it is challenging to present average bill information for a service area with the diverse water use patterns we have due to varying geography, climate, lot sizes and vegetation. Proposition 218 notices must meet many legal requirements. Because of our diverse service area, meeting these requirements results in a long and complex document and we must make many choices about how to present information clearly. One choice we made was to present the average 246 gpd SFR customer bill impact. Striking a balance between being clear and being comprehensive is challenging, and we appreciate ideas on how to present accurate, accessible information to our diverse customer base.

The Grand Jury Final Report observed that the Proposition 218 notice did not mention EBMUD's history of annual rate increases. The notice did reference how prior rate increases were used and the 2014-2015 Biennial Budget shows the last 10 years of rate increases (p.48 for water and p.57 for wastewater). Past rate increase information is included in the biennial budget book in every budget cycle. We also note that raising rates annually is an industry best practice to keep utilities in healthy financial condition and to avoid customer rate shock from erratic increases.

The Grand Jury also stated that EBMUD's bond rating risk was not disclosed. This issue was discussed in several venues. The General Manager's letter that opens the 2014-2015 Biennial Budget states: "A final warning signal came from the bond rating agencies. EBMUD's AAA rating which saves about \$7.5 million annually in interest costs and reduces the cost of borrowing, received a negative outlook from Standard and Poor's." Board memos, minutes and presentations from the September 2012 time period all mention the need to emphasize the commitment to prudently managing finances with respect to bond ratings. The theme rises again in Board memos, meetings and presentations in the February 2013 time frame where there are several mentions of the continued negative outlook on EBMUD's bond rating as well as reference to rates and budget as being key to long-term fiscal stability and the maintenance of EBMUD's strong credit ratings. Again, Board documents from April 2013 reprise these themes.

We agree with the Grand Jury's statements about the importance of transparency and we strive for continuous improvement in this regard. Our 2014-2015 Biennial Budget provided more information than in previous years and reflected a reorganization of the information to make it easier to read. Changes included bringing information about financial policies and the budget process to the front of the document rather than including them as appendices, separating water and wastewater information into distinct sections for greater clarity, improving the information presented on debt and including more trend graphs to provide greater context for the information provided. For thirteen consecutive budget cycles EBMUD has won the national Government Finance Officers Association's Distinguished Budget Presentation Award. In addition, the California Society of Municipal Finance Officers has twice awarded EBMUD its Excellence in Budgeting award. Our most recent Strategic Plan, adopted in June 2014, identifies this strategy under the goal of long-term financial stability: "Ensure integrity, accountability and transparency in financial management." As we work on this strategy, your input reminds us there is always room for improvement.

Pension Costs. Turning to the issue raised by the Grand Jury pertaining to the EBMUD Employee's Retirement System (ERS), EBMUD shares the Grand Jury's concerns about pension costs. EBMUD reviewed the California Public Employees' Pension Reform Act of 2013 and made changes in response, including creating a new tier requiring employees hired on or after January 1, 2013 to contribute at least 50 percent of the normal cost of the plan and negotiating with labor unions to increase existing employees' share of contributions over time.

EBMUD has always been up-front about the costs of funding the ERS and aims for a high level of transparency. Because EBMUD runs its own pension fund, the bimonthly meetings of the ERS take place at EBMUD's main offices and are open to the public. EBMUD engages in regular, publicly available disclosure to investors in EBMUD bonds, providing great detail on the pension fund's status. Regular audited reports of the ERS are posted on EBMUD's website along with EBMUD's other financial statements, and the EBMUD Board of Directors receives an annual report on the pension fund status.

The Grand Jury states that EBMUD did not include ERS unfunded liability in its drivers for the rate increases. The reason is that funding the pension system was not a major driver of the rate increases. The three major rate increase drivers were increased operation and maintenance costs, capital-related infrastructure costs and decreased water sales projections (sales projections were adjusted downward from prior budgets as a result of the economic downturn and excellent conservation by our customers).

Past Savings. Turning to the issues raised in the Grand Jury Final Report section, "Overstated Past Savings," EBMUD shared its ten-year staffing level trend as part of the FY14-15 budget process. The reference to the 10 percent reduction in staff since 2003 represents the ten-year trend from 2003 – 2013.

In 2009, in response to a national and local economic crisis and a drought, EBMUD implemented mitigation measures to contain costs. One measure was a hiring freeze with limited exceptions for operational necessity. Positions that were determined to be operationally necessary were filled while many other positions intentionally remained vacant. When the hiring freeze was established a significant portion of the workforce was projected to be retirement-eligible within five years. The hiring freeze was a thoughtful approach to reduce staff while keeping positions filled for operational necessity, and was effective in reducing expenses. EBMUD represented the workforce reduction in terms of employee headcount and budgetary savings realized. At no time has EBMUD represented that the workforce reduction was achieved through strategies other than a hiring freeze.

The Grand Jury notes there was a more than 50 percent cut in the EBMUD capital improvement program budget from the mid-2000s to 2013, and there has been a more than 75 percent reduction in new water and sewer connections since 2006-2007. In FY05 the capital budget was nearly \$400 million, of which \$275 million was spent on the Freeport Regional Water Project, a multi-agency joint venture to build a major water supply reliability project and to construct new EBMUD facilities to draw supplemental supplies from an alternate source in droughts. While the FY13 capital budget of \$177 million looks low by comparison, the FY14 capital budget of \$200 million represents an increase of 13 percent.

A substantial portion of EBMUD's current capital program pertains to rehabilitation and improvement of existing infrastructure, such as pipes and facilities that need to be maintained. EBMUD's service area grew at unusually high rates during the economic boom, and the growth rate did undergo a correction in the subsequent economic crisis. However, growth-

related capital infrastructure is a relatively small portion of EBMUD's current and future capital plan.

#### **14-27: AUDIOVISUAL ACCESS TO BOARD MEETINGS**

In Recommendation 14-27, the Grand Jury recommended that EBMUD must provide live streaming of Board meetings, televise on public access channels, and have online access of past meetings available on the EBMUD website based on Finding 14-26 which states, "EBMUD's daytime meetings and single meeting location, as well as its failure to record or to provide live broadcasts of its board meetings, has resulted in limited participation."

This recommendation requires further analysis. EBMUD is committed to transparency and actively encourages public participation in all facets of its work. EBMUD invests significant effort in engaging its customers and make information easy to access. Currently, EBMUD agendas and staff reports are posted in advance of meetings, and meeting-day presentation materials and minutes are posted subsequent to meetings. EBMUD's minutes, available online, provide a level of detail with regard to the meeting discussion that is not typically provided when agencies make audio or video streaming available. EBMUD's approach of providing links to detailed minutes and online copies of agenda materials is a common practice among other utilities we surveyed (Alameda County Water District, Marin Municipal Water District, Contra Costa Water District, Irvine Ranch Water District, and Central Contra Costa Sanitary District).

The Grand Jury may not be aware that EBMUD routinely conducts neighborhood-based meetings, mailings and presentations to engage directly with individuals whose lives may be affected by an EBMUD project. These offer opportunities for customers to shape the approach used to build or replace infrastructure and represent substantive public engagement in decisions that ultimately come before the Board. The meetings occur in the evening, on weekends and at locations that are proximate to the neighbors affected by projects. Board members frequently participate directly in these neighborhood meetings. Perhaps low participation at Board meetings is a reflection of effective outreach early in the decision making process on projects that represent the building blocks of EBMUD's budget and rate decisions.

We also note that for the FY14-15 budget process, as in prior budget rounds, EBMUD provided many opportunities for public participation outside of the Board room. EBMUD Board members regularly speak before city councils, civic groups, business groups and other entities to discuss EBMUD issues and provide updates on pending rate decisions. In the last 12 months, EBMUD Board members have given presentations at more than 50 public meetings in our service area; these meetings have occurred at various times during the day or evening and were made to groups that include city councils, civic groups, homeowner associations and EBMUD-sponsored meetings of key stakeholder leaders within EBMUD wards. In addition, information about the budget process is posted on the EBMUD website and is reported through a bill insert to customers.



All of these actions, plus the mailing of a detailed Proposition 218 notice explaining the reasons for the rate increases, represent a solid commitment to public engagement and transparency. Based on EBMUD's experience and the experience of other water and wastewater agencies, changing the location and time of the Board meeting does not increase participation. A review of the literature on the reasons people participate in public meetings indicates many factors influence public participation.

Consistent with the Grand Jury Final Report Recommendation 14-27 and our continuous effort to improve access to information for the public, EBMUD will evaluate audio and video service options with the goal of providing a recommendation to the Board of Directors in late 2014. We note that adding audio or video to complement existing efforts to provide another means for the public to engage in EBMUD policy discussions was evaluated previously but limited resources during the economic downturn precluded serious consideration of this option. Audio and video services may be a useful adjunct to the suite of Board-related services currently provided online. We do note, however, that there has been virtually no customer feedback to indicate that the current resources offered are insufficient or that the Board meeting schedule is a hurdle to public participation.

#### **14-28: TIME AND PLACE OF BOARD MEETINGS**

In Recommendation 14-28, the Grand Jury recommended that EBMUD must make it more convenient for the public to attend its meetings, which may include holding meetings in the evening and at other locations throughout the district.

This recommendation will not be implemented for the following reasons. In the early 1990s EBMUD conducted its meetings at night for a period of time for the purpose of seeking to encourage public participation and found that it did not generate that result. As stated previously, EBMUD routinely conducts numerous public meetings throughout its service area when the topic of the meeting affects a specific area or group of customers. When EBMUD has held meetings on broad topics such as long-term water supply planning that will have a significant effect on the quality of life in the community and a defined impact on future rates, attendance at meetings held at alternate times and locations in the service area has been minimal.

EBMUD believes that its continuous efforts to engage with the public through government, civic and business meetings throughout its 332 square mile service area and to provide convenient meetings near the site of potential construction represents a significant investment in customer relations that results in customer confidence and trust. Holding regular Board meetings in the evening or in multiple locations would increase costs, make it more difficult to schedule project-related night meetings and, based on our experience, not increase public participation. However, we will continue the practice of special evening meetings on select topics to provide additional opportunities for participation as appropriate.



## CONCLUDING REMARKS

In conclusion, we believe that EBMUD accurately presented the FY14-15 rate increases to the public. EBMUD makes every effort to be clear in its communications. Recognizing that this is a complicated subject, we appreciate the Grand Jury's suggestions with regards to providing additional information in our budget documents on future rate increases and welcome suggestions about ways in which we can improve our communications.

We again regret that a typographical error in our February 14, 2014 letter resulted in a misunderstanding of how average rate impacts were presented and assure the Grand Jury that it has been and will continue to be our intent to accurately present the cost impacts of proposed rate increases. While we believe we did this to the best of our ability in prior budget cycles, we recommit to striving to provide information that makes it easy for all customers to understand potential rate increases. In addition to implementing Recommendation 14-26 in the next budget cycle, in preparing future budget information, EBMUD will explore alternative ways to present rate information that may aid our customers as they seek to understand the costs of service and projected rates such as explaining the financial impact of the proposed rate increase on a broader range of water or wastewater customers. As part of this process, we will also review making available on-line tools allowing customers to calculate individual bill impacts.

In addition, we will investigate adding audio or video of Board meetings to complement the existing public engagement efforts we make online, through mailings with bills, through presentations and through earned media to support public engagement in the budget process. However, we believe our past experiences in holding Board meetings in the evening and in conducting public meetings throughout the service area on long-term water supply planning topics indicate that these are approaches that do not necessarily promote public engagement with utilities, although they certainly may be successful strategies for other local governments. That said, we will continue to consider special evening meetings on select topics as appropriate.

We again express EBMUD's appreciation for the work of the Grand Jury with respect to the concerns raised, and the recommendations presented in its Final Report.

Sincerely,



Andy Katz, President  
EBMUD Board of Directors

cc: Alameda County Grand Jury