



THIS MEETING WILL BE CONDUCTED WITH IN PERSON ATTENDANCE PERMITTED WITH LIMITED CAPACITY IN ACCORDANCE WITH COUNTY AND STATE COVID GUIDELINES, INCLUDING MASK REQUIREMENTS FOR ALL THOSE ATTENDING IN PERSON. PARTICIPATION WILL ALSO BE AVAILABLE VIA VIDEO CONFERENCE OR TELECONFERENCE.

TO PARTICIPATE IN THE MEETING VIA VIDEO OR TELECONFERENCE, GO TO <https://rainbowmwd.zoom.us/j/89405780088> OR CALL 1-669-900-6833 or 1-346-248-7799 or 1- 253-215-8782 or 1-301-715-8592 or 1-312-626-6799 or 1-929-205-6099 (WEBINAR/MEETING ID: 894 0578 0088).

MEMBERS OF THE PUBLIC WISHING TO SUBMIT WRITTEN COMMENT TO THE COMMITTEE UNDER PUBLIC COMMENT OR ON A SPECIFIC AGENDA ITEM MAY SUBMIT COMMENTS TO OUR BOARD SECRETARY BY EMAIL AT DWASHBURN@RAINBOWMWD.COM OR BY MAIL TO 3707 OLD HIGHWAY 395, FALLBROOK, CA 92028. ALL WRITTEN COMMENTS RECEIVED **AT LEAST ONE HOUR IN ADVANCE OF THE MEETING** WILL BE READ TO THE COMMITTEE DURING THE APPROPRIATE PORTION OF THE MEETING. THESE PUBLIC COMMENT PROCEDURES SUPERSEDE THE DISTRICT'S STANDARD PUBLIC COMMENT POLICIES AND PROCEDURES TO THE CONTRARY.

SPECIAL BOARD MEETING

Wednesday, November 17, 2021 Closed Session 9:30 a.m. Open Session 10:00 a.m.

THE PURPOSE OF THE REGULAR BOARD MEETING IS TO DISCUSS THE ATTACHED AGENDA

District Office 3707 Old Highway 395 Fallbrook, CA 92028

Board Agenda Policies

Board of Directors Meeting Schedule Regular Board meetings are normally scheduled for the 4th Tuesday of the month with Open Session discussions starting time certain at 1:00 p.m.

Breaks It is the intent of the Board to take a ten minute break every hour and one-half during the meeting.

Public Input on Specific Agenda Items Any person of the public desiring to speak shall fill out a "Speaker's Slip", encouraging them to state their name, though not mandatory. Such person shall be allowed to speak during public comment time and has the option of speaking once on any agenda item when it is being discussed. Speaking time shall generally be limited to three minutes, unless a longer period is permitted by the Board President.

Agenda Posting and Materials Agendas for all regular Board of Directors' meetings are posted at least seventy-two hours prior to the meeting on bulletin boards outside the entrance gate and the main entrance door of the District, 3707 Old Highway 395, Fallbrook, California 92028. The agendas and all background material may also be inspected at the District Office.

You may also visit us at www.rainbowmwd.com.

Time Certain Agenda items identified as "time certain" indicate the item will not be heard prior to the time indicated.

Board meetings will be audio and video recorded with copies available upon request. Requests for audio recordings will be fulfilled once draft minutes for such meeting have been prepared. There are no costs associated with obtaining copies of audio and video recordings; however, these recordings will only be retained according to the policies provided in the District's Administrative Code. Copies of public records are available as a service to the public; a charge of \$.10 per page up to 99 pages will be collected and \$.14 per page for 100 pages or more.

If you have special needs because of a disability which makes it difficult for you to participate in the meeting or you require assistance or auxiliary aids to participate in the meeting, please contact the District Secretary, (760) 728-1178, by at least noon on the Friday preceding the meeting. The District will attempt to make arrangements to accommodate your disability.

(*) - Asterisk indicates a report is attached.

Notice is hereby given that the Rainbow Municipal Water District Board of Directors will hold Closed Session at 9:30 a.m. and Open Session at 10:00 a.m. Wednesday, November 17, 2021, at the District Office located at 3707 Old Highway 395, Fallbrook, CA 92028. At any time during the session, the Board of Directors Meeting may adjourn to Closed Session to consider litigation or to discuss with legal counsel matters within the attorney client privilege.

AGENDA

1. **CALL TO ORDER**
2. **ROLL CALL: Gasca____ Hamilton____ Mack____ Moss_____**
3. **ADDITIONS/DELETIONS/AMENDMENTS TO THE AGENDA (Government Code §54954.2)**
4. **INSTRUCTIONS TO ALLOW PUBLIC COMMENT ON AGENDA ITEMS FROM THOSE ATTENDING THIS MEETING VIA TELECONFERENCE OR VIDEO CONFERENCE**

CHAIR TO READ ALOUD - "If at any point, anyone would like to ask a question or make a comment and have joined this meeting with their computer, they can click on the "Raise Hand" button located at the bottom of the screen. We will be alerted that they would like to speak. When called upon, please unmute the microphone and ask the question or make comments in no more than three minutes.

*Those who have joined by dialing a number on their telephone, will need to press *6 to unmute themselves and then *9 to alert us that they would like to speak.*

A slight pause will also be offered at the conclusion of each agenda item discussion to allow public members an opportunity to make comments or ask questions."

5. **ORAL/WRITTEN COMMUNICATIONS FROM THE PUBLIC OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD REGARDING CLOSED SESSION AGENDA ITEMS (Government Code § 54954.2).**

Under Oral Communications, any person wishing to address the Board on matters regarding the Closed Session agenda should email or mailing their comments to the Board Secretary one hour before the Closed Session scheduled start time. All written public comments will be read to the Board prior to their adjournment to Closed Session. Any person wishing to speak to the Board regarding Closed Session agenda items may do so by calling (760) 728-1178, listening for "Thank you for calling Rainbow Municipal Water District", dialing Extension 429, and entering pin 8607 at the Closed Session scheduled start time. Once all public comment is heard, this call will be disconnected, and the Board will adjourn to Closed Session. To participate in the Open Session portion of the meeting, please follow the instructions provided at the top of Page 1 of this agenda. Speaking time shall generally be limited to three minutes unless a longer period is permitted by the Board President.

6. **CLOSED SESSION**
 - A. Conference with Legal Counsel - Existing Litigation Pursuant to Government Code Section 54956.9(d)(1)
 - * Rainbow Municipal Water District v. Blum, Inc., et al.

7. **REPORT ON POTENTIAL ACTION FROM CLOSED SESSION**

(*) - Asterisk indicates a report is attached.

Time Certain: 1:00 p.m.

8. REPEAT CALL TO ORDER
9. PLEDGE OF ALLEGIANCE
10. REPEAT ROLL CALL
- *11. **BOARD OF DIRECTORS CONSIDER ADOPTING RESOLUTION NO. 21-21 RENEWING STATE OF EMERGENCY FINDINGS FOR ASSEMBLY BILL 361 (AB 361)**
(A majority of the RMWD Board of Directors invoked AB361 at their October 26, 2021, meeting and to comply with AB361, the Board must reconsider the circumstances of emergency at all subsequent meetings.)
12. REPEAT REPORT ON POTENTIAL ACTION FROM CLOSED SESSION
13. REPEAT ADDITIONS/DELETIONS/AMENDMENTS TO THE AGENDA (Government Code §54954.2)
14. REPEAT INSTRUCTIONS TO ALLOW PUBLIC COMMENT ON AGENDA ITEMS FROM THOSE ATTENDING THIS MEETING VIA TELECONFERENCE OR VIDEO CONFERENCE
CHAIR TO READ ALOUD - *"If at any point, anyone would like to ask a question or make a comment and have joined this meeting with their computer, they can click on the "Raise Hand" button located at the bottom of the screen. We will be alerted that they would like to speak. When called upon, please unmute the microphone and ask the question or make comments in no more than three minutes.*

*Those who have joined by dialing a number on their telephone, will need to press *6 to unmute themselves and then *9 to alert us that they would like to speak.*

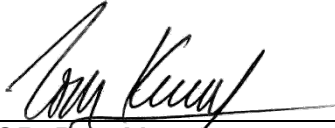
A slight pause will also be offered at the conclusion of each agenda item discussion to allow public members an opportunity to make comments or ask questions."
15. **ORAL/WRITTEN COMMUNICATIONS FROM THE PUBLIC OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD REGARDING ITEMS ON THIS AGENDA (Government Code § 54954.2).**
Under Oral Communications, any person wishing to address the Board on matters on this agenda should indicate their desire to speak or may email or mail their comments to the Board Secretary one hour before the Open Session scheduled start time. All written public comments received will be read to the Board during the appropriate portion of the meeting. No action will be taken on any oral communications item since such item does not appear on this Agenda, unless the Board of Directors makes a determination that an emergency exists or that the need to take action on the item arose subsequent to posting of the Agenda (Government Code §54954.2). Speaking time shall generally be limited to three minutes unless a longer period is permitted by the Board President.

BOARD ACTION ITEMS

- *16. **DISCUSSION AND POSSIBLE SELECTION OF DIVISION FOUR DIRECTOR AND APPROVAL OF RESOLUTION NO. 21-20, A RESOLUTION APPOINTING _____ AS DIRECTOR OF DIVISION FOUR OF THE RAINBOW MUNICIPAL WATER DISTRICT**
(On October 20, 2021, Director Carl Rindfleisch resigned from the Board of Directors thereby leaving the Board seat for Division Four vacant. Staff advised the Registrar of Voters office of the vacancy and posted the notice of vacancy in the Division Four area.)

(*) - Asterisk indicates a report is attached.

17. **BOARD MEMBER REQUESTS FOR AUTHORIZATION TO ATTEND UPCOMING MEETINGS / CONFERENCES / SEMINARS**
18. **LIST OF SUGGESTED AGENDA ITEMS FOR THE NEXT REGULAR BOARD MEETING**
19. **ADJOURNMENT - To Tuesday, December 7, 2021, at 1:00 p.m.**



FOR: Pam Moss
Secretary of the Board

11-4-21 @ 1:45 p.m.

Date and Time of Posting
Outside Display Cases

(*) - Asterisk indicates a report is attached.

BOARD OF DIRECTORS

November 17, 2021

SUBJECT

BOARD OF DIRECTORS CONSIDER ADOPTING RESOLUTION NO. 21-21 RENEWING STATE OF EMERGENCY FINDINGS FOR ASSEMBLY BILL 361 (AB 361)

BACKGROUND

On September 16, 2021, Governor Newsom signed Assembly Bill 361 (“AB 361”), which incorporated into California state law some aspects of the teleconferencing rules that have applied by Executive Order to local public agencies during the COVID-19 pandemic. Notably, because AB 361 included an urgency measure, the law was immediately effective as of the date of the Governor’s signature. AB 361 provides that it sunsets on January 1, 2024.

Benefits

Benefits of operating under AB 361 during the COVID-19 pandemic, as opposed to under the normal open meeting laws, include the following:

- Agendas need not be posted at all teleconference locations;
- Each teleconference location need not be identified in the notice and agenda of the meeting;
- Each teleconference location need not be accessible to the public; and
- A quorum of the members of the legislative body do not need to participate in the meeting from locations within the boundaries of the territory over which the public agency exercises jurisdiction.

Requirements

Following are requirements for invoking AB 361 the first time that a public agency does so:

1. There must be a “proclaimed state of emergency,” as there is currently, in that the Governor’s State of Emergency Declaration, issued on March 4, 2020, has not been lifted, and
2. One of the following three circumstances must exist:
 1. State or local officials have imposed or recommended measures to promote social distancing.
 2. The meeting is held to determine, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to health or safety of attendees.
 3. The majority of the legislative body has voted that, as a result of the emergency, meeting in person would present imminent risk to the health or safety of attendees.

If a public agency wishes to consider invoking AB 361 for subsequent meetings, the following is required:

1. The proclaimed state of emergency must remain active; or
2. State or local officials have imposed or recommended measures to promote social distancing; and
3. Not later than 30 days after teleconferencing for the first time under the AB 361 rules, *and every 30 days thereafter*, the Legislative body shall make the following findings by majority vote:
 - The legislative body has reconsidered the circumstances of emergency, and at least one of the following circumstances exist:
 1. The state of emergency continues to directly impact the ability of the members to meet safely in person; or
 2. State or local officials continue to impose or recommend measures to promote social distancing.

If a public agency invokes AB 361, the following notice and public participation requirements apply:

Notice Requirements

- Each notice of the meeting and agenda must identify the means by which members of the public may access the meeting and offer public comment by a call-in option or an internet-based service option (does not need to be both).

Public Participation Requirements

- Cannot require public comments to be submitted in advance of the meeting (although the agency may provide this as an option along with the call-in or internet-based service option).
- Public must be able to attend via call-in option or internet-based service option (does not need to be both).
- Public must be able to address the legislative body “directly” via call-in option or internet-based service option.
- The public agency must provide an opportunity for the public to address the Legislative body and “offer comment in real time.”
- If there is a disruption that prevents the public agency from broadcasting the meeting using the call-in option or internet based service option, or if there is a disruption within the public agency’s control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the body “shall take no further action on items appearing on the agenda until public access to the meeting via the call-in option or internet-based service option is restored.”
- Timing of Public Comment Period
 - If a legislative body does not provide a timed public comment period, but takes public comment separately on each agenda item, it shall allow a “reasonable amount of time per agenda item to allow public members the opportunity to provide public comment,” including time for members of the public to register to provide comment or otherwise be recognized for the purpose of providing public comment.

- If a legislative body provides a timed general public comment period that does not correspond to a specific agenda item, it shall not close the public comment period or the opportunity to register until the timed general public comment period has lapsed.
- If a legislative body provides a timed public comment period for each agenda time, it shall not close the public comment period or the opportunity to register until the timed public comment has elapsed.

DESCRIPTION

Continuing Legislative Findings

On October 26, 2021, the Board of Directors approved a Resolution authorizing virtual meetings in accordance with Assembly Bill 361. In order to continue virtual meetings, AB 361 requires that the Board adopt the legislative findings discussed above every 30 days, for as long as the Board wishes to continue virtual meetings.

ENVIRONMENTAL

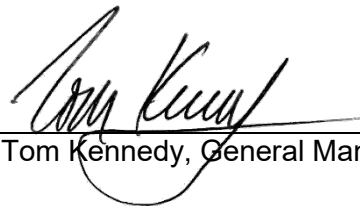
In accordance with CEQA guidelines Section 15378, the action before the Board does not constitute a "project" as defined by CEQA and further environmental review is not required at this time.

BOARD OPTIONS/FISCAL IMPACTS

1. Adopt the attached Resolution No. 21-21 renewing virtual meetings in accordance with Assembly Bill 361.
2. Do not invoke AB 361 and provide staff with direction.

STAFF RECOMMENDATION

Staff supports direction.



Tom Kennedy, General Manager

November 17, 2021

RESOLUTION NO. 21-21

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
RAINBOW MUNICIPAL WATER DISTRICT
RENEWING REMOTE TELECONFERENCE MEETINGS
IN ACCORDANCE WITH ASSEMBLY BILL 361 (AB361)**

WHEREAS, COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease that has spread across the globe, with thousands of confirmed cases in California; and

WHEREAS, according to data from Johns Hopkins University, the COVID-19 pandemic has caused the death of more than 68,796 Californians as of October 1, 2021; and

WHEREAS, social distancing measures decrease the chance of spreading COVID-19; and

WHEREAS, the Rainbow Municipal Water District is committed to preserving and fostering public access, transparency, observation, and participation in meetings of the Board of Directors and Committee meetings; and

WHEREAS, all meetings of the Board of Directors and Standing Committees are open and public as required by the Ralph M. Brown Act, Government Code sections 54950 – 54963, so that any member of the public may attend, observe, and participate in a meaningful way; and

WHEREAS, Government Section 54953 (b) (3) of the Brown Act allows a local legislative body to hold public meetings by teleconference and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to attend and to address the local legislative body, as long as the following requirements are met:

1. Each teleconference location from which a member is participating is noticed on the agenda;
2. Each teleconference location is accessible to the public;
3. Members of the public must be able to address the body at each teleconference location;
4. At least one member of the legislative body must be physically present at the location specified in the meeting agenda; and

5. During teleconference meetings, at least a quorum of the members of the local body must participate from locations within the local body's territorial jurisdiction; and

WHEREAS, the Brown Act, as amended by AB 361 (2021), at Government Code section 54953(e) *et seq.*, allows for remote observation and participation in meetings by members of a legislative body and members of the public without compliance with the requirements of Government Code section 54953(b)(3), subject to certain conditions; and

WHEREAS, the initial required condition is a declaration of a state of emergency by the Governor pursuant to the California Emergency Services Act at Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state and within the boundaries of the Rainbow Municipal Water District, caused by conditions as described in Government Code section 8558; and

WHEREAS, the Governor's Proclamation of a State of Emergency includes area within the boundaries of the Rainbow Municipal Water District; and

WHEREAS, Government Code Section 54953(e)(3)(A-B) added by AB 361 provides an alternative to having public meetings in accordance with Government Code Section 54953(b)(3) when the Rainbow Municipal Water District has reconsidered the circumstances of the COVID-19 state of emergency and that the following circumstances exist:

1. The state of emergency as a result of COVID-19 continues to directly impact the ability of the members of Board of Directors and the members of the Standing Committees to meet safely in person; and
2. The State of California and the County of San Diego continue to recommend measures to promote social distancing.

WHEREAS, Government Code Section 54953(e) *et seq.* further requires that state or local officials have imposed or recommended measures to promote social distancing or the legislative body finds that meeting in person would present an imminent risk to the health or safety of attendees; and

WHEREAS, such conditions now exist in the Rainbow Municipal Water District's territorial boundaries in that (i) State and Local officials recommend social distancing measures and (ii) emergency conditions evidenced by COVID-19 and its variants create ongoing COVID-19 cases, hospitalizations, and deaths, such that COVID-19 continues to pose an imminent risk to the public; and

WHEREAS, the Rainbow Municipal Water District affirms that it will allow for observation and participation by Board Members, Committee members and the public via Zoom in an effort to protect the constitutional and statutory rights of all attendees; and

WHEREAS, on October 26, 2021, the Board of Directors approved a Resolution authorizing virtual meetings in accordance with Assembly Bill 361; and

WHEREAS, Government Code Section 54953 (e)(3) requires that the Rainbow Municipal Water District review the need and make findings for continuing the teleconferencing as authorized by AB 361 at least once every thirty days until the Governor terminates the state of emergency.

NOW, THEREFORE, THE RAINBOW MUNICIPAL WATER DISTRICT HEREBY FINDS, DECLARES, AND RESOLVES AS FOLLOWS:

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. The Rainbow Municipal Water District finds that the state of emergency conditions related to COVID-19 as set forth in the Governor's Proclamation of Emergency are on-going.

Section 3. The Rainbow Municipal Water District further finds that state and county officials recommend social distancing conditions to prevent imminent risk to in-person meeting attendees.

Section 4. The Rainbow Municipal Water District hereby recognizes and affirms the existence and conditions of a state of emergency as proclaimed by the Governor and by state and local officials; and the Rainbow Municipal Water District affirms, authorizes, and proclaims the existence of a local emergency throughout its territorial boundaries.

Section 5. The Rainbow Municipal Water District finds that the state of emergency as a result of COVID-19 continues to directly impact the ability of members of the Board, Committees and the public to meet safely in person, and that COVID-19 continues to pose an imminent health risk to the public.

Section 6. The Rainbow Municipal Water District hereby authorizes the Board of Directors and Committee members to conduct their meetings without compliance with Government Code section 54953(b)(3), and to instead comply with the remote meeting requirements as authorized by Government Code section 54953(e) *et seq.*

Section 7. The Board President and Board Secretary are authorized and directed to take all actions reasonably necessary to carry out the intent and purpose of this Resolution, including, conducting open and public meetings remotely in accordance with Government Code section 54953(e) *et seq.*, and other applicable provisions of the Brown Act, for all Board of Directors and Standing Committee meetings.

Section 8. This Resolution shall renew the virtual meeting authorization adopted by the Board of Directors on October 26, 2021. This renewed virtual meeting authorization shall take effect immediately upon its adoption and shall be effective until either (i) thirty days after the adoption of this Resolution, or (ii) such time as the Rainbow Municipal Water District

adopts a Subsequent Resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the Board of Directors and Standing Committees may continue to meet remotely, without compliance with Government Code section 54953(b)(3), but otherwise as permitted by Government Code section 54953(e) *et seq.*

PASSED AND ADOPTED at a meeting of the Board of Directors of the Rainbow Municipal Water District held on the 17th day of November 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Hayden Hamilton, Board President

ATTEST:

Dawn M. Washburn, Board Secretary

BOARD OF DIRECTORS

November 17, 2021

SUBJECT

DISCUSSION AND POSSIBLE SELECTION OF DIVISION FOUR DIRECTOR AND APPROVAL OF RESOLUTION NO. 21-20, A RESOLUTION APPOINTING _____ AS DIRECTOR OF DIVISION FOUR OF THE RAINBOW MUNICIPAL WATER DISTRICT

BACKGROUND

Occasionally circumstances arise resulting in Board Members no longer able to serve on the Rainbow Municipal Water District Board of Directors. Upon receipt of formal notification that a current Board Member is unable to continue serving, the District is required to follow specific regulatory requirements in accordance with Government Code Section 1780.

DESCRIPTION

On October 30, 2021, Director Carl Rindfleisch resigned from the Board of Directors thereby leaving the Board seat for Division Four vacant. Staff advised the Registrar of Voters office of the vacancy and posted the notice of vacancy in the Division Four area.

The person appointed to fill this vacancy will hold the seat until the next election, which will be November 2022; they may run for reelection at that time for a four-year term that will end in 2026.

In accordance with Government Code Section 1780, the Board has three options:

1. Appoint a resident of Division Four to serve the remainder of the term.
2. Call for a special election to fill the vacancy.
3. If neither an appointment of a replacement nor a call for an election is completed within 60 days, the County Board of Supervisors may appoint the person of their choice to serve the remainder of the term.

At the October 26, 2021, Board meeting staff was directed to proceed with the solicitation of interested persons for the Board to consider for appointment to the Board. Interested persons were asked to contact the District with their name, address, contact information, and brief background of their education and experience as part of the application process no later than 12:00 p.m. on November 15, 2021. A list of prospective appointees will be forwarded to the Board prior to the meeting.

POLICY/STRATEGIC PLAN KEY FOCUS AREA

Government Code 1780

ENVIRONMENTAL

In accordance with CEQA guidelines Section 15378, the action before the Board does not constitute a "project" as defined by CEQA and further environmental review is not required at this time.

BOARD OPTIONS/FISCAL IMPACTS

- 1) Adopt Resolution No. 21-20 appointing a successor for Director Carl Rindfleisch.
- 2) Call for a special election to allow voters to elect a successor.
- 3) Allow the County Board of Supervisors to make the appointment.

STAFF RECOMMENDATION

Staff supports direction.



Tom Kennedy, General Manager

November 17, 2021

RESOLUTION NO. 21-20

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE RAINBOW MUNICIPAL WATER DISTRICT
APPOINTING _____ AS DIRECTOR OF
DIVISION FOUR OF THE RAINBOW MUNICIPAL WATER DISTRICT**

WHEREAS, the Board of Directors of the Rainbow Municipal Water District has selected _____ at the Special Board meeting of November 17, 2021, to serve as the representative for Division Four of the Rainbow Municipal Water District; and

WHEREAS, _____ has agreed to serve as the appointed Director of Division Four of the Rainbow Municipal Water District;

NOW, THEREFORE, IT IS HEREBY RESOLVED, DETERMINED AND ORDERED by the Board of Directors of Rainbow Municipal Water District to appoint _____ for service as the Director of Division Four of the Rainbow Municipal Water District beginning on November 17, 2021, for the unfulfilled term expiring December, 2022 and;

BE IT FURTHER RESOLVED that the District is hereby directed to execute the Oath of Office and swear in _____ as soon as practical.

PASSED, APPROVED AND ADOPTED at a Regular meeting of the Board of Directors of the Rainbow Municipal Water District held on the 17th day of November 2021 by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Hayden Hamilton, Board President

ATTEST:

Dawn Washburn, Board Secretary

