



## **NOTICE OF SPECIAL LOCATION**

The regularly scheduled meeting of the  
BAWSCA Board of Directors on  
**September 19, 2019 at 6:30 p.m.**

**WILL BE HELD**

in the **Wind Room**  
of the **Foster City Community Building, 1000 E. Hillsdale Blvd.**

If you have any questions, please call the  
BAWSCA office at (650) 349-3000.

**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
BOARD OF DIRECTORS MEETING**

**SPECIAL LOCATION**

**Foster City Community Building –1000 E. Hillsdale Blvd. Foster City  
Wind Room**

*(Directions on Page 2)*

**Thursday, September 19, 2019  
6:30 P.M.**

**AGENDA**

<b><u>Agenda Item</u></b>	<b><u>Presenter</u></b>	<b><u>Page</u></b>
<b>1. Call to Order/Roll Call/Salute to Flag</b>	<b>(Pierce)</b>	
<b>2. Comments by the Chair</b>	<b>(Pierce)</b>	
<b>3. Public Comments</b> <i>Members of the public may address the Board on any issues not listed on the agenda that are within the purview of the Agency. Comments on matters that are listed on the agenda may be made at the time the Board is considering each item. Each speaker is allowed a maximum of three (3) minutes.</i>	<b>(Pierce)</b>	
<b>4. SFPUC Report</b>	<b>(Kelly)</b>	
<b>5. Consent Calendar</b> <i>(Attachments)</i>	<b>(Pierce)</b>	
A. Approve Minutes of the July 18, 2019 Meeting		<i>Pg 3</i>
B. Receive and File Pre-Audit Budget Status Report – As of 6/30/19		<i>Pg 7</i>
C. Receive and File Investment Report – As of 6/30/19		<i>Pg 9</i>
D. Receive and File Directors' Reimbursement Report – As of 6/30/19		<i>Pg 11</i>
E. Receive and File Bond Surcharge Collection, Account Balance and Payment Report For Fiscal Year Ending June 30, 2019		<i>Pg 13</i>
<b>6. Action Calendar</b>	<b>(Sandkulla)</b>	
A. Resolution Approving Temporary Reappointment of Arthur Jensen as Special Counsel to the CEO/GM <i>(Attachment)</i>		<i>Pg 17</i>
<b>7. Special Reports on Bay Delta Plan</b>	<b>(Pierce)</b>	
A. Tuolumne River Trust		
B. SFPUC		
C. BAWSCA		
<b>8. Reports</b>	<b>(Sandkulla)</b>	
A. Water Supply Update		
B. CERBT Fund Update <i>(Attachment)</i>		<i>Pg 21</i>
C. CEO/General Manager's Letter <i>(Attachment)</i>		<i>Pg 23</i>
D. Board of Directors Policy Calendar <i>(Attachment)</i>		<i>Pg 27</i>
E. Correspondence Packet ( <a href="#"><u>Under Separate Cover</u></a> )		

## 9. Closed Session

- |   |                  |
|---|------------------|
| <p>A. Conference with Legal Counsel – Existing Litigation pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9 <i>Federal Energy Regulatory Commission Final License Application Proceedings for Don Pedro Hydroelectric Project, P-2299-082, and La Grange Hydroelectric Project, P-14581-002</i></p> | <p>(Schutte)</p> |
| <p>B. Conference with Legal Counsel – Existing Litigation pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9 <i>San Joaquin Tributaries Authority, et al. v. California State Water Resources Control Board (Tuolumne County Superior Court Case No. CV62094).</i></p>                               |                  |
| <p>C. Public Employee Performance Evaluation<br/>Title: CEO/General Manager<br/>Closed Session Pursuant to Government Code Section 54957<br/>(Under Separate Cover)</p>   | <p>(Pierce)</p>  |

## 10. Report from Closed Session (Pierce/Schutte)

**11. Action Item Following Closed Session** (Pierce)

- A. Consider declaration that the compensation and benefits of CEO/General Manager are uncertain as of September 19, 2019 due to Ongoing Negotiations

**12. Directors' Discussion: Comments, Questions and Agenda Requests (Pierce)**

**13. Date, Time and Location of Future Meetings** (Pierce) Pg 31  
(See attached schedule of meetings)

**14. Adjourn to next meeting scheduled for November 21, 2019 at 6:30pm (Pierce)**

*Upon request, the Bay Area Water Supply and Conservation Agency will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. Please send a written request, including your name, mailing address, phone number and brief description of the requested materials and the preferred alternative format or auxiliary aid or service at least two (2) days before the meeting. Requests should be sent to: **Bay Area Water Supply & Conservation Agency, 155 Bovet Road, Suite 650, San Mateo, CA 94402** or by e-mail at [bawsca@bawsca.org](mailto:bawsca@bawsca.org)*

*All public records that relate to an open session item of a meeting of the BAWSCA Board that are distributed to a majority of the Committee less than 72 hours before the meeting, excluding records that are exempt from disclosure pursuant to the California Public Records Act, will be available for inspection at **BAWSCA, 155 Bovet Road, Suite 650, San Mateo, CA 94402** at the same time that those records are distributed or made available to a majority of the Committee.*

**DIRECTIONS TO FOSTER CITY COMMUNITY BUILDING — WIND ROOM:**

**From Hwy 101 North**, take the Hillsdale Ave. exit toward Foster City. Turn Right onto E. Hillsdale Blvd. Turn Right into the parking lot just after the intersection with Shell Blvd. The Community Bldg. entrance is separate from the Library entrance and is marked by signage. The Wind Room will be at the top of the stairs on the right, across from the reception station. (There is an elevator).

**From the East Bay**, take Hwy 92 West, exiting at Foster City Blvd., and going South on Foster City Blvd. to Hillsdale. Turn Right (West) onto Hillsdale and proceed to Shell Blvd., making a U-turn to be able to pull into the parking lot SE corner of Hillsdale and Shell. The Wind Room will be at the top of the stairs on the right, across from the reception station. (There is an elevator).

**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY  
BOARD OF DIRECTORS MEETING**

**July 18, 2019 – 6:30 p.m.  
San Mateo Library – 55 W. 3<sup>rd</sup> Ave.  
Oak Room**

<b>MINUTES</b>
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**1. Call to Order/Pledge of Allegiance/Roll Call – 6:30 pm**

BAWSCA Chair, Barbara Pierce, called the meeting to order and led the salute to the flag. Nicole Sandkulla called the roll. Fifteen (15) members of the Board were present at roll call. Three Directors arrived after roll call. A list of Directors present (18) and absent (8) is attached.

**2. Comments by the Chair:** Chair Pierce welcomed members of the Board, and announced the addition of Mountain View Mayor, Lisa Matichak, to the BAWSCA Board.

Chair Pierce stated that BAWSCA's next strategic objective is to ensure adequate and reliable water supply for the next drought and beyond. She reported that Ms. Sandkulla addressed the Commissioners of the SFPUC at its June 25<sup>th</sup> meeting emphasizing that SFPUC, under AB 1823, is required to report annually to the Legislature and the California Department of Health Services about its progress in finding new sources of water for its customers during the next drought and beyond. Ms. Sandkulla's statement urged the SFPUC to pursue a strategic plan for new water sources with a solid proposal, dedicated leadership, and an adequate budget, just as it was done for the WSIP.

BAWSCA will monitor SFPUC's efforts closely, just as it has with the WSIP, and report its observations and suggestions to the SFPUC, the BAWSCA Board, and the State of California.

Chair Pierce stated that the Board's support for the effort will be crucial to its success, particularly with the current negotiations at the State level to negotiate a Voluntary Settlement on the Bay Delta Plan.

**3. Board Policy Committee (BPC) Report:** Committee Vice-Chair Tom Chambers reported the discussions and actions taken by the Board Policy Committee at its meeting on June 12, 2019. They are reflected in the BPC summary report included in the packet.**4. Public Comments:** There were no public comments.**5. SFPUC Report:** SFPUC Division Manager for SFPUC Natural Resources and Lands Management, Tim Ramirez, reported on SFPUC's efforts for watershed fire risk reduction.**6. Consent Calendar:**

**Director Wood made a motion, seconded by Director Larsson, to approve the Minutes of the May 16, 2019 meeting, receive and file the Budget Status**

**Report as of May 31, 2019, authorize the CEO/General Manager to negotiate and enter into an agreement with West Yost Associates to conduct an SFPUC Asset Management Program Audit, and authorize the CEO/General Manager to negotiate and enter into a Memorandum of Understanding with Regional Water Authority (RWA) to implement a Regional Smart Controller Program.**

**The motion carried unanimously.**

- 7. Reports:** Staff reports were provided on water supply conditions, Bay Delta Plan, and BAWSCA's Pilot Water Transfer.
- 8. Closed Session:** The meeting adjourned to Closed Session at 7:37pm
- 9. Report After Closed Session:** Legal Counsel, Allison Schutte, reported that Closed Session was concluded at 8pm, and no action was taken during Closed Session.
- 10. Directors' Discussion: Comments, Questions and Agenda Requests:** Director Larsson thanked Andree Johnson for her key role in organizing the California United Water Conference, which he and Director Kuta attended. The Conference covered significant topics including fire risks, fire management, and escalated fire risks due to climate change.  
  
Director Keith appreciated the report from Tim Ramirez and the SFPUC's efforts in managing the watershed.
- 11. Date, Time and Location of Next Meeting:** The next meeting is scheduled on September 19, 2019 at 6:30pm, in the Wind Room of the Foster City Community Building.
- 12. Adjournment:** The meeting adjourned at 8:15pm.

Respectfully submitted,

Nicole M. Sandkulla  
Chief Executive Officer/General Manager

NMS/le

Attachments: 1) Attendance Roster

# Bay Area Water Supply and Conservation Agency

## Board of Directors Meeting Attendance Roster

Director	Agency	July 18, 2019	May 16, 2019	Mar. 21, 2019	Jan. 17 2019	Nov. 15 2018	Sept. 20 2018
Benton, Jay	Hillsborough		✓		✓	✓	✓
Breault, Randy	Guadalupe		✓		✓	✓	✓
Chambers, Tom	Westborough	✓	✓	✓	✓	✓	✓
Cormack, Alison	Palo Alto		✓	✓	✓*	✓*	*
Davis, Debi	Santa Clara			✓	vacant	✓*	*
Hindi, Sam	Foster City			✓	✓	*	*
Jordan, Steve	Purissima	✓	✓	✓	✓*	✓*	✓*
Keith, Kirsten	Menlo Park	✓	✓				
Kuta, Rob	Cal Water	✓	✓	✓	✓	✓	✓
Larsson, Gustav	Sunnyvale	✓	✓	✓	✓		✓
Liccardo, Sam	San Jose						
Manalo, Juslyn	Daly City	✓		✓			✓
Matichak, Lisa	Mountain View	✓	✓*	✓*	*	✓*	*
Mendall, Al	Hayward	✓	✓	✓	✓	✓	✓
Mickelsen, Chris	Coastside	✓		✓	✓		
Montano, Carmen	Milpitas	✓	✓	✓	*	*	*
Moody, Larry	East Palo Alto	✓	✓	✓		✓	✓
O'Connell, Irene	San Bruno	✓	✓	✓	✓	✓	✓
O'Mahony, Rosalie	Burlingame	✓	✓		✓	✓	✓
Piccolotti, Tom	North Coast		✓	✓		✓	✓
Pierce, Barbara	Redwood City	✓	✓	✓	✓	✓	✓
Quigg, Dan	Millbrae		✓		✓	✓	
Vella, Lou	Mid-Peninsula	✓		✓	✓		✓
Weed, John	ACWD	✓	✓	✓	✓	✓	✓
Wood, Sepi	Brisbane	✓	✓	✓	✓	✓	✓
Zigterman, Tom	Stanford	✓	✓	✓		✓	✓

✓ : Present

\* : Predecessor

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**Bay Area Water Supply & Conservation Agency**

155 Bovet Road, Suite 650  
 San Mateo, California 94402  
 (650) 349-3000 tel. (650) 349-8395 fax

**TO:** Nicole Sandkulla, CEO/General Manager

**FROM:** Deborah Grimes, Office Manager

**DATE:** September 5, 2019

**SUBJECT:** Pre-Audit Budget Status Report as of June 30, 2019

This memorandum shows fiscal year budget status for FY 2018-19. It includes major areas of spending, provides an assessment of the overall budget, and summarizes reserve fund balances. This report covers the budget and expenses for BAWSCA. The BAWSCA budget includes necessary resources for the RFA and BAWUA.

**Operating Budget Summary:**

For the twelve-month period ending June 30, 2019, total expenditures were \$3,996,082 or 93 percent of the total budget of \$4,278,585.

**Table 1. Operating Budget Summary as of June 30, 2019**

Cost Category	Year-To-Date		
	Budget	Expenses	Percent
<b>Consultants /Direct Expenditures</b>			
Reliability	1,791,080	1,619,651	90%
Fair Pricing	301,000	222,591	74%
Administration	130,000	118,944	92%
<b>Subtotal</b>	<b>2,222,080</b>	<b>1,961,186</b>	<b>88%</b>
<b>Administration and General</b>			
Salary & Benefits	1,673,955	1,684,911	101%
<b>Other Expenses</b>			
BAWSCA	376,850	349,523	93%
BAWUA	1,050	0	0%
<b>Subtotal</b>	<b>4,273,935</b>	<b>3,995,620</b>	<b>93%</b>
<b>Capital Expenses</b>	3,000	0	0%
<b>Budgeted Contingency</b>	0	0	0%
<b>Regional Financing Authority</b>	1,650	462	28%
<b>Grand Total</b>	<b>4,278,585</b>	<b>3,996,082</b>	<b>93%</b>



**Overview:**

Overall expenditures for FY 2018-19 tracked within budget.

**Consultants**

The \$127,500 budget for technical review and tracking of the SFPUC's Water System Improvement Program was 65 percent expended. The Operating Budget allocation of \$170,000 for strategic counsel was 100 percent expended. The Operating Budget allocation of \$919,000 for legal counsel was 100 percent expended. The \$460,200 budget for water management and conservation-related activities was 79 percent expended.

**Administration and Other Expenses**

The budget for salaries and benefits was 101% expended due to slight underbudgeting in CalPERS. Other expenses were 93% percent expended.

**Use of CEO's Discretionary Spending Authority:**

No use of CEO discretionary spending authority since the last monthly budget report.

**Use of Reserve and Reserve Fund Balance:**

Unspent funds at the end of FY 2017-18 were \$253,892. The BAWSCA reserve balance as of June 30, 2019 shown below reflects this deposit. In accordance with the adoption of the FY 2018-19 annual budget in May 2018, the Board approved transferring \$321,688 from the General Reserve to fund the FY 2018-19 budget. The reserve balance as of June 30, 2019 shown below reflects this transfer.

**Table 2. General Reserve Fund Balance**

<b>Fund</b>	<b>Account Balance (As of 05/31/19)</b>	<b>Account Balance (As of 06/30/19)</b>
General Reserve	\$1,115,848	\$1,115,848



**Bay Area Water Supply & Conservation Agency**

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155 Bovet Road, Suite 650  
San Mateo, California 94402  
(650) 349-3000 tel. (650) 349-8395 fax

**MEMORANDUM**

**TO:** Nicole Sandkulla, CEO/General Manager

**FROM:** Deborah Grimes, Office Manager

**DATE:** September 9, 2019

**SUBJECT:** Investment Report – As of June 30, 2019

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In February 2004, the Board originally adopted an investment policy consistent with the Government Code that requires a report on the Agency's investments be provided to the Board. This report presents fund management in compliance with the current investment policy. The Board most recently reviewed and re-affirmed the investment policy at the January 17, 2019 board meeting. No changes were recommended or adopted as part of that review.

Funds in excess of \$250,000 are deposited in the BAWSCA Local Agency Investment Fund (LAIF) account throughout the year to ensure compliance with BAWSCA's investment policy.

BAWSCA's prior and current period LAIF account balances are shown below:

<u>03/31/19</u>	<u>06/30/19</u>
\$2,434,988	\$2,100,262

Of the total in the BAWSCA LAIF account as of June 30, 2019, \$1,115,848 represents BAWSCA's General Reserve Fund, equivalent to approximately 26 percent of FY 2018-19 Operating Budget. The remaining amount consists of Subscription Conservation Program funds and unrestricted funds.

Recent historical quarterly interest rates for LAIF deposits are shown below:

<u>03/31/19</u>	<u>06/30/19</u>
2.55%	2.57%

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# **BAWSCA**

## **Bay Area Water Supply & Conservation Agency**

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155 Bovet Road, Suite 650  
San Mateo, California 94402  
(650) 349-3000 tel. (650) 349-8395 fax

### **MEMORANDUM**

**TO:** Nicole Sandkulla, CEO/General Manager

**FROM:** Deborah Grimes, Office Manager

**DATE:** September 9, 2019

**SUBJECT:** Directors' Reimbursement Quarterly Report for the Period Ending June 30, 2019

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In March 2006, the board adopted a directors' expense reimbursement policy consistent with the Government Code that requires a quarterly report on the Agency's reimbursement of directors' expenses. This report shall show the amount of expenses reimbursed to each director during the preceding three months.

Table 1 presents the reimbursed expenses for BAWSCA Directors during the quarter ending June 30, 2019.

**Table 1. Director Reimbursement Expenses**

<b>BAWSCA Director</b>	<b>Expense Amount</b>	<b>Purpose</b>
Gustav Larrison, Vice-Chair	\$340	Mileage & Lodging June 2019 - Urban Water Institute Conference Auburn, CA

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**Bay Area Water Supply & Conservation Agency**

155 Bovet Road, Suite 650  
San Mateo, California 94402  
(650) 349-3000 tel. (650) 349-8395 fax

**MEMORANDUM**

**TO: Nicole Sandkulla, CEO/General Manager**

**FROM: Christina Tang, Finance Manager**

**DATE: August 23, 2019**

**SUBJECT: Bond Surcharge Collection, Account Balance and Payment Report  
for Fiscal Year Ending June 30, 2019**

BAWSCA's Revenue Bond Series 2013A and Series 2013B (Taxable) were issued to prepay the remaining capital cost recovery payments that the BAWSCA agencies owed San Francisco as of June 30, 2013, when the payments were paid off. The bond transaction and the prepayment program were anticipated to generate approximately \$62.3 million in net present value savings over the term of the bonds, or about 17% of the \$356.1 million in principal prepaid from bond proceeds to San Francisco at the end of February 2013.

**Bond Surcharge Collections**

BAWSCA collects the bond surcharge from member agencies through the SFPUC as a separate item on SFPUC's monthly water bills to agencies. The bond surcharge payments are used to make debt service payments on BAWSCA's revenue bonds.

As of today, BAWSCA has received surcharge payments of \$24,686,376, which represent the total surcharge billed in FY 2018-19. Partial payments of surcharges billed for May 2019 and all payments of surcharges billed for June 2019 were remitted to Trustee after the fiscal year ended. Table 1 below presents a payment collection summary for FY 2018-19.

Table 1: Summary of Surcharges Remitted to Trustee for Fiscal Year Ending 6/30/2019

<u>Month</u>	<u>Amount Billed</u>	<u>Amount Remitted to Trustee</u>	<u>Difference</u>
July 2018	\$2,057,198	\$2,057,198	\$0
August 2018	\$2,057,198	\$2,057,198	\$0
September 2018	\$2,057,198	\$2,057,198	\$0
October 2018	\$2,057,198	\$2,057,198	\$0
November 2018	\$2,057,198	\$2,057,198	\$0
December 2018	\$2,057,198	\$2,057,198	\$0
January 2019	\$2,057,198	\$2,057,198	\$0
February 2019	\$2,057,198	\$2,057,198	\$0
March 2019	\$2,057,198	\$2,057,198	\$0
April 2019	\$2,057,198	\$2,057,198	\$0
May 2019	\$2,057,198	\$2,057,198	\$0
June 2019	<u>\$2,057,198</u>	<u>\$2,057,198</u>	<u>\$0</u>
Total	\$24,686,376	\$24,686,376	\$0

**Bond Surcharge Account Balances**

All surcharge payments are deposited with the Bank of New York, the Trustee, which manages BAWSCA's accounts and administers debt service payments. BAWSCA's account balances at the Trustee and the account activities in FY 2018-19 are shown in Table 2 below.

Table 2: Bank of New York Bond Trustee Account Activity for Fiscal Year Ending 6/30/2019

	<b>28,408,990</b>	<b>Account Market Value as of 6/30/2018</b>
<i>plus:</i>	24,499,446	Surcharge Collected in July 2018 through June 2019
<i>plus:</i>	474,651	Money Market Fund Interest, Security Coupons/Accrued Interest Received
<i>plus:</i>	1,555,212	Change in Market Value of Held Treasury Bonds
<i>plus:</i>	10,177	Change in Market Value of Matured Treasury Bonds
<i>minus:</i>	24,476,435	Debt service payment to bondholders
<i>minus:</i>	2,592,248	Principal for Treasury bonds purchased
<i>minus:</i>	3,884	Accrued interest for Treasury bonds purchased
<i>plus:</i>	1,359,969	Market Value of Purchased Bonds
<i>minus:</i>	<u>11,513</u>	<u>Reimbursement to BAWSCA for bond administration expenses</u>
	<b>29,224,365</b>	<b>Account Market Value as of 6/30/2019</b>

There are two ways interest is earned by BAWSCA on the collected surcharge payments and balances held in the stabilization funds. First, interest is automatically earned on the account balance in the Bank of New York Bond Trustee money market account. Second, BAWSCA has the ability to invest the collected surcharge payments by purchasing U.S. Treasury securities, possibly earning a higher rate of return than the money market account.

Based upon an evaluation of the available yields, it was determined that BAWSCA would realize a moderate earnings benefit by purchasing U.S. Treasury securities instead of staying invested in the money market account. Following further evaluation, BAWSCA determined that a strategy that involved both a rolling and a laddered security structure provided the Agency with the most appropriate balance of safety, liquidity, and yield. Consequently, this investment strategy was implemented in October 2015. With the Investment Advisor's assistance, BAWSCA re-evaluated the investment strategy in April 2018 and determined that a modest extension of portfolio maturity was appropriate to pursue higher yields while still satisfying the primary objectives of safety and liquidity. Following the April 2018 debt service payment, BAWSCA began the transition to a 0-5 year laddered portfolio strategy. In November 2018, BAWSCA evaluated the credit quality, market price risk, and liquidity characteristics of all investment instruments permitted by the Bond Indenture. Based on the results of the evaluation, no changes in the investment strategy were made.

As of June 30<sup>th</sup>, the market yield on BAWSCA's revised portfolio strategy was 1.86% compared to 2.24% for the money market fund. The Federal Reserve left short term interest rates unchanged over the quarter. However, longer term interest rates (e.g., one through five years) declined, reflecting concerns over slowing global growth and growing expectations that the next change to monetary policy may be a reduction in short term interest rates. Confirming these expectations, the Federal Reserve reduced the Fed Funds rate by 25 basis points to a range of 2-2.5% at its July FOMC meeting and signaled the

possibility of further rate cuts to support the U.S. expansion. Following the Fed's decision, market-based measures of future short-term policy rates reflected expectations of an additional 75 basis points of reduction through the end of 2020. Against this backdrop, the yield curve remains inverted with short term interest rates equal to or greater than longer term interest rates. Historically, the flattening/inverting of the yield curve has preceded periods of economic slowdown and often times declining interest rates. Accordingly, BAWSCA believes that maintaining the current 0-5 year laddered portfolio strategy remains appropriate as such longer-maturity strategies have historically provided greater investment returns and income while protecting against the reinvestment rate risk associated with potential declines in short term interest rates and earnings.

All investment interest earnings are deposited directly in the Trustee account, and will be used to pay for future expenses and debt service of the bonds. Ultimately, all interest earnings are returned to the member agencies through annual savings and through distribution of the Stabilization Fund, including interest, once the bonds are fully paid.

**Revenue Bond Series 2013A and Series 2013B Debt Service Payment Status**

During FY 2018-19, BAWSCA made debt service payments twice, using the bond surcharges collected from the agencies, consistent with the initial bond structure. The first payment of \$18,402,535 was made on October 1, 2018. The second payment of \$6,073,900 was made on April 1, 2019. The next debt service payment of \$18,598,900 will be made on October 1, 2019. There are sufficient funds in the Trustee account to make the payment. Debt service payments are made on April 1<sup>st</sup> and October 1<sup>st</sup> of each year until 2034.



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**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

**BOARD OF DIRECTORS MEETING**

**Agenda Title:**        **Resolution Approving Temporary Reappointment of Arthur Jensen as Special Counsel to the CEO/GM**

**Summary:**

As required by the California Public Employees' Retirement System (PERS), Board findings are required before Arthur Jensen, retired from BAWSCA, can be reappointed to the temporary position of Special Counsel to the Chief Executive Officer and General Manager (CEO/GM) in order to provide BAWSCA with essential services.

**Fiscal Impact:**

An allocation of \$10,000 was included in the adopted FY 2019-20 budget to fund reappointment of Arthur Jensen as Special Counsel to the CEO/GM.

**Board Policy Committee Action:**

The Committee did not meet in August. This item is being presented to the Board without a recommendation from the BPC.

**Recommendation:**

**That the Board adopt Resolution 2019-01 approving the reappointment of Arthur Jensen to the temporary position of Special Counsel to the CEO/GM, and making associated findings in support of such an appointment.**

**Discussion:**

Although Arthur Jensen retired from BAWSCA in September 2013, his services were critical in completing negotiations with the City and County of San Francisco pertaining to the classification of assets under the Water Supply Agreement between San Francisco and its wholesale water customers, and other matters as needed. The negotiations began in FY 2013-14 and were finalized in FY 2018-19 resulting in the favorable resolutions of a number of issues.

Mr. Jensen's consulting services provide BAWSCA guidance from his institutional knowledge of both BAWSCA and the SFPUC. Questions requiring the same level of historical knowledge are anticipated in support of BAWSCA and the CEO. Mr. Jensen's level of activity will be less than 7 hours a week and will not exceed the approved budgetary allowance.

The California Government Code allows the temporary employment of a PERS-covered retiree only under specified conditions, and only if the person works no more than 960 hours per fiscal year. The attached resolution includes findings that the Board must adopt in order for the CEO/GM to appoint Arthur Jensen to a temporary position for no longer than one year in compliance with all legal requirements.

**Attachments:**

1. Resolution 2019-01 for the temporary reappointment of Arthur Jensen as Special Counsel to the CEO/GM.

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**RESOLUTION NO. 2019 – 01  
BY THE BOARD OF DIRECTORS OF THE  
BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

**APPROVING TEMPORARY APPOINTMENT OF ARTHUR JENSEN  
AS SPECIAL COUNSEL TO THE CEO/GM**

**WHEREAS**, the Bay Area Water Supply and Conservation Agency ("BAWSCA") is organized and established pursuant to the Bay Area Water Supply and Conservation Agency Act, Water Code section 81300, et seq. (the "Act"); and

**WHEREAS**, section 81408 of the Act authorizes the Board of Directors of BAWSCA (the "Board") to (i) employ employees that it determines are necessary or convenient to operate BAWSCA, and (ii) delegate that authority to the Chief Executive Officer and General Manager of BAWSCA (the "CEO/GM") with respect to the employment of additional employees; and

**WHEREAS**, the CEO/GM recommends the temporary appointment of Arthur Jensen (the "Appointee") to the position of Special Counsel to the CEO/GM; and

**WHEREAS**, the Appointee is a retired annuitant entitled to receive retirement benefit payments under the California Public Employees' Retirement System ("PERS"), which benefits he accrued based on service with multiple PERS-covered agencies; and

**WHEREAS**, BAWSCA contracts with PERS to provide retirement benefits to its eligible employees; and

**WHEREAS**, the Appointee will be performing similar duties to those performed by individuals who have held or are currently holding the position of CEO/GM; and

**WHEREAS**, the California Government Code ("Code") generally requires that a retired PERS annuitant be reinstated to active PERS membership upon employment by a PERS-covered agency, unless he is temporarily appointed by the agency's appointing authority under sections 7522.56 and 21224 of the Code, which exempt a retired PERS annuitant from the reinstatement requirement if (i) he is temporarily appointed because he "... has specialized skills needed in performing work of limited duration," (ii) he works no more than 960 hours per fiscal year for all PERS-covered employers, (iii) his hourly rate of pay is neither less than nor more than the monthly base salary paid by the agency to any of its other employees who perform comparable duties, divided by 173.333, (iv) he will not receive any other benefit, incentive, compensation in lieu of benefits, or other form of compensation in excess of such hourly rate, (v) he is not reemployed within 180 days of his retirement, and (vi) he has not received unemployment compensation arising out of any prior employment subject to these requirements with the same employer during the 12-month period preceding his appointment; and

**WHEREAS**, the Board has determined that the Appointee has the skills needed in performing work as Special Counsel to the CEO/GM for a limited term of no more than one year and intends that his appointment to that position for such term meet this and all other applicable requirements of sections 7522.56 and 21224 of the Code.

**NOW THEREFORE BE IT RESOLVED**, that subject to BAWSCA's customary employment practices and the specific terms and conditions of any offer of employment by BAWSCA to the Appointee in connection therewith, the Board hereby approves the appointment of the

Appointee to the position of Special Counsel to the CEO/GM for up to a one-year term, effective upon appropriate action by the CEO/GM; and

**RESOLVED FURTHER**, that in accordance with sections 7522.56 and 21224 of the Code:

1. the Board finds and declares that the Appointee possesses extensive, highly specialized skills and experience needed to complete critical negotiations with the City and County of San Francisco pertaining to the classification of assets under the Water Supply Agreement between San Francisco and its wholesale water customers and other matters as needed;
2. the Appointee's appointment to the position of Special Counsel to the CEO/GM will not exceed 960 hours in any fiscal year for all PERS-covered agencies;
3. the Appointee's rate of pay as Special Counsel to the CEO/GM will be neither less than nor more than the monthly base salary paid by the agency to any of its other employees who perform comparable duties, divided by 173.333, and he will not receive any other benefit, incentive, compensation in lieu of benefits, or other form of compensation in excess of such hourly rate;
4. the Appointee is being reappointed more than 180 days after his retirement;
5. the Appointee has not received any unemployment compensation arising out of his prior employment with BAWSCA during the 12-month period preceding his appointment; and
6. subject to BAWSCA's customary employment practices, including "at-will" employment, the appointment of Appointee as Special Counsel to the CEO/GM will continue only until the earlier of: (i) the end of the appointment's one-year term, or (ii) termination of the Appointee's employment by either BAWSCA or the Appointee for any other reason; and

**RESOLVED FURTHER**, that the CEO/GM is hereby authorized and directed to execute all documents and take all other actions necessary or advisable to effect the purposes of this resolution.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

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Chair, Board of Directors  
Bay Area Water Supply and  
Conservation Agency

ATTEST:

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Assistant to the CEO/GM

**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

**BOARD OF DIRECTORS MEETING**

**Agenda Title:**        **BAWSCA's California Employers' Retiree Benefit Trust Fund Update**

**Summary:**

BAWSCA participates in the California Employers' Retiree Benefit Trust (CERBT) program, administered by CalPERS, to prefund Other Post-Employment Benefits (OPEB) obligations. Since entering the CERBT program from April 26, 2014 through June 30, 2019, BAWSCA has had total contributions of \$570,731 and investment earnings of \$120,743. The actual average annualized internal rate of return was 7.18% in FY2018-19, which is 143 basis points higher than the 5.75% discount rate used in BAWSCA's recent OPEB actuarial valuation as of July 1, 2018. Since FY 2013-14, BAWSCA has been fully funding the annual OPEB expense, as determined by the annual actuarial valuation, to prefund its OPEB obligations in each year.

**Fiscal Impact:**

BAWSCA's FY 2019-20 Operating Budget includes a CERBT contribution of \$82,000 to fully fund the annual OPEB expense for FY 2019-20. This amount was deposited into BAWSCA's CERBT account in August 2019.

**Recommendation:**

This item is for informational purposes only. No Board action is requested.

**Discussion:**

Like all other public agencies, BAWSCA prefunds its OPEB obligations in order to generate investment income from employer controlled contributions to pay for future retiree benefits, reduce future employer cash flow requirements, and reduce OPEB liabilities reported on the agency's annual financial statements. To achieve these goals, BAWSCA established a CalPERS CERBT program to prefund OPEB obligations in April 2014.

BAWSCA's actual investment performance in the CERBT account is considered during the annual OPEB actuarial valuation. BAWSCA participates in CERBT's Strategy 2 asset allocation program. In FY 2018-19, BAWSCA's actual average annualized internal rate of return was 7.18%, which is slightly higher than the CERBT's current long-term expected rate of return of 7.01%. Based on BAWSCA's actual investment performance and the CERBT's expectations on the long-term rate of return on assets, BAWSCA will evaluate the discount rate of 5.75% used in the recent OPEB actuarial valuation as of June 30, 2018 and work with the actuary to determine the most reasonable discount rate for the next valuation as of June 30, 2019. In general, a lower discount rate results in a higher annual OPEB expense but will effectively minimize the agency's unfunded liability risk from overly optimistic assumptions in the future.

Since FY 2013-14, BAWSCA has been fully funding the OPEB expense determined by the annual actuarial valuation as part of its operating budget. The table on the next page provides a summary of BAWSCA's CERBT account as of June 30, 2019.

<b>CERBT Account Summary as of June 30, 2019</b>	
Total Contributions (Initial contribution made on 4/26/2014)	\$570,731
Total Disbursements	-
Total CERBT Expenses	(\$1,789)
Total Investment Earnings	\$120,743
Total Assets	\$689,685
Current Asset Allocation Strategy Selection	CERBT Strategy 2
CERBT Long-Term Expected Rate of Return	7.01%
BAWSCA's Discount Rate Used in OPEB Actuarial Valuation as of June 30, 2018	5.75%
BAWSCA Actual Average Annualized Internal Rate of Return* in FY2018-19	7.18%
BAWSCA Actual Average Annualized Internal Rate of Return* from Inception (4/26/2014) through 6/30/2019	5.86%
BAWSCA Net OPEB Liability as of 6/30/2018 (Expected to Be Paid Off by 6/30/2042)	\$855,120

*\*Net of fees*

# **BAWSCA**

**Bay Area Water Supply & Conservation Agency**

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155 Bovet Road, Suite 650  
San Mateo, California 94402  
(650) 349-3000 tel. (650) 349-8395 fax

## **MEMORANDUM**

**TO:** BAWSCA Board of Directors  
**FROM:** Nicole Sandkulla, CEO/General Manager  
**DATE:** September 13, 2019  
**SUBJECT:** Chief Executive Officer/General Manager's Letter

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### **Advanced Metering Infrastructure (AMI) Report**

As a Water Conservation initiative, BAWSCA recently assisted our member agencies by researching regional purchasing options for Advanced Metering Infrastructure (AMI). BAWSCA's effort also included a review of AMI software options and a compilation of area consultants who offer AMI services. Work began in the fall of 2018 and was completed in September 2019.

In early 2019, BAWSCA hired ManageWater Consulting, Inc. to provide assistance by conducting an AMI Survey and Assessment (AMI Assessment). The AMI Assessment, which was co-sponsored by the Santa Clara Valley Water District (Valley Water), was scoped to determine potential areas for regional collaboration on AMI program implementation. The initial results of the AMI Assessment were presented at an AMI Workshop, co-sponsored by BAWSCA and Valley Water, held in March of 2019 in Palo Alto, California. The AMI Workshop also included presentations by agencies that have already implemented AMI programs. Those early AMI adopters shared their "lessons learned".

Information gleaned during and as follow-up to the above-mentioned March workshop was incorporated into a report entitled "BAWSCA and Valley Water AMI Implementation Survey, a White Paper on survey results and opportunities for collaboration on AMI projects among BAWSCA and Santa Clara Valley Water District agencies".

Information from the workshop and as summarized in the Report will also be used to inform the BAWSCA FY 2020-21 Work Plan.

### **Los Vaqueros Expansion Project – Update:**

BAWSCA continues to work with Contra Costa Water District (CCWD) and the other Los Vaqueros Expansion (LVE) partner agencies in the evaluation of the project benefits and costs. Presently, there is a financial review being conducted by Alameda County Water District on behalf of the partners. The review considers the proposed system usage fees developed by CCWD and EBMUD for use of their respective existing facilities that are proposed to be included in the operation of LVE. That review is expected to be completed in the fall of 2019.

CCWD is also working with each of the Partners to identify a new, independent legal counsel that would represent the combined interests of the parties moving forward. A list of



acceptable law firms has been developed. Those firms will be asked to propose on the work. It is anticipated that selection of counsel will take place in the fall of 2019.

BAWSCA continues to work with CCWD and the LVE partner agencies on the refinement of possible operational plans to convey LVE water to the BAWSCA service area, including ability to move water through the South Bay Aqueduct (SBA) and to provide the necessary treatment. In August, CCWD hosted several meetings to detail the work being performed and get further feedback and input from the LVE partner agencies.

Plans are in place to hold a meeting of those partner agencies that are involved in SBA discussions on October 10, 2019. The discussion is aimed to further refine the modeling that is needed to help agencies such as BAWSCA better understand the cost and availability of the SBA to convey supplies as sourced from LVE.

**Meter Testing RFP - Update:**

BAWSCA issued a Request for Proposal (RFP) for customer water meter accuracy testing services on September 3, 2019. The program is being offered as a new subscription program to the BAWSCA agencies. For those that elect to participate, the selected contractor will be tasked to provide volumetric customer meter testing services concordant with American Water Works Association (AWWA) best-practice methodology for small meters (3" and smaller) and large meters (4" and larger).

BAWSCA obtained assistance from member agencies in the development of the RFP as well as identification of potential interested vendors. Proposals are due back to BAWSCA by 5:00 pm, Pacific Standard Time on October 1, 2019.

The current schedule anticipates presenting this item at the Board Policy Committee on October 9th for its consideration of a recommendation to the Board for action on November 21, 2019.

**New Staff Member:**

In conjunction with the adoption of the proposed FY 2019-20 Work Plan and Operating Budget, the BAWSCA Board approved a new water resources staff position to serve as an added member of BAWSCA's water resources staff. An extensive recruitment and outreach process was conducted by BAWSCA in June and July of 2019 in an effort to secure a diverse and experienced applicant pool and to encourage those qualified to apply. BAWSCA has completed the hiring process. Dr. Negin Ashoori was selected following candidate interviews and background vetting. Negin's first day is scheduled for September 18th and she is planning to attend the September 19, 2019 Board meeting.

Dr. Ashoori has a Ph.D. from Carnegie Mellon University in Civil and Environmental Engineering and most recently has worked at Stanford University conducting post-doctorate work for Professor Richard Luthy on efforts associated with Monterey County's water supply planning. Her Ph.D. work linked her academic research toward helping solve real-world water agency challenges. Note also that Dr. Ashoori was a Fulbright Scholar and is the author of numerous technical papers.

Dr. Ashoori will be called upon to support BAWSCA's technical and policy-level water resources work and will participate along with other BAWSCA staff in several water conservation efforts and in our work to oversee SFPUC's water supply planning, operation and maintenance activities associated with the San Francisco Regional Water System.

**Pilot Water Transfer Plan:**

BAWSCA continues efforts to implement a pilot water transfer in January 2020. BAWSCA's agreements with the City of Hayward and the SFPUC are progressing, and the challenges associated with negotiating an agreement with EBMUD were tackled in late August.

There are seven agreements that need to be at or near final between now and when the Board Policy Committee (BPC) will be asked for its recommendation to approve the necessary agreements (and thus the pilot transfer) at its October 9, 2019 meeting. Specifically, the necessary agreements to be considered by BAWSCA to implement the pilot water transfer are: a water transfer agreement with Amador Water Agency, a wheeling agreement with EBMUD, an agreement with SFPUC regarding use of the SF Regional Water System (RWS), and an agreement with the City of Hayward to take delivery of transfer water. In addition, there are 3 other agreements that are necessary, but which BAWSCA is not a party to: a letter agreement between the Hayward Intertie Partners (Hayward, EBMUD, and SFPUC) for the use of the Intertie as a conveyance facility, and two side agreements between certain pilot transfer participant agencies as a condition of the transfer. BAWSCA will be the lead agency for CEQA purposes, requiring action by the Board as well. Lastly, several areas of cost remain under negotiation with EBMUD and CCWD.

At this time BAWSCA believes that the agreement effort will be successful and that agreements can be finalized in time for BPC consideration on October 9, 2019 and BAWSCA Board action on November 21, 2019.

**SFPUC Capital Improvement Plan Comparison Study – Report to be Distributed to Board at Meeting**

In recognition of the need for the SFPUC to have a well-maintained and efficient water supply system, BAWSCA pays attention to capital improvements that are proposed and implemented for the San Francisco (SF) Regional Water System (RWS). Given the importance of having a sound Capital Improvement Plan (CIP), BAWSCA has performed a study to summarize the capital planning processes in place at the SFPUC in comparison with other water suppliers (participating agencies) to identify best practices. The Comparison Study was conducted through a review of CIP documents as well as through interviews and electronic communications with staff from participating agencies. Eight water suppliers, aside from SFPUC, were selected to participate in the study.

The Comparison Study, including appendices, is now available on the BAWSCA web site. In addition, a printed copy of the Comparison Study will be provided to the Board at its September 19, 2019 meeting.

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# Board Of Directors

## Policy Calendar Through March 2020

Meeting Date	Purpose	Issue or Topic
September 2019	D&A D&A R&D	CEO/General Manager Evaluation Resolution Approving Temporary Appointment of A. Jensen as Special Counsel to the CEO/General Manager Review of CERBT Fund Update
November 2019	D&A D&A  D&A D&A R&D R&D	Annual Review and Consideration of BAWSCA's Statement of Investment Policy Consideration of Agreements Related to BAWSCA's Pilot Water Transfer; CEQA Determination; Funding Approval Consideration of Consultant Agreement for a Customer Meter Testing Program Consideration of Action to Extend Current Tier 2 Drought Plan Los Vaqueros Expansion Update & Feedback from Agency Workshop Demand Study Update
January 2020	D&A D&A R&D R	Review of Agency Personnel Handbook FY 2019-20 Mid-year Review and Management of General Reserve FY 2020-21 Work Plan and Budget Preparation Planning Session Review of Water Supply Forecast
March 2020	D&A R	Consideration of BAWSCA Bond Surcharges for FY 2020-21 Presentation of Preliminary FY 2020-21 Work Plan and Budget

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**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY**

**BOARD OF DIRECTORS MEETING**

**Agenda Title:**           **Consider Declaration that the Compensation and Benefits of the CEO/General Manager are Uncertain as of September 19, 2019 due to Ongoing Negotiations**

**Summary:**

The Board evaluated the CEO/General Manager's performance during FY 2018-19 and negotiations regarding an adjustment to the CEO/General Manager's compensation are ongoing. Declaring the compensation and benefits of the CEO/General Manager uncertain preserves the Bay Area Water Supply and Conservation Agency's (BAWSCA) ability to adjust the CEO/General Manager's compensation effective September 19, 2019, pending the outcome of the ongoing negotiations.

Legal Counsel recommends that the Board approve such a motion.

**Fiscal Impact:**

Given that negotiations regarding an adjustment to the CEO/General Manager's compensation are ongoing, the fiscal impact of this motion is unknown. However, the agency's adopted FY 2019-20 budget includes an allowance for any potential compensation for the CEO/General Manager. The Chair of the Board desires any change in compensation to be retroactive to the September 19, 2019 Board meeting.

**Recommendation:**

That the Board approve a motion declaring that the compensation of the CEO/General Manager is under ongoing negotiation and is therefore uncertain and undetermined, with the understanding that any such new compensation for the CEO/General Manager, as may be subsequently adopted by the Board of Directors, may be applied effective as of September 19, 2019, in consideration of the services provided by the CEO/General Manager henceforth, should labor negotiations result in such a recommendation.

**Background:**

BAWSCA is in labor negotiations with its CEO/General Manager regarding an adjustment to her compensation. BAWSCA last considered an adjustment to the CEO/General Manager's compensation on September 20, 2018.

Section 3.A of the CEO/General Manager's Employment Agreement specifies that BAWSCA will conduct a performance review and evaluate the CEO/General Manager's performance at least once annually, no later than the September Board meeting. Additionally, the Agreement states that the CEO/General Manager's salary will be subject to increase based upon such evaluation.

Given the ongoing negotiations, the Board is not prepared to consider a compensation adjustment at this time. Declaring the compensation and benefits of the CEO/General Manager uncertain mitigates potential "gift of public funds" claims because where compensation is not fixed, the compensation employees ultimately earn cannot accurately be deemed "extra compensation." Thus, the recommended motion preserves BAWSCA's ability to pay an adjusted compensation effective as of September 19, 2019, pending the outcome of the ongoing negotiations. Legal Counsel recommends that the Board approve such a motion.

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**Bay Area Water Supply and Conservation Agency  
and Regional Financing Authority**

**Meeting Schedule through December 2020**

<b>Schedule for BAWSCA Board Meetings (Meetings are held from approx. 6:30 – 8:45 p.m.)</b>	
<b><u>Date</u></b>	<b><u>Location</u></b>
Thursday – November 21, 2019	Oak Room, San Mateo Main Library
Thursday – January 16, 2020	Oak Room, San Mateo Main Library
Thursday – March 19, 2020	Oak Room, San Mateo Main Library
Thursday – May 21, 2020	Oak Room, San Mateo Main Library
Thursday – July 16, 2020	Oak Room, San Mateo Main Library
Thursday – September 17, 2020	Wind Room, Foster City Community Building ( <i>Venue for Month of September Meetings with few exceptions</i> )
Thursday – November 19, 2020	Oak Room, San Mateo Main Library

<b>Schedule for RFA Board Meetings (Meeting time will be announced)</b>	
<b><u>Date</u></b>	<b><u>Location</u></b>
Thursday – January 16, 2020	Oak Room, San Mateo Main Library

<b>Schedule for BAWSCA Board Policy Committee Meetings (Meetings held from 1:30-4:00 p.m.)</b>	
<b><u>Date</u></b>	<b><u>Location</u></b>
Wednesday – October 9, 2019	155 Bovet Rd., San Mateo – 1 <sup>st</sup> Floor Conf. Rm.
Wednesday – December 11, 2019	155 Bovet Rd., San Mateo – 1 <sup>st</sup> Floor Conf. Rm.
Wednesday – February 12, 2010	155 Bovet Rd., San Mateo – 1 <sup>st</sup> Floor Conf. Rm.
Wednesday – April 8, 2020	155 Bovet Rd., San Mateo – 1 <sup>st</sup> Floor Conf. Rm.
Wednesday – June 10, 2020	155 Bovet Rd., San Mateo – 1 <sup>st</sup> Floor Conf. Rm.
Wednesday – August 12, 2020	155 Bovet Rd., San Mateo – 1 <sup>st</sup> Floor Conf. Rm.
Wednesday – October 14, 2020	155 Bovet Rd., San Mateo – 1 <sup>st</sup> Floor Conf. Rm.
Wednesday – December, 9, 2020	155 Bovet Rd., San Mateo – 1 <sup>st</sup> Floor Conf. Rm.