

# EXECUTIVE COMMITTEE MEETING AGENDA TRABUCO CANYON WATER DISTRICT ADMINISTRATIVE FACILITY

32003 DOVE CANYON DRIVE, TRABUCO CANYON, CA MAY 6, 2024 AT 5:00 PM

### **COMMITTEE MEMBERS**

Ed Mandich, Committee Chair Stephen Dopudja, Committee Member

#### **DISTRICT STAFF**

Fernando Paludi, General Manager Michael Perea, District Secretary

#### **AGENDA NOTE:**

Trabuco Canyon Water District (District) will make this meeting available by telephone audio as follows:

Persons desiring to monitor the Committee meeting agenda items may download the Executive Committee meeting agenda and documents on the internet at <a href="www.tcwd.ca.gov">www.tcwd.ca.gov</a>. You may submit public comments by email to the Committee at <a href="maperea@tcwd.ca.gov">mperea@tcwd.ca.gov</a>. In order to be part of the record, emailed comments on meeting agenda items must be received by the District, at the referenced e-mail address, not later than 10:00 a.m. (PDT) on the day of the meeting.

#### **CALL MEETING TO ORDER**

#### **VISITOR PARTICIPATION**

Members of the public wishing to address the Committee regarding a particular item on the agenda are requested to complete a speaker card and submit it to staff. The Committee Chair will call on the visitor following the Committee's discussion about the matter. Committees do not constitute a quorum of the Board of Directors and Committee Members cannot make decisions on matters. The Committee makes recommendations only to the Board of Directors. Members of the public will be given the opportunity to speak to the Committee prior to making a recommendation on the matter. For persons desiring to make verbal comments and utilizing a translator to present their comments into English reasonable time accommodations, consistent with State law, shall be provided. Please limit comments to three minutes.

#### **ORAL COMMUNICATION**

Members of the public who wish to make comment on matters not appearing on the agenda are invited to identify themselves and encouraged to make comment at this time. The Committee Chair will call on the visitor following the Committee's discussion about the matter. Committees do not constitute a quorum of the Board of Directors and Committee Members cannot make decision on matters. The Committee makes recommendations only to the Board of Directors. Under the requirements of State Law, Committee Members cannot take action on items not identified on the agenda and will not make decisions on such matters. The Committee Chair may direct District Staff to follow up on issues as may be deemed appropriate. For persons desiring to make verbal comments and utilizing a translator to present their comments into English reasonable time accommodations, consistent with State law, shall be provided. Please limit comments to three minutes.

#### **COMMITTEE MEMBER COMMENTS**

REPORT FROM THE GENERAL MANAGER

#### **ADMINISTRATIVE MATTERS**

#### ITEM 1: APPROVAL OF EXECUTIVE COMMITTEE MEETING RECAP

#### **RECOMMENDED ACTION:**

Approve the following Executive Committee Meeting Recap and recommend that the Board receive and file the same (Consent Calendar):

1. April 1, 2024

#### **DISCUSSION MATTERS**

### ITEM 2: SB 1072 (PADILLA) – PROPOSITION 218 REMEDIES: SUPPORT

#### **RECOMMENDED ACTION:**

Adopt a SUPPORT position on SB 1072 (Padilla) and authorize the General Manager to sign the coalition letter in support of the legislation.

#### ITEM 3: BOARD AGENDA PLANNING CALENDAR

#### **RECOMMENDED ACTION:**

Receive information at the time of the meeting and take action(s) as deemed appropriate.

#### ITEM 4: DISCUSSION CONCERNING TOTAL COMPENSATION SURVEY

#### **RECOMMENDED ACTION:**

Committee to discuss information at the time of the Executive Committee Meeting and take action(s) as deemed appropriate.

# ITEM 5: DISCUSSION CONCERING ADMINISTRATIVE BUILDING BOARD ROOM AUDIO/VISUAL SYSTEM UPGRADES TO IMPROVE PUBLIC MEETING ACCESS

#### **RECOMMENDED ACTION:**

Committee to discuss information at the time of the Executive Committee Meeting and take action(s) as deemed appropriate.

#### **OTHER MATTERS**

#### ITEM 6: REPORTS OR COMMENTS FROM THE GENERAL MANAGER AND/OR STAFF

### **RECOMMENDED ACTION:**

Hear other matters from the General Manager and/or Staff.

#### **ADJOURNMENT**

#### **AVAILABILITY OF AGENDA MATERIALS**

Agenda exhibits and other writings that are disclosable public records distributed to all or a majority of the members of the Trabuco Canyon Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection at the District Administrative Facility, 32003 Dove Canyon Drive, Trabuco Canyon, California (District Facility). If such writings are distributed to members of the Board less than 72 hours prior to the meeting, they will be available in the lobby area of the District Facility at the same time as they are



distributed, except that, if such writings are distributed immediately prior to or during the meeting, they will be available in the Boardroom at the District Facility.

#### **COMPLIANCE WITH THE REQUIREMENTS OF CALIFORNIA GOVERNMENT CODE SECTION 54954.2**

In compliance with California law and the Americans with Disabilities Act, if you need special disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, or if you need the agenda provided in an alternative format, please contact the District Secretary at (949) 858-0277 at least 48 hours in advance of the scheduled meeting. Notification 48 hours prior to the meeting will assist the District in making reasonable arrangements to accommodate your request. The District office is wheelchair accessible.

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### **ADMINISTRATIVE MATTERS**

# ITEM 1: APPROVAL OF EXECUTIVE COMMITTEE MEETING RECAP

Information will be presented at the time of the meeting.

### **RECOMMENDED ACTION:**

Approve the following Executive Committee Meeting Recap and recommend that the Board receive and file the same (Consent Calendar):

1. April 1, 2024



# TRABUCO CANYON WATER DISTRICT EXECUTIVE COMMITTEE MEETING RECAP | APRIL 1, 2024

#### **DIRECTORS PRESENT**

Vice President Ed Mandich, Committee Chair President Stephen Dopudja, Committee Member

#### **STAFF PRESENT**

Fernando Paludi, General Manager Michael Perea, Assistant General Manager Roseann Lejsek, Administrative Assistant Gary Kessler, Water Operations Superintendent Other Staff were present

#### **CONSULTANTS PRESENT**

None

#### **PUBLIC PRESENT**

None

#### **CALL MEETING TO ORDER**

Vice President Mandich called the March 4, 2024 Executive Committee Meeting to order at 5:00 PM.

#### **VISITOR PARTICIPATION**

No visitor participation was received.

#### **ORAL COMMUNICATION**

No oral communication was received.

#### **COMMITTEE MEMBER COMMENTS**

None

#### REPORT FROM THE GENERAL MANAGER

None

#### **DISCUSSION MATTERS**

#### ITEM 1: APPROVAL OF EXECUTIVE COMMITTEE MEETING RECAP

Mr. Paludi presented the Executive Committee Meeting Recap(s) for Committee consideration in accordance with the agenda.

MOTION: Approve the Executive Committee Meeting Recap(s) and recommend the Board of Directors

receive and file the same (Consent Calendar) - Director Dopudja

**SECOND:** Director Mandich

AYES: Directors Mandich & Dopudja

NOES: None ABSTAIN: None

# TRABUCO CANYON WATER DISTRICT EXECUTIVE COMMITTEE MEETING RECAP | APRIL 1, 2024

MOTION PASSED/FAILED: Passed 2 - 0

#### ITEM 2: BOARD AGENDA PLANNING CALENDAR

Mr. Paludi provided a handout that included the following agenda planning items for Committee review and consideration:

#### April 2024

Special Board Meeting - 4/4

- Review updated financial model based on preliminary FY 25 budget and revised CIP
- Consider position on Proposition 218 / peaking bill.
- OC LAFCO Special District Seat Nomination

Regular Board Meeting – 4/18

- Award Harris Grade Pipeline Replacement Design Contract (E/O)
- Discuss/approve health benefit determination methodology (Exec & F/A)
- Receive and file District Total Compensation Survey Update (Exec & F/A)

Trabuco Canyon Public Financing Authority - 4/18

Approve loan legal documents and finance plan (F/A)

#### May 2024

Water Awareness Day - 5/11

Regular Board Meeting – 5/16

- Award Recycled Water P.S. Improvements Design Contract (E/O)
- Award WWTP Blower Replacement Project (E/O)
- Accept Saddle Crest Facilities (tent)
- Settlement Offer with Rutter Development (Closed Session)

Trabuco Canyon Public Financing Authority - 5/16

Approve lending bank and legal documents (F/A)

#### June 2024

Regular Board Meeting – 6/20

- Award HR Support Services Contract (Exec and F/A)
- Adopt FY 2024-25 Budget

**MOTION:** None – Informational item only.

#### ITEM 3: DISCUSSION CONCERNING TOTAL COMPENSATION SURVEY

Mr. Paludi presented this matter for Committee consideration, and he provided background information on the total compensation survey performed by Ralph Andersen & Associates. Mr. Paludi reported that in addition to total compensation information, the District requested that the comparator agencies be surveyed regarding their method of deriving the health insurance benefit they offer their employees to provide information to support a discussion on the District's method as requested by the Board. Mr. Paludi presented the results of the health benefit survey, as well as the total compensation comparison for discussion which used the same criteria as the survey conducted in 2021. Director Dopudja remarked about the challenges of balancing rising healthcare costs

# TRABUCO CANYON WATER DISTRICT EXECUTIVE COMMITTEE MEETING RECAP | APRIL 1, 2024

with market salaries and the competitive interplay between the two factors for staff compensation. Discussion occurred concerning the total compensation benefits components included in the survey data. Director Dopudja recommended looking at the overall total compensation and stated that getting feedback from staff on the preference of competitive salaries or benefits during this process is important to the Board. Discussion occurred between the Committee and staff regarding possible options in order to be competitive on salary as well as benefits. Mr. Kessler expressed concern that some positions may not receive any type of adjustment based on the raw data in the report, and he commented that the previous survey included a minimum floor for those positions. Director Dopudja indicated that the Committee intends to address this concern.

**MOTION:** None – Informational item only.

#### **OTHER MATTERS**

#### ITEM 4: REPORTS OR COMMENTS FROM THE GENERAL MANAGER AND/OR STAFF

#### Saddleback Meadows

Mr. Paludi provided a brief history of this development and the related reservoir improvement project, and he reported that the District is looking at a significant increase in project costs. Discussion occurred on whether the project is needed at this time due to the current state mandates regarding demand decrease and whether the District can accommodate the demands of the development with existing storage. Mr. Paludi commented that staff will evaluate the feasibility of that consideration.

MOTION: None

#### **ADJOURNMENT**

Vice President Mandich adjourned the April 1, 2024 Executive Committee Meeting at 6:22 p.m.

#### **ADMINISTRATIVE MATTERS**

#### ITEM 2: SB 1072 (PADILLA) - PROPOSITION 218 REMEDIES: SUPPORT

In 1996, Proposition 218 was approved by the voters of California for the purpose of restricting local government revenue-raising ability, reducing the amount of fees, assessments, and taxes. The following year, SB 919 was passed which clarified Proposition 218 related to water agencies' ability to assess charges a the reasonable and proportional cost of providing service to customer property. Currently, water agencies throughout the staff are facing legal challenges to their water and wastewater fee structures, specifically the cost of service and proportionality provision of Prop. 218.

Writs of mandate, declaratory relief, and injunctive relief – which direct a public agency to change their rates in the future - are the traditional and appropriate remedies that courts have imposed for violations of Proposition 218. In contrast to these remedies, new class-action lawsuits have sought multi-million-dollar refunds, which, if ordered by a court, would force public agencies who merely recover annual costs and receive no profit to raise rates on *future* ratepayers in order to pay refunds to *past* users.

No part of Proposition 218 provides for a refund, nor does any published case. Senator Padilla has proposed SB 1072 to clarify existing law that a refund is not available under Proposition 218 for alleged excess charges resulting from an agency's rate structure. Instead, a challenger's remedy will only be to require the agency to change their rate structure going forward. Any excess revenues would be used to defray future costs of service.

The bill will significantly help agencies maintain predictable rates for water, sewer, and refuse collection services by making it clear in the Government Code that refunds are prohibited except when explicitly provided for in law, or in the case of billing errors.

District staff recommends the Board of Directors adopt a SUPPORT position on SB 1072.

#### **FISCAL IMPACT**

None at this time

#### **ENVIRONMENTAL COMPLIANCE:**

Not applicable

#### **COMMITTEE STATUS:**

This item was not reviewed by a Committee.

#### **RECOMMENDED ACTION:**

Adopt a SUPPORT position on SB 1072 (Padilla) and authorize the General Manager to sign the coalition letter in support of the legislation.

#### **EXHIBITS:**

- 1. SB 1072 Fact Sheet & Bill Text
- Draft Support Letter

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SENATOR
STEPHEN C. PADILLA
EIGHTEENTH SENATE DISTRICT



COMMITTEES

BUDGET SUBCOMMITTEE #4 ON STATE ADMINISTRATION AND GENERAL GOVERNMENT CHAIR

MEMBER

AGRICULTURE

BUDGET

GOVERNMENTAL ORGANIZATION

HOUSING

NATURAL RESOURCES AND WATER

# SB 1072 Fact Sheet – Proposition 218 Refund Remedy

Proposition 218, the "Right to Vote on Taxes Initiative" was put forward and approved by voters in 1996. The act promised to restrict local government revenue-raising ability, reduce the amount of fees, assessments, and taxes that individuals had to pay, and further promised to reduce spending for local public services. One year later, the California State Legislature passed SB 919, "The Proposition 218 Omnibus Implementation Act", to clarify specific provisions of Proposition 218. Under Proposition 218, water agencies may only charge ratepayers the reasonable and proportional cost of providing service to their property.

Today, retail water and wastewater agencies throughout the state are facing legal challenges to their water and wastewater service fee structures. The basis for these challenges is Proposition 218's substantive limitations, specifically the cost of service and proportionality provision. Often, challengers are high water users who claim the charges are not proportional, and these high water users demand a refund in litigation. These challenges are often brought as a class action.

Refunds are not expressly authorized by Proposition 218. Since Proposition 218 amended the California Constitution in 1996, courts have remedied violations through writs of mandate, declaratory relief, and injunctive relief. These prospective remedies adequately cure the violation by directing the agency to reform its rate approach going forward. Any excess revenues would be used to defray future costs of service.

Yet, of January 26, 2024, there are at least three cases under consideration by the California Courts of Appeal where the validity of refunds as a remedy is at issue: Coziahr v. Otay Water District; Patz v. City of San Diego; Howard Jarvis Taxpayers Association v. Coachella Valley Water District. Additional cases seeking refunds are pending against other public water districts throughout the state, including the City of Azusa and the Marin Municipal Water District.

These cases threaten the solvency of local public agencies – that is because if a refund remedy were granted, it would operate retroactively. Public water districts often have no revenue source other than their rates and charges. Since a public agency sets its charges to merely recover costs annually and receives no profit, any refund would need to be funded by raising rates on future ratepayers. But a charge to future ratepayers may also be a non-proportional overcharge. As such, a refund to remedy a Proposition 218 violation threatens the solvency of local public agencies throughout California by exposing public water suppliers to liabilities for which they do not have a funding source.

SB 1072 would be declaratory of and clarify the existing law that if a court determines that a fee or charge for a property-related service, including water, sewer, and refuse collection, violates Section 6 of

Article XIII D of the California Constitution, then the local agency shall, in the next procedure to impose or increase the fee or charge, credit the amount of the fee or charge attributable to the violation against the amount of the revenues required to provide the property-related service unless a refund is explicitly provided for by statute.

# **Staff Contact**

Name: Alexis Castro

Title: Legislative Director

Email: Alexis.Castro@sen.ca.gov Capitol Office: (916) 651 – 4018

### **Support**

- Otay Water District (Co-Sponsor)
- City of San Diego (Co-Sponsor)
- Association of California Water Agencies (ACWA)
- California Municipal Utilities Association (CMUA)
- California State Association of Counties
- Coachella Valley Water District
- Orange County Sanitation District
- Otay Water District
- San Diego County Water Authority
- San Gabriel Valley Water Association
- Sweetwater Authority
- Valley Sanitary District

### **Introduced by Senator Padilla**

February 12, 2024

An act to add Article 4.6.5 (commencing with Section 53758.5) to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, relating to local government.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1072, as amended, Padilla. Local government: Proposition 218: remedies.

The California Constitution sets forth various requirements for the imposition of local taxes. The California Constitution excludes from classification as a tax assessments and property-related fees imposed in accordance with provisions of the California Constitution that establish requirements for those assessments and property-related fees. Under these requirements, an assessment is prohibited from being imposed on any parcel if it exceeds the reasonable cost of the proportional special benefit conferred on that parcel, and a fee or charge imposed on any parcel or person as an incident of property ownership is prohibited from exceeding the proportional cost of the service attributable to the parcel.

Existing law, known as the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local compliance with the requirements of the California Constitution for assessments and property-related fees.

This bill would require, if a property-related fee or charge creates revenues in excess of the local government's reasonable cost of providing the specific benefit or specific government service, that the

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excess revenues be used only to reduce the subsequently adopted and following property-related fee or charge. require a local agency, if a court determines that a fee or charge for a property-related service, as specified, violates the above-described provisions of the California Constitution relating to fees and charges, to credit the amount of the fee or charge attributable to the violation against the amount of the revenues required to provide the property-related service, unless a refund is explicitly provided for by statute. The bill would declare that this provision is these provisions are declaratory of existing law.

This bill would declare that its provisions further the purposes and intent of Proposition 218, approved by the voters at the November 5, 1996, statewide general election, and the Proposition 218 Omnibus Implementation Act.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:* 

SECTION 1. Article 4.6.5 (commencing with Section 53758.5) is added to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 4.6.5. Property-Related Fee or Charge Remedies Remedy

53758.5. (a) If a property-related fee or charge creates revenues in excess of the local government's reasonable cost to provide that specific benefit or specific government service, then the excess revenues shall be used only to reduce the subsequently adopted and following property-related fee or charge.

(b) This section does not constitute a change in, but is declaratory of, existing law.

53758.5. (a) If a court determines that a fee or charge for a property-related service, including water, sewer, and refuse collection, violates Section 6 of Article XIII D of the California Constitution, then the local agency shall, in the next procedure to impose or increase the fee or charge, credit the amount of the fee or charge attributable to the violation against the amount of the revenues required to provide the property-related service unless a refund is explicitly provided for by statute.

(b) This section does not apply to claims related to billing errors.

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(c) This section does not constitute a change in, but is declaratory of, existing law.

- SEC. 2. The Legislature finds and declares that this act furthers the purposes and intent of the Right to Vote on Taxes Act, approved by the voters as Proposition 218 at the November 5, 1996, statewide general election, and the Proposition 218 Omnibus Implementation Act (Chapter 38 of the Statutes of 1997) by accomplishing all of the following:
- (a) Finding that Proposition 218 does not contain any affirmative intent to authorize a refund remedy.
- (b) Recognizing that water and sewer agencies, and local governments providing property-related services, set charges to merely recover costs annually and receive no profit.
- (c) Further recognizing that lawsuits seeking refunds for property-related service rate determinations threaten to compromise the financial stability of water and sewer agencies and local governments providing property-related services and the critical public services they provide.
- (d) Further recognizing that any refund would need to be funded by raising rates on future ratepayers, further reducing the affordability of essential public services.
- (e) Protecting ratepayers by requiring that the entity charging the property-related service fee or charge credit against future revenues the amount of any fee or charge in violation of Proposition 218.

April 25, 2024 Senator María Elena Durazo (Chair) Senate Local Government Committee State Capitol, Room 407 Sacramento, CA 95814

### RE: Senate Bill 1072 (Padilla) Proposition 218: Remedies – Support

Dear Senator Durazo:

On behalf of [insert agency/organization name], I am writing in support of Senate Bill (SB) 1072. SB 1072 will protect public agencies from costly legal challenges to their water, sewer, and refuse collection service fee structures. This bill will also protect future ratepayers whose bills would be increased to pay for these lawsuits.

### [Insert paragraph about agency/organization]

Proposition 218, approved by voters in 1996, amended the California Constitution and requires water, sewer, and refuse collection rates to be reasonably proportional to the costs of providing those services to a given property. The legislature enacted SB 919 "The Proposition 218 Omnibus Implementation Act" to clarify specific provisions of the proposition. SB 1072 seeks to further clarify the types of remedies available to customers who challenge water, sewer, and refuse collection rates.

Writs of mandate, declaratory relief, and injunctive relief – which direct a public agency to change their rates in the future - are the traditional and appropriate remedies that courts have imposed for violations of Proposition 218. In contrast to these remedies, new class-action lawsuits have sought multi-million-dollar refunds, which, if ordered by a court, would force public agencies who merely recover annual costs and receive no profit to raise rates on *future* ratepayers in order to pay refunds to *past* users.

No part of Proposition 218 provides for a refund, nor does any published case. SB 1072 will declare and clarify existing law that a refund is not available under Proposition 218 for alleged excess charges resulting from an agency's rate structure. Instead, a challenger's remedy will only be to require the agency to change their rate structure going forward. The bill will significantly help agencies maintain predictable rates for water, sewer, and refuse collection services by making it clear in the Government Code that refunds are prohibited except when explicitly provided for in law, or in the case of billing errors.

For these reasons, [insert agency/organization name] is pleased to support SB 1072.

Sincerely,

[Insert signature]
[Insert signatory name]
[Insert title and organization]

# [Insert Organization Logo/Letterhead]

CC:

Senator Kelly Seyarto (Vice Chair) Members of Senate Local Government Committee

### **DISCUSSION MATTERS**

### ITEM 3: BOARD AGENDA PLANNING CALENDAR

Information will be presented at the time of the meeting.

### **RECOMMENDED ACTIONS:**

Receive information at the time of the meeting and take action(s) as deemed appropriate.

#### **DISCUSSION MATTERS**

#### ITEM 4: DISCUSSION CONCERNING TOTAL COMPENSATION SURVEY

Trabuco Canyon Water District supports maintaining competitive salaries and benefits as a critical staff recruitment and retention tool. In February 2021, the Board of Directors approved salary adjustments for all employees based on the results of total compensation survey research performed by Ralph Andersen & Associates and reviewed and recommended by an Ad Hoc committee of the Board. In January 2024, to ensure that the District is keeping pace with the market following several years of anomalistic price inflation, staff engaged Ralph Andersen to provide an update of the total compensation survey using the same comparator agencies and evaluation criteria.

In addition to total compensation information, the District requested that comparator agencies be surveyed regarding their method of deriving the health insurance benefit they offer their employees. This was done to provide information to support a discussion on the District's method as requested by the Board in September 2023 when the current 2024 health insurance premium benefit was approved.

The results of the health benefit survey as well as the total compensation comparison will be presented at the time of the Committee meeting.

#### **RECOMMENDED ACTION:**

Committee to discuss information at the time of the Executive Committee Meeting and take action(s) as deemed appropriate.

#### **EXHIBIT(S):**

None

#### **DISCUSSION MATTERS**

# ITEM 5: DISCUSSION CONCERNING ADMINISTRATIVE BUILDING BOARD ROOM AUDIO/VISUAL SYSTEM UPGRADES TO IMPROVE PUBLIC MEETING ACCESS

The District's Administration Facility serves as the primary public meeting room for the Board of Directors, as well as the de facto community center for groups like homeowner associations, voting centers, and local non-profit organizations. The current audio/visual (A/V) system has been in use since 2012 and is still in working order, but there have been significant technical advances and unforeseen meeting challenges, namely hybrid meeting formats, that are not compatible with the current system. District staff has procured a budgetary estimate with options from a local contractor that has worked with neighboring water agencies and special districts to upgrade their board room A/V systems. More information may be presented at the time of the meeting.

#### **RECOMMENDED ACTION:**

Committee to discuss information at the time of the Executive Committee Meeting and take action(s) as deemed appropriate.

#### **EXHIBIT(S)**:

None

### **OTHER MATTERS**

# ITEM 6: REPORTS OR COMMENTS FROM THE GENERAL MANAGER AND/OR STAFF

Other matters may have arisen after the posting of the agenda and will be brought forward for discussion and/or information at the time of the Executive Committee.

# **RECOMMENDED ACTION:**

Hear other matters from the General Manager and/or Staff.