

BOND DOCUMENTS, DEBT SERVICE AND WHO IS RESPONSIBLE FOR WHAT?

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BOND DOCUMENTS AND DEBT SERVICE

- What will we cover?
- Who is involved in a “typical” financing and some variations?
- What are some practical tips for issuers?
- What are the ongoing debt activities performed by an issuer?
- How does the East Bay Municipal Utility District (“East Bay MUD”) handle its financing program and division of responsibilities?
- Note: We will generally be addressing fixed rate, publicly offered non-conduit transactions.

FINANCING TEAM

- Issuer
- Issuer's Counsel
- Bond Counsel
- Disclosure Counsel
- Underwriter
- Underwriter's Counsel
- Municipal Advisor
- Trustee / Paying Agent / Fiscal Agent
- Trustee's Counsel
- Feasibility Consultant
- Dissemination Agent
- Verification Agent (Refundings)
- Title Insurer/Property Insurer (any deal involving real estate)
- Bond Insurer

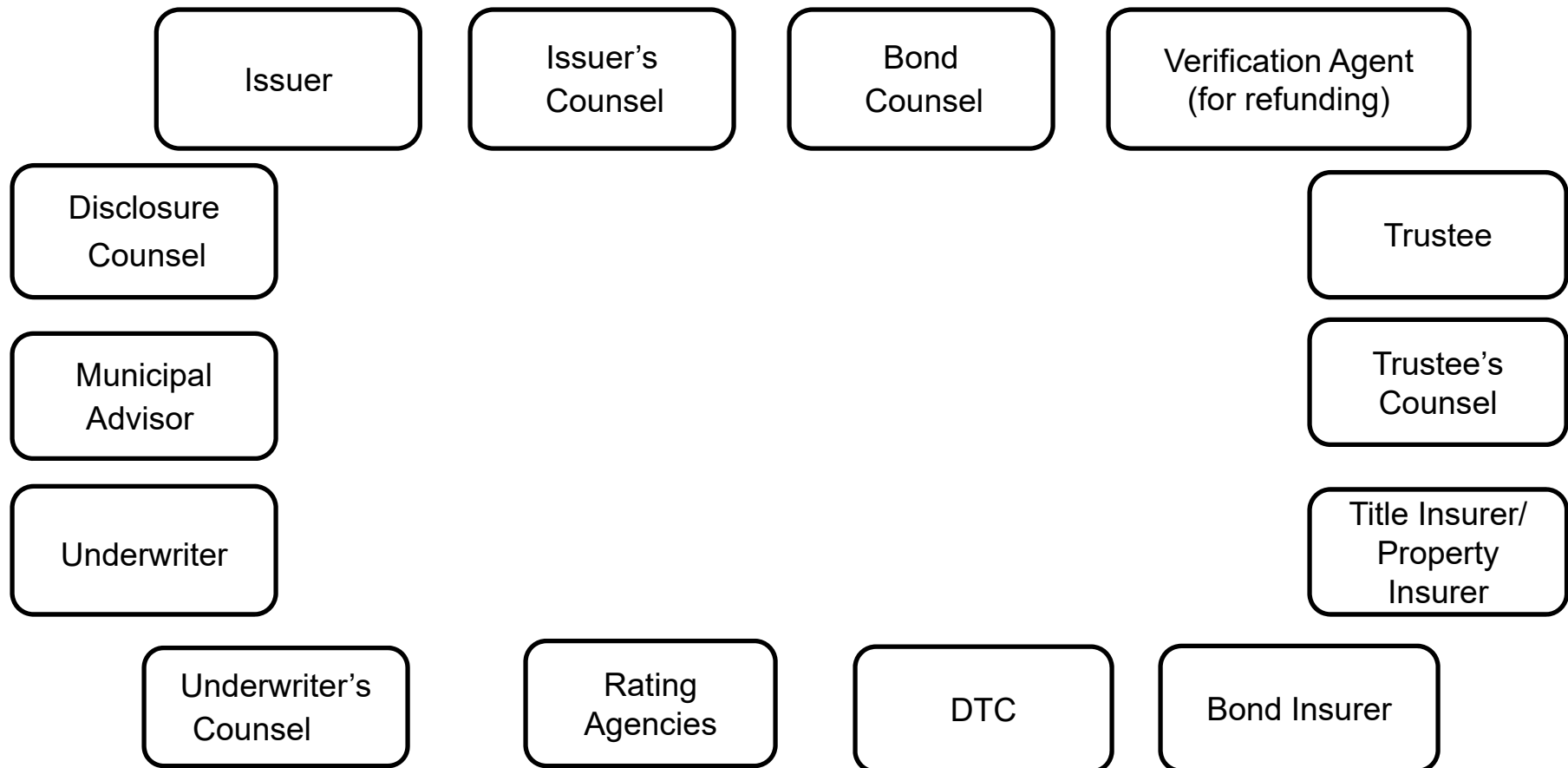
PRELIMINARY CONSIDERATIONS

- What is being financed?
- What will be the structure of the financing? (Abatement lease/installment sales/ special tax)
- What is the source of funds for repayment of the borrowing? (General Fund/Enterprise Revenues/Special Taxes)
- Who at the Issuer will be responsible for ongoing compliance of the bond issue?

BASIC DOCUMENTS

- Trust Agreement / Indenture
- Authorizing Resolution
- Preliminary Official Statement / Official Statement
- Lease/Installment Sale Agreement
- Bond Purchase Agreement
- Continuing Disclosure Agreement
- Tax Certificate
- Closing Documents and Certificates

NEGOTIATED (PRIVATE SALE) BOND TRANSACTION



INDENTURE OF TRUST / TRUST AGREEMENT / BOND RESOLUTION / BOND ORDINANCE

Key Provisions:

- Definitions
- Permitted Investments
- Pledge of Collateral
- Reserve Fund
- Flow of Funds
- Additional Debt
- Interest Rates
- Principal and Interest Payment Dates
- Maturity Dates
- Redemption / Prepayment
- Defeasance Provisions
- Representations, Warranties and Covenants of the Issuer
- Maintenance of Rates, Fees & Charges
- Continuing Disclosure
- Rights and Responsibilities of the Trustee
- Events of Default and Remedies
- Insurance Provision

Parties:

- Issuer
- Trustee
- For Ordinances and Resolutions, only the Issuer

AUTHORIZING RESOLUTION

Purpose:

- Authorizes the sale of the bonds by the Issuer and establishes the parameters for the issuance of the bonds, authorizes the execution and delivery of each of the financing documents, directs staff to take other actions necessary to complete the transactions, delegates officers to approve revisions to financing documents consistent with the parameters

Key Provisions:

- Maximum principal amount of bonds to be issue
- Maximum interest rate
- Maximum underwriter's discount
- Maximum term
- For refundings, the minimum savings to be achieved
- Delegation of Authority to Officers

Parties:

- Issuer

LOAN AGREEMENT / LEASE AGREEMENT / PROJECT OR FACILITIES LEASE / INSTALLMENT SALE AGREEMENT

Purpose:

- Evidences the loan of bond proceeds by the Issuer to finance the project(s) and for user (borrower) of the project(s) to make payments sufficient in time and amount to repay the bonds
- For Installment Sale Agreements and Leases, the title to the project will transfer at the end of the term and maturity of the bonds

Key Provisions:

- Pledge of Revenues
- Lease Payments
- Additional Payments
- Representations & Warranties
- Covenants
- Prepayment Provisions
- Abatement

Parties:

- Issuer

PRELIMINARY AND FINAL OFFICIAL STATEMENT

Purpose:

- Provides disclosure to investors and potential investors; terms of the bonds; description of project(s) being financed or bonds being refunded; security and sources for repayment; risk factors; issuer financial and operating information; description of obligated party; outstanding material litigation
- The Issuer is required under securities laws to disclose all information a “reasonable investor” would consider to be important in making an investment decision to purchase the bonds
- The Preliminary Official Statement is deemed substantially final except for pricing information and is used by the underwriter to pre-sell the bonds
- The Official Statement is dated the date the bonds are sold to the underwriter

Key Provisions:

- Securities and Sources of Payment
- Risk Factors
- Absence of Material Litigation
- Financial and Operating Information
- Continuing Disclosure

Parties:

- Issuer

BOND PURCHASE AGREEMENT / BOND PURCHASE CONTRACT

Purpose:

- Provides for the sale of the bonds by the Issuer to the Underwriter
- Specifies (i) the terms of the bonds; (ii) conditions precedent to the obligation of the underwriter to purchase of the bonds; and (iii) the delivery date of the bonds;
- This agreement is bilaterally executed by the Underwriter and the Issuer after the bonds have been priced by the Underwriter

CONTINUING DISCLOSURE UNDERTAKING

Purpose:

- Contains the undertakings of the Issuer (and each Obligated Party) to provide annual updates of specified information (Annual Reports) by a specified date certain and notices of the occurrence of significant events, generally within 10 business days following occurrence, pursuant to Rule 15c2-12
- Remains in effect during the lifetime of the bonds

Key Provisions:

- Content of the Annual Report
- Filing Date for the Annual Report
- Listing of Significant Events
- Filing Date for Filing Notices of the Occurrence of Significant Events
- Amendment Procedures

Parties:

- Issuer
- Obligated Party
- Trustee
- Dissemination Agent

TAX CERTIFICATE / TAX AND NON-ARBITRAGE CERTIFICATE

Purpose:

- Sets forth the certifications and covenants of the Issuer (and the Borrower) necessary to maintain the tax-exempt status of the bonds
- Includes rules for investment of the bond proceeds, compliance with arbitrage and rebate requirements

Key Provisions:

- Sources and Uses of Proceeds
- Investment of Proceeds
- Representations and Warranties
- Tax Compliance Program
- Others – depending upon the purpose of the financing

Parties:

- Issuer

CLOSING CERTIFICATES, DOCUMENTS & OPINIONS

Key Provisions:

- Issuer Certificates
- Receipts
- Requisitions
- Documents for Deposit of Funds
- Opinions

Parties:

- All

OTHER FINANCINGS

Refundings:

- Basic Documents
- Escrow Agreement
- Verification Report



Variable Rate:

- Basic Documents
- Remarketing Agreement
- Paying Agent Agreement
- Letter of Credit or Standby Bond Purchase Agreement
 - A Letter of Credit is issued by a bank to the Trustee on behalf of the Issuer to provide sufficient money to pay the principal and accrued interest (the "purchase price") on the bonds when tendered by the bondholders
 - A Standby Bond Purchase Agreement serves essentially the same purpose as the letter of credit, but instead of automatically paying the purchase price of the bonds when tendered by the bondholders, the bank purchases only those bonds that are not successfully remarketed by the remarketing agent to new purchasers. The remarketing agent then remarkets the bank's bonds
- Reimbursement Agreement
 - An agreement between the Issuer or the Conduit Borrower to reimburse the bank for all draws made on the letter of credit

OTHER FINANCINGS – LEASE REVENUE TRANSACTIONS

- Lease-revenue bonds rely for their validity on the fact that bond payments are limited to lease payments made by the City/Financing Authority.
 - Lease payments are made by the City/Financing Authority each year in consideration of the use and occupancy of the leased facility in that year
 - Lease exception to constitutional debt limit

“Beneficial use and occupancy” is a required element for lease payments

- If the facility is not available for use and occupancy, the abatement of rental process would be triggered as rental abatement is a required element of the facility lease
- Bond payments due prior to completion and occupancy are paid from capitalized interest only

Any facts that bear on availability for use and occupancy are material and should be immediately discussed with your Bond Counsel

OTHER FINANCING *(CONTINUED)*

Private Placements/Direct Purchase:

- A direct negotiation by the Issuer with a limited number of commercial banks, private financial institutions or investors with a high degree of sophistication; essentially a loan that is evidenced by a “bond”; exempt from registration with the SEC and doesn’t require many of the disclosure requirements of a public offering
- Master Loan Agreement –
 - Similar to an Indenture
- Private Placement Agreement –
 - Similar to the BPA, but is an agreement between the Issuer (and the Borrower) and the placement agent

OTHER FINANCING *(CONTINUED)*

Private Placements:

— Continuing Covenant Agreement —

- an agreement between the Issuer (and the Borrower) and the financial institution purchasing the Bonds

— Investor Letter/Lender's Letter —

- Executed by the investors or a commercial bank agreeing to certain restrictions on resale and certifying that they have the degree of sophistication necessary to make an investment in the bonds or a loan to the issuer as evidenced by the bonds

PRACTICAL TIP: Know your commercial banker, build on the relationship and keep them in the loop

DEBT SERVICE

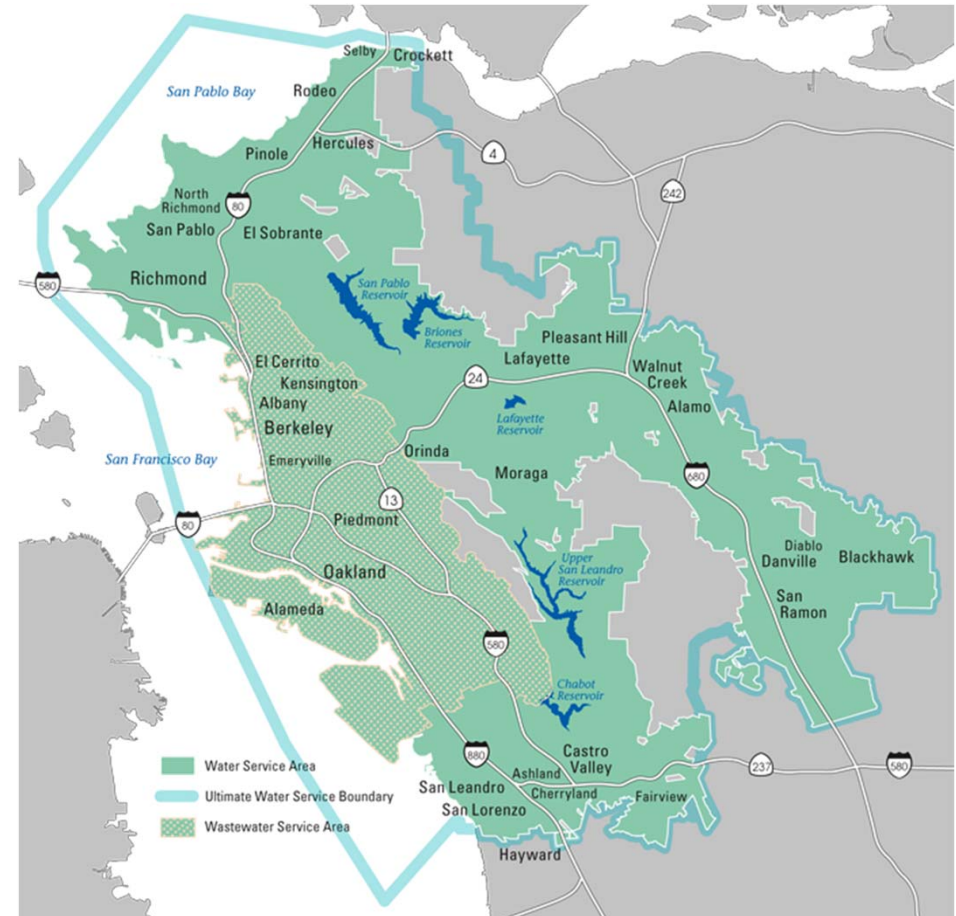
- Overview of the East Bay Municipal Utility District (EBMUD)
- What is Debt Service?
- The Basics of Paying Debt Service
 - How much do I owe?
 - How am I going to pay?
- Responsible Parties for Paying Debt Service
- Budget and Debt Service Planning
- Treasury and Cash Management

EBMUD INTRODUCTION

The East Bay Municipal Utility District (EBMUD) provides water and wastewater services in the East Bay area of the San Francisco Bay Area

The water system serves about 1.4 million customers

The wastewater system serves about 685,000 customers



EBMUD DEBT OUTSTANDING

Water System Debt

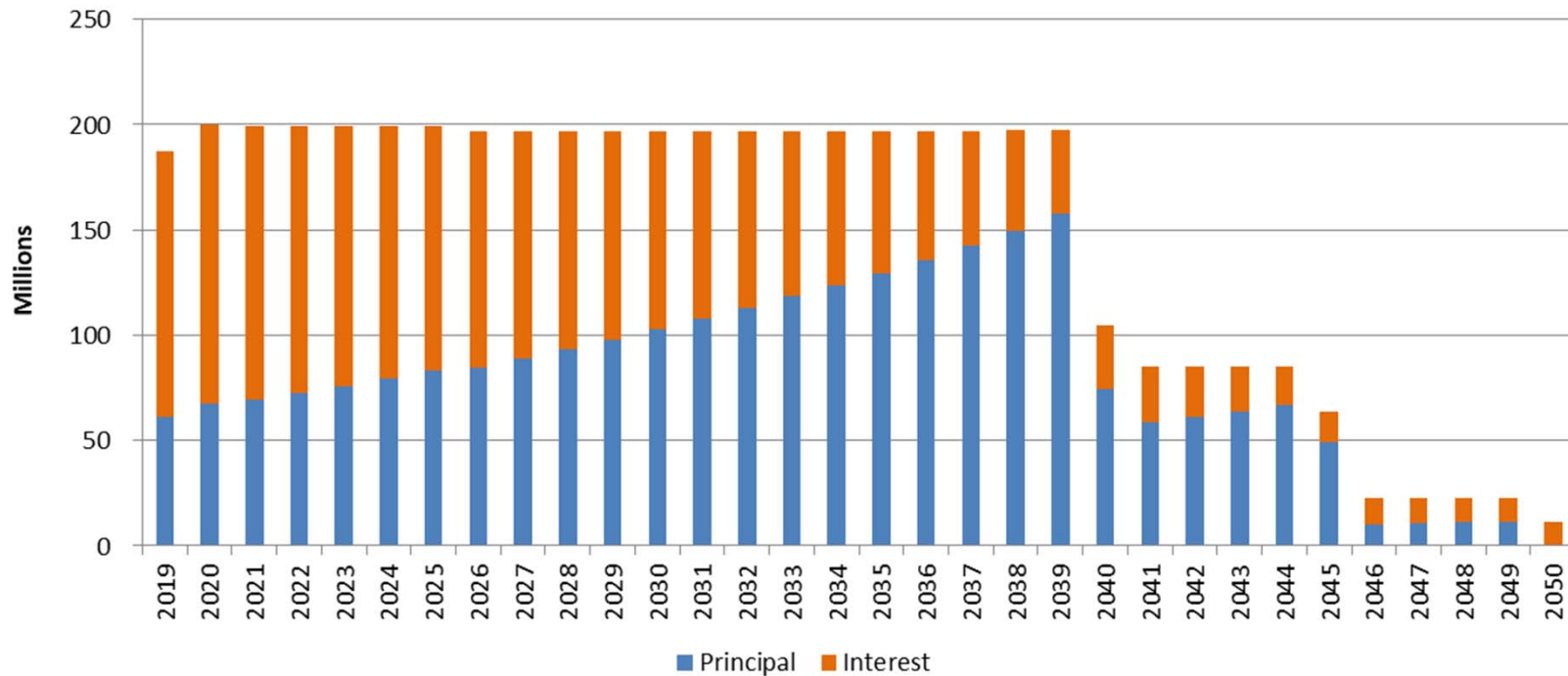
- \$2.5 billion in Water System Revenue Bonds
- \$13 million in State Loans
- \$360 million in Commercial Paper
- Ratings: AAA/Aa1/AA+

Wastewater System Debt

- \$370 million in Wastewater System Revenue Bonds
- \$15 million in Commercial Paper
- Ratings: AAA/Aa1/AA+

WATER SYSTEM DEBT SERVICE SCHEDULE

Water System Debt Service



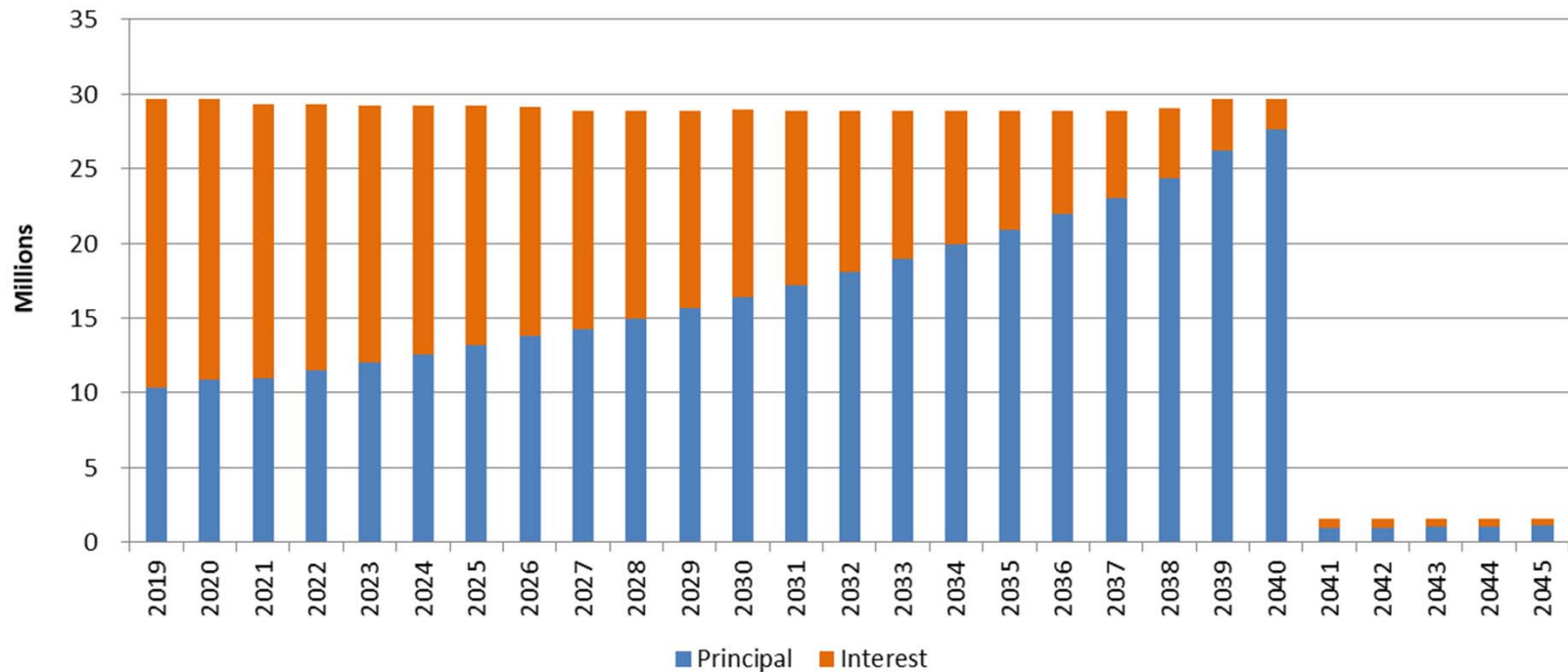
As of June 30, 2019

Includes interest on commercial paper



WATER SYSTEM DEBT SERVICE SCHEDULE

Wastewater System Debt Service



As of June 30, 2019

Includes interest on commercial paper



WHAT IS DEBT SERVICE?

- Payment of principal and interest on debt obligations
- Timely payment is critical
 - No grace period
- Debt administration costs may include other fees:
 - Trustee/Fiscal Agent Fees
 - Remarketing and liquidity fees
 - Arbitrage Rebate Consultant Fees
 - Special Tax Administrator Fees (Mello-Roos financings)

THE BASICS OF PAYING DEBT SERVICE

- How much do I owe?
- How am I going to pay?

HOW MUCH DO I OWE?

- Gross Debt Service
 - Internal Allocations/Schedules (up to date)
 - Trustee Records/Invoices (up to date)
 - Bond Documents (as of date of issue)
 - Final Cash Flows
- Net Debt Service = Gross Debt Service less Other Sources of Funds, which may include:
 - Capitalized Interest
 - Excess from the Reserve Fund
 - Interest Earnings
 - BABs subsidies
 - Other Available Sources (funds, accounts, or external)

HOW AM I GOING TO PAY?

- Set rates and charges as appropriate
 - At EBMUD, this is part of biennial budget and rate setting process
- Budget for expenditure
- Establish an appropriation
- Generate sufficient liquidity
- Verify debt service amounts
- Transfer funds to trustee

RESPONSIBLE PARTIES FOR DEBT SERVICE

- Debt Administrator (within Treasury at EBMUD)
- Accounting
- Budget
- Rate administrator (within Treasury at EBMUD)
- Treasury/Cash Management

ACCOUNTING'S RESPONSIBILITIES

Role before bond closing

- Review funds and accounts and establish them in the organization's financial system
- Review the flow of funds and establish procedures to ensure compliance with flow of funds

Documentation at closing

- Indenture
- Official Statement
- Final Number Run from the Underwriter (checked by FA)
- Staff reports related to the financing

ACCOUNTING'S RESPONSIBILITIES *(CONTINUED)*

Ongoing role

- Record the entries for payment of debt service
- Review trustee account statements to:
 - Verify flow of funds and application of transferred funds
 - Record entries into the organization's financial system
- Close collaboration with Treasury/Cash Management and Budget staff

TREASURY/DEBT ADMINISTRATOR'S RESPONSIBILITIES

Role before the closing:

- Review the flow of funds and establish procedures to ensure compliance with flow of funds
- Plan for the investment of proceeds in anticipation of closing

Documentation at closing

- Indenture
- Official Statement
- Final Number Run from the Underwriter
- Tax Certificate

TREASURY/DEBT ADMINISTRATOR'S RESPONSIBILITIES *(CONTINUED)*

Ongoing role

- Maintain up-to-date debt service schedules
- Maintain and manage cash flow projections
- Receive, review, and reconcile debt service invoices from the trustees
- Review accuracy of trustee statements
- Close collaboration with Accounting and Budget staff

DEBT ADMINISTRATOR RECONCILING TRUSTEE INVOICES

Please be advised that payment in the amount of \$2,043,750.00 is due on 06/01/2019 for EAST BAY MUNICIPAL UTILITY DISTRICT WATER SYSTEM REVENUE REFUNDING BONDS, SERIES 2012A. The bondholder payment date is 06/01/2019. The details of the amount due are as follows:

	<i>Amount in Dollars(\$)</i>
Principal	\$0.00
Interest	\$2,043,750.00
Collection Amount	\$2,043,750.00
Total Cash on Hand	(\$0.00)
Total Amount Due	\$2,043,750.00

2010A	2,390,000.00	112,000.00	2,502,000.00
2010B (BABs)	-	11,748,000.00	11,748,000.00
2012A	-	2,043,750.00	2,043,750.00
2012B	36,110,000.00	5,107,900.00	41,217,900.00
2013A	6,820,000.00	540,000.00	7,360,000.00
2014A	-	3,187,362.50	3,187,362.50
2014B	8,425,000.00	5,553,625.00	13,978,625.00
2014C	-	1,875,000.00	1,875,000.00

DEBT ADMINISTRATOR HANDLING VARIABLE RATE DEBT

- EBMUD has variable rate debt that resets weekly
- Interest is paid semi-annually
- Debt service wire is sent before final weekly reset is available
- An estimation with cushion must be made to ensure sufficient funds are available
- The final trustee invoice is checked against wire amount when available

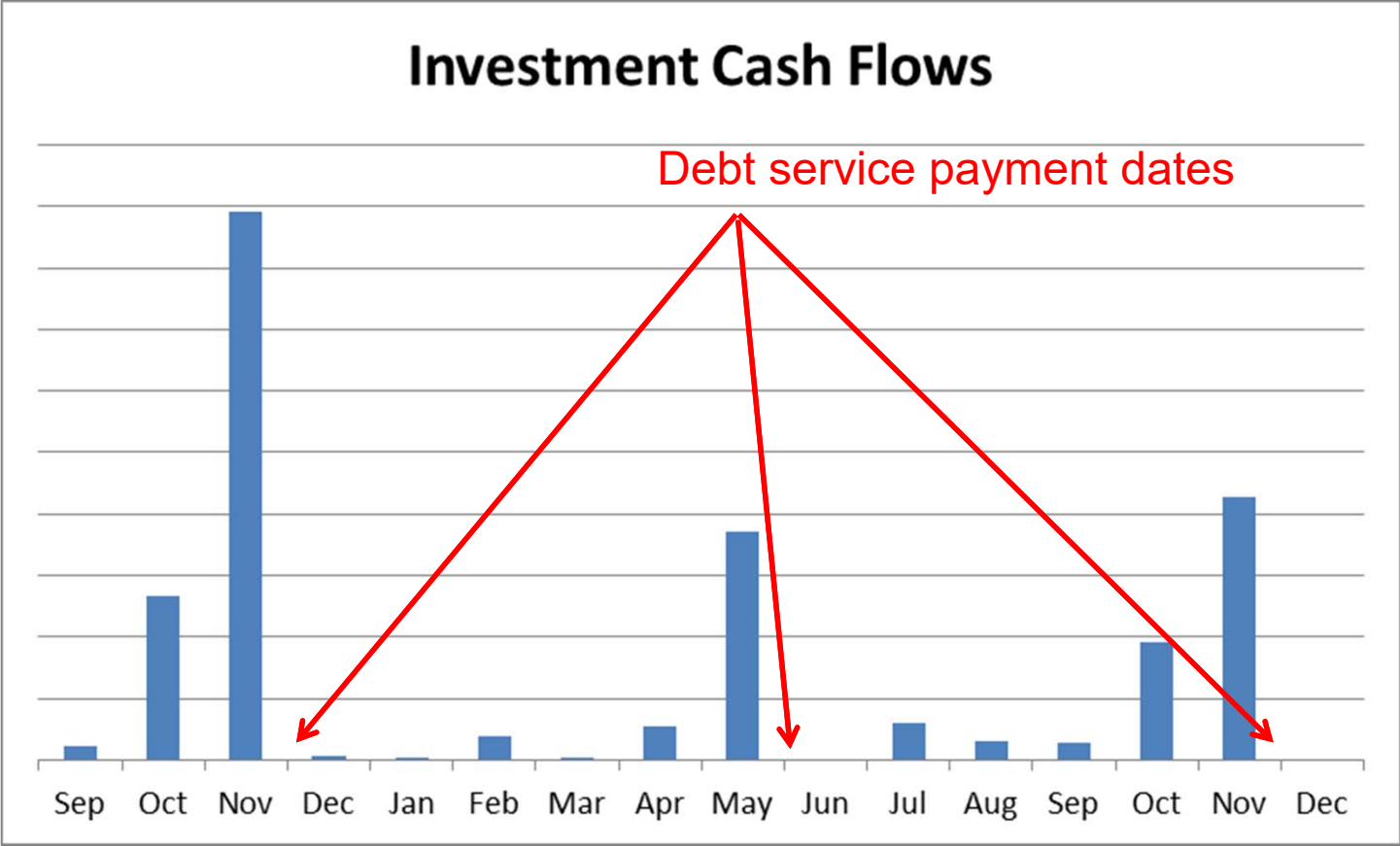
4/17/2019	4/23/2019	1.74%	10,810.17	162,507.52
4/24/2019	4/30/2019	2.00%	12,425.48	174,933.00
5/1/2019	5/7/2019	1.90%	11,804.21	186,737.21
5/8/2019	5/14/2019	1.47%	9,132.73	195,869.93
5/15/2019	5/21/2019	1.10%	6,834.01	202,703.95
5/22/2019	5/28/2019	0.93%	5,777.85	208,481.79
5/29/2019	5/31/2019	12.00%	31,951.23	240,433.03

TREASURY/CASH MANAGEMENT RESPONSIBILITIES

Ongoing role

- Manage the purchase and settlement of investments so investment cash flows approximately match debt service schedule
- Provide liquidity for timely and complete principal and interest payments
- In coordination with Debt Administrator, wire funds to the trustees on the correct dates in the correct amounts

TREASURY/CASH MANAGEMENT RESPONSIBILITIES



BUDGET'S RESPONSIBILITIES

- Budgeting the correct funds
 - Identify primary source of repayment
 - Other available funds (grants, etc.)
- Budgeting the correct amounts
 - Gross Debt Service vs. Net Debt Service
- Budgeting other debt service-related costs
 - Remarketing agents, liquidity, swap payments
 - Ongoing financial advisor and bond counsel support
- Close collaboration with Accounting and Treasury staff

RATE ADMINISTRATOR'S RESPONSIBILITIES

- Establish necessary rates and charges so that debt service can be paid and all required coverage ratios are met
- Forecast future debt needs and associated new debt service
- Coordinate with Budget staff on revenue and debt service figures

PRACTICAL APPLICATIONS WITH BOND DOCUMENTS

- What are the redemption provisions?
- What is the method that excess debt service reserve funds can be applied towards debt service?
- What is the timing of when the sufficiency of the reserve fund will be determined by the trustee?
- Is the reserve requirement adequately funded? If there is a deficiency, how soon does the reserve fund balance need to be supplemented?
- What funds and accounts are related to a specific financing, who holds the funds, and who is responsible for them? What is the flow of funds?

DOCUMENT EXAMPLE: WATER SYSTEM REVENUE BONDS

- Master Indenture established in 1990
- Initially called the “Subordinated Revenue Bond Indenture”
- Upon the defeasance of all senior debt outstanding, became the District’s “parity lien”

MASTER INDENTURE WATER SYSTEM REVENUE BONDS

- Primary document establishing security provisions for revenue bonds
 - Basic security document of a bond transaction
 - Defined terms
- Key security provisions
 - Security Pledge and Flow of Funds
 - Rate Covenant
 - Additional Bonds Test

MASTER INDENTURE WATER SYSTEM REVENUE BONDS *(CONTINUED)*

- Defines pledged revenues for repayment of bonds
- Establishment of Funds and Accounts
 - Interest Fund, Principal Fund, Reserve Fund, Redemption Fund
- Allocation of Money in the Revenue Fund
 - Interest Fund
 - Principal Fund; Sinking Accounts
 - Then - free and clear of indenture

MASTER INDENTURE WATER SYSTEM REVENUE BONDS – *RATE COVENANT*

- Important covenant
- Measures ability to pay annual debt service
 - EBMUD pledges to set rates and charges such that net revenues provide debt service coverage of at least 1.1x
- The rate covenant is a minimum
 - EBMUD's policy target is at least 1.6x
 - For its water system, coverage was 2.15x in FY2019

MASTER INDENTURE

ADDITIONAL BONDS TEST

- Must be met for new bonds to be issued
- Net revenues (subject to certain adjustments) must provide coverage of at least 1.1x Maximum Annual Debt Service (MADS)
 - MADS is on existing and proposed bonds
 - Adjustments to revenue include:
 - 90% of additional revenue from rate increases
 - 75% of additional revenue from projects

NET WATER REVENUES	\$210,350,524	\$242,206,351	\$271,539,933	\$309,897,153	\$380,905,779
PARITY DEBT SERVICE:					
Water System Revenue Bonds ⁽⁸⁾	\$125,016,887	\$144,320,119	\$162,809,748	\$164,213,889	\$175,759,278
Parity State Loans	<u>1,400,107</u>	<u>1,400,108</u>	<u>1,400,108</u>	<u>1,400,108</u>	<u>1,401,897</u>
TOTAL PARITY DEBT SERVICE	\$126,416,994	\$145,720,227	\$164,209,856	\$165,613,997	\$177,161,175
PARITY DEBT SERVICE COVERAGE	1.66	1.66	1.65	1.87	2.15

COMMERCIAL PAPER PROGRAM

- EBMUD's water and wastewater systems each have commercial paper programs
- Approach to debt service differs from fixed-rate bonds
- CP note rolls are tracked to estimate interest owed in each future month
- Funds are wired to the CP trustee monthly
 - Must cover interest for the following month
 - Must also provide cushion in case there are rolls within the month

COMMERCIAL PAPER PROGRAM

- Monthly debt service account funding

Funding month	Jul-2019	Aug-2019
Cash balance date	6/28/2019	7/19/2019
Cash balance	718,991.34	526,327.48
Interest due in:		
Funding month	592,663.86	341,577.70
Funding month 2	211,193.87	389,227.82
Funding month 3	307,479.87	123,317.69
Total interest to pre-fund	1,111,337.60	854,123.21
Wire amount needed	392,346.26	327,795.73
Wire amount (rounded up)	400,000	400,000
<i>Rounding difference</i>	7,654	72,204
Target ending balance	1,118,991.34	926,327.48
Checking beginning balance		
Target after previous month wire	1,276,929.77	1,118,991.34
Interest expected in previous month	557,650.76	592,663.86
Additional interest	287.67	-
Ending balance	718,991.34	526,327.48
Check with new balance	-	-

SCOPE OF SERVICES FOR BOND TRUSTEE AND FISCAL AGENT

Participate as a member of the Issuer's financing team including financial advisors, underwriters and all their respective counsels:

- Trustee and Trustee's counsel review and comment on all governing documents inclusive of all closing documents.

Participate in all Pre-closing/Closing activity:

- Finalize/review Trustee closing documents, closing memorandum, receipt of bond proceeds and release of bonds on the date of Closing.

SCOPE OF SERVICES FOR BOND TRUSTEE AND FISCAL AGENT *(CONTINUED)*

Establish funds and accounts as required by Indentures, Fiscal Agent Agreements and Paying Agent Agreements:

- Deposit of bond proceeds to funds and accounts; payment of Costs of Issuance; invest account balances at the direction of the Issuer; and establish account memo ticklers to monitor account activity as well as mutual duties and responsibilities of the Trustee and the Issuer.
- In EBMUD's indenture, it establishes and maintains its own Cost of Issuance and Construction Account

SCOPE OF SERVICES FOR BOND TRUSTEE AND FISCAL AGENT *(CONTINUED)*

Ongoing administration of funds and accounts in accordance with the provisions of the governing documents

- Disburse funds upon receipt of payment requisitions
- Invest funds in permitted investments in accordance with written direction by the Issuer
- Process cash flows (such as debt service payments to DTC)
- Determine the ongoing reserve requirement and reserve fund valuation for compliance
- Prepare, send and file with EMMA redemption notices for both optional and mandatory redemptions

SCOPE OF SERVICES FOR BOND TRUSTEE AND FISCAL AGENT *(CONTINUED)*

Trustee and Issuer compliance

- Request and receive ongoing compliance documentation as required by the bond covenants such as budget certifications; insurance certifications; debt service coverage ratio certifications, balance sheets, income statements, no default certifications, audited financials; applicable IRS and State filings

SCOPE OF SERVICES FOR BOND TRUSTEE AND FISCAL AGENT *(CONTINUED)*

Financial accounting

- Provide periodic trust accounting activity statements to the issuer and their auditors; provide annual trust account activity to issuer's rebate analyst as requested

Other Trustee related services

- Issuer dissemination agent; developer dissemination agent; capital market services for secondary market investment purposes