

**Minutes of the Regular Meeting of the Allegheny County Water District Board of Directors  
Tuesday October 9, 2018 Allegheny Firehouse, 105 Plaza Court Allegheny**

**1. Call to Order & Establish a Quorum** The meeting was called to order by Vice President Finney at 6:06 pm. Directors present: Robbin DeWeese, Nancy Finney, Coral Spencer, and Gus Tenney Secretary Amber Mehrmann was present and took minutes. Staff Present: GM Rae Bell Arbogast and WTO Bruce Coons Absent: Tobyn Mehrmann Public Present: Jan Sticha, and Vicky Tenney

**2. Consent Calendar:**

a.) Motion made to approve consent calendar with one correction made to the minutes. Gus Tenney made motion and Coral Spencer 2<sup>nd</sup> **Ayes: DeWeese, Tenney, Finney and Spencer**  
**Nays:0 Absent: Mehrmann Abstain: 0**

**3. Public Response Time:**

None

**4. Information/Discussion Items:**

**a) Correspondence:**

**Incoming:** 1. Notice from Clerk-recorders office that the conflict of interest code revision was approved by the Board of Supervisors on Oct. 2<sup>nd</sup>. 2. Two certified letters from sub-contractors for the tank construction project stating that they must be notified within 10 days after the certificate of completion is issued and that if they are not paid by the primary contractor they can put a lean on the district's property.

**Outgoing:** 1. [missed last month] All accounting back-up documentation for FY17/18 mailed to the auditors, 2. Thank you card to Sean Felton for the use of his mini-excavator for the Cumberland spring project. 3. Revised conflict of interest code sent to BOS for approval 4. Verification of residency letter 5. Copy of Bruce's most recent time cards sent to Gus per his request with a note that all other time cards were sent to the auditor

**b) SRF Projects Update:** There was a written update in the packet. Additional update provided by Bruce: subcontractor is looking for an alternative to using the special jacks that they normally use because they aren't available until the first week of November.

- There was an update that PG&E got the deed documents for the easement for the power line.

**c) Board Member or Special Committee Reports:** None

**d) Staff Reports:** Written *General Manager's report* attached to these minutes. There was a discussion about the mission statement and it was decided to put in on the next agenda. Nancy Finney is going to draft something.

- The board was also informed that the governor signed a bill that requires all special districts to have a website.

**Water Treatment Operator Report:** WTO- Total finished water production: 303,330 gallons high because the switch on the temporary tanks isn't working and it keeps on overflowing.- Nitrite test came back absent.- The average GPM is 72 gallons a minute

- The Cumberland is averaging 49.2 gallons a minute

- On the 15th of September there was a break in the water main caused by a person digging in an area that they shouldn't have been digging. A new valve was installed on that line which happens to be where the new service going. They will be billed for the emergency break.

**e) Historical Church/Library Report:** None

**f) Park Report:** It was decided to put the fountain in storage for now, since the water at the park will be shut-off for the winter.

## **5. Unfinished Business**

**a) Customer Accounts/Billings/Disconnects:** Three ten-day notices were sent to two customers. One escalated to a 48-hour notice.

**b) Ordinances, Policies & Procedures and Bylaws:** There was discussion about being able to put money into the contingency fund every 6 months. No action was taken.

**c) Field trip to Cumberland Spring:**

- The hike out to the Cumberland Spring had a good turn out and the weather was beautiful.

- The spring is flowing well.

- The portal will have to be put in on the side of the spring instead of in front of the spring due to the hillside not being stable.

**d) New water service:** As of October 2<sup>nd</sup> it is online!

## **6. New Business**

**a) Rae Bell Arbogast** concluded that it would be a good idea to have a Labor Compliance Consultant. She recommended this to the board due to how complicated the laws and such can be.

- Rae asked the board to authorize Tobyn Mehrmann and Rae Bell Arbogast to be able to find a consultant to meet with the board about Labor Compliance.

-Discussion was had.

- It was agreed that, if possible, it would be good to find a consultant that has worked with small water districts.

- At the end of the discussion it was agreed that Tobyn and Rae could come up with a list of consultants and at the next meeting one would be chosen by the board.

## **7. Next meeting Date, Items for next Agenda and Adjournment.**

Next regular meeting scheduled for November 13, 2018 at 6:00 P.M. at the Alleghany Fire House. There being no further business before the Board, the meeting was adjourned at: 7:30 p.m.

Minutes respectfully submitted,



Amber Mehrmann Secretary

# Alleghany County Water District

P.O. Box 860, Alleghany, CA 95910 ~ alleghanywater@gmail.com ~ Phone 530-287-3204

~ Established March 8, 1939 ~

## CERTIFICATE OF POSTING

I, Amber Merhmann certify that the following document was posted on behalf of Alleghany County Water District, Sierra County California:

Agenda and meeting packet Regular Meeting, Meeting Date 10/9/2018

In the following location(s):

Alleghany Post Office Bulletin Board (packets put in box for the public) and On the door of the Alleghany Firehouse (meeting location)  
Emailed to email list as well.

On 10/5/2018 (date)

A copy of which is attached hereto and by reference made a part herof.

Signed under penalty of perjury: X

  
Amber Mehrmann

# NOTICE

## OF REGULAR MEETING OF THE BOARD OF DIRECTORS OF ALLEGHANY COUNTY WATER DISTRICT

**Date: Tuesday October 9, 2018 Time: 6:00 pm**

**Location: Alleghany Firehouse 105 Plaza Ct. Alleghany**

This agenda has been prepared and posted at least 72 hours prior to the regular meeting of the Board of Directors in accordance with the Ralph M. Brown Act. Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order. Details and supporting materials concerning agenda items are available for public reference in the box at the Post Office or by calling 530-287-3204 or email: alleghanywater@gmail.com

1. Call to Order & Establish a Quorum
2. Consent Calendar
  - a) Approval of the agenda
  - b) Reading and approval of the minutes for the regular meeting dated September 11, 2018.
  - c) Ratification of Treasury Report and bill payments for September 2018
3. Public Response Time: The public may be heard before or during the consideration of any agenda item to be considered by the board, subject to reasonable time limitations for each speaker. Members of the public may address matters under the jurisdiction of the Board of Directors, and not on the posted agenda, provided that no action shall be taken by the board unless the matter is deemed urgent by a 2/3 vote.
4. Information/Discussion Items:
  - a) Correspondence
  - b) SRF Projects Update –
  - c) Board Member or Special Committee Reports -
  - d) Staff Reports – Water Treatment Operator (WTO) & General Manager (GM)
  - e) Historical Church/Library Report –
  - f) Park Report
5. Unfinished Business (Discussion & Possible Action Items):
  - a) Customer Accounts/Billings/Disconnects. 3 ten-day notices mailed in Sept. One escalated to a 48-hour notice all three paid.
  - b) Ordinances, Policies & Procedures and Bylaws: The Conflict of Interest Code revision was approved by BOS on Oct. 2nd. Contingency fund policy revisit (it was requested at the last meeting that a six-month rather than annual cash-flow analysis and deposit schedule be considered).
  - c) Trip to Cumberland Spring –
  - d) Status of new water connection –
6. New Business (Discussion & Possible Action Items):
  - a) Consideration of hiring a Labor Compliance Consultant (to be paid by SRF project funds)
7. Next meeting date, Items for next Agenda & Adjournment.

Next regular meeting, November 13, 2018 6:00 pm at the Alleghany Firehouse

Upon request, Agendas will be made available in alternative formats to accommodate persons with disabilities. Please make your request to District Secretary, P.O. Box 860, Alleghany CA 95910 specifying your disability and the format in which you would like to receive this Agenda and future Agendas as well.

## Alleghany County Water District

**MAIN ACCOUNT** **Beginning Balance \$ 10,296.80**

**Deposits**

| Date                  | From:                     | For:                     | Amount             |
|-----------------------|---------------------------|--------------------------|--------------------|
| 9/7                   | Customers                 | Water                    | \$ 1,015.97        |
| 9/12                  | SWRCB                     | Planning Project Payment | \$ 1,304.35        |
| 9/14                  | Customers                 | Water                    | \$ 554.75          |
| 9/26                  | Tank Project & State Fund |                          | \$ 698.68          |
|                       |                           | Tank Project             | \$ 642.00          |
|                       |                           | State Fund Refund        | \$ 56.68           |
| 9/26                  | Customers                 | Water                    | \$ 1,109.23        |
| <b>Deposits Total</b> |                           |                          | <b>\$ 4,682.98</b> |

**Expenditures**

| Ck #                      | Date | To:            | For:                          | Amount      |
|---------------------------|------|----------------|-------------------------------|-------------|
| 5279                      | 9/1  | VOID           |                               |             |
| 1069                      | 9/1  | SWRCB          | Bruce license renewal fee     | \$ 55.00    |
| 5294                      | 9/7  | Aqua Sierra    | SCADA Billing                 | \$ 4,668.44 |
| 1070                      | 9/8  | Amber Mehrmann | Secretary 7/10 & 8/14 minutes | \$ 75.00    |
| 1071                      | 9/10 | Postmaster     | Stamps                        | \$ 18.90    |
| 1072                      | 9/14 | PG&E           | Tank Project                  | \$ 3,158.18 |
| 5295                      | 9/17 | Ed Snyder      | WDA July & August Bill        | \$ 372.00   |
| 5296                      | 9/17 | Edda Snyder    | Bookkeeper July & August Bill | \$ 200.00   |
| EFT                       | 9/24 | PG&E           | Pumphouse                     | \$ 132.94   |
| <b>Expenditures Total</b> |      |                | <b>\$ 8,680.46</b>            |             |

**Ending Main Account Balance \$ 6,299.32**  
**Less Contingency Fund Balance \$ (4,500.00)**  
**Plus Undeposited Funds \$ 365.00**  
**Available Funds \$ 2,164.32**

**NON-ENTERPRISE ACCOUNT (Historical Church & Park)** **Beginning Balance \$ 8,955.57**

**Deposits**

| Date                  | From: | For: | Amount      |
|-----------------------|-------|------|-------------|
| <b>Deposits Total</b> |       |      | <b>\$ -</b> |

**Expenditures**

| Ck #                      | Date | To:  | For:            | Amount   |
|---------------------------|------|------|-----------------|----------|
| EFT                       | 9/24 | PG&E | Church          | \$ 10.90 |
| <b>Expenditures Total</b> |      |      | <b>\$ 10.90</b> |          |

**Ending Non-enterprise Account Balance \$ 8,944.67**

|                           |             |
|---------------------------|-------------|
| Historical Church Balance | \$ 7,696.58 |
| Park Balance              | \$ 1,248.09 |

Alleghany County Water District

P.O. Box 860  
Alleghany, CA 95910

9/12/18 deposit  
detail

# Invoice

|           |           |
|-----------|-----------|
| Date      | Invoice # |
| 5/31/2018 | SRF#17    |

Bill To

SWRCB Division of Financial Ass.  
Attn: Disbursement Unit  
P O Box 944212  
Sacramento, CA 94244-2120



Ship To

| P.O. Number  | Terms            | Rep  | Ship      | Via | F.O.B.     | Project    |
|--|------------------|--|-----------|-----|------------|------------|
|  |                  |  | 5/31/2018 |     |            |            |
| Quantity   | Item Code        | Description  |           |     | Price Each | Amount     |
| 5.5  | Planning Project | Rae Bell invoice #1315 March .5 hours April 3 hours Line item 9                          |           |     | 20.00      | 110.00     |
|  | Planning Project | Workers comp. clerical \$110 x .0103 = 1.13 Line item 9                                  |           |     | 1.13       | 1.13       |
|  | Planning Project | Bruce Coons March Invoice line item 6  |           |     | 225.00     | 225.00     |
|  | Planning Project | Edward Snyder March Invoice line item 6  |           |     | 48.00      | 48.00      |
|  | Planning Project | Bruce Coons April Invoice \$255 labor (add to worker's comp) \$42.80 mileage line item 6 |           |     | 297.80     | 297.80     |
|  | Planning Project | Edward Snyder April Invoice line item 6  |           |     | 30.00      | 30.00      |
|  | Planning Project | workers comp water labor \$558 x .0947 = \$52.84 line item 6                             |           |     | 52.84      | 52.84      |
|  | Planning Project | Biovir invoice # 180769 line item 6  |           |     | 445.00     | 445.00     |
|  | Planning Project | Shipping for MPA test line item 6  |           |     | 30.83      | 30.83      |
|  | Planning Project | postage line item 9  |           |     | 6.70       | 6.70       |
|  | Planning Project | B& C Invoice # 317900 line item 6  |           |     | 66.75      | 66.75      |
| <p>The state did not pay \$9.70, they did not say why.</p> |                  |  |           |     |            |            |
| <b>Total</b>   |                  |  |           |     |            | \$1,314.05 |

Alleghany County Water District

P.O. Box 860  
 Alleghany, CA 95910

# Invoice

9/26/18  
 Deposit detail

|           |           |
|-----------|-----------|
| Date      | Invoice # |
| 6/30/2018 | Tank7     |

|  |
|--|
| Bill To  |
| SWRCB Div. Financial Asst.<br>Attn: Disbursement Unit<br>PO Box 944212<br>Sacramento, CA 94244 |

|         |
|---------|
| Ship To |
|         |

| P.O. Number | Terms | Rep | Ship      | Via | F.O.B. | Project |
|-------------|-------|-----|-----------|-----|--------|---------|
|             |       |     | 6/30/2018 |     |        |         |

| Quantity     | Item Code    | Description  | Price Each | Amount   |
|--------------|--------------|--|------------|----------|
|              | Tank Project | Edward Snyder June labor                           | 84.00      | 84.00    |
|              | Tank Project | Bruce Coons June labor                             | 315.00     | 315.00   |
|              | Tank Project | workers comp water companies .0947 x \$399 = 37.79 | 37.79      | 37.79    |
|              | Tank Project | Rae Bell invoice 1326                              | 30.00      | 30.00    |
|              | Tank Project | workers comp clerical .0103 x \$30 = .31           | 0.31       | 0.31     |
|              | Tank Project | USA blue book part for stand pipe                  | 96.60      | 96.60    |
|              | Tank Project | postage  | 6.70       | 6.70     |
|              | Tank Project | adjust for rounding                                | 0.14       | 0.14     |
|              | Tank Project | The Hose Shop LLC                                  | 71.46      | 71.46    |
| <b>Total</b> |              |  |            | \$642.00 |

**State Revolving Fund (SRF) Projects Update:**  
For ACWD BOD Meeting Date: 10/9/18 Prepared by Rae Bell

**1. PLANNING PROJECT (Water Source Analysis):**

**Ram Spring** Nothing new to report.

**Cumberland Spring** The Microscopic Particulate Analysis (MPA) test results arrived on 9/27/18 but it is inconclusive. It had one primary indicator for surface water infiltration and three secondary indicators. The reason that we can say it is inconclusive is because there was no way for us to sterilize the pipe after it was installed and only one primary indicator is very minimal.

I consulted with Kip and the State and we think that it makes sense to go ahead and run the title 22 water quality panel. If that test comes back good, we are going to recommend opening the tunnel as part of the construction project because we know that we can capture the water underground that way (eliminate any surface water infiltration).

After we get the results of the title 22 panel, the ACWD board will be consulted to see what direction they want to go. (Unlike the tank project, the planning project manager (me) needs to check with the board at critical decision making junctures)

**2. WATER TANK REPLACEMENT PROJECT UPDATE:**

**Change order #1**

On Friday Sept. 14<sup>th</sup> a Geotech investigation was done in the bottom of the trench for the tank footing to verify that the ground was as reported in the original Geotech report (completed in May of 2016). That report was part of the planning project for the tank and was used to draw-up the tank foundation specifications.

The investigation found softer ground than previously reported on one side of the trench resulting in the need for a change order to deepen the footing on that side. The increased cost estimate came to \$7,338. We were able to get a verbal approval from the State on the following Monday the 17<sup>th</sup> and no additional time request was needed. This money will come out of the project's contingency fund.

Starting tank project contingency fund balance \$121,550 less pumphouse meters \$4,668 less additional footing requirement \$7,338 leaves a balance of \$109,544 remaining in the contingency fund.

**Components of tank construction project (some of these tasks will happen simultaneously):**

1. Site preparation **DONE**
2. Manufacture of tank (offsite) **It arrived in Alleghany on Oct. 2<sup>nd</sup>.**
3. Placement and hook-up of temporary tanks **DONE**
4. Dismantle and haul away old tank **DONE**
5. Electrical power installation (PG&E) October (Finally got in touch with them) **signed contract with additional \$ mailed on 9/14/18 – followed up 10/2/18 have not heard back**
6. Tank Pad preparation **The tank foundation was poured on 10/2/18**
7. Construct new tank on new pad (beginning of October)
8. Install SCADA system (end of October)
9. Install fencing around new tank
10. Remove temporary tanks **We are looking into purchasing at least one to have on-hand as a spare tank.**  
**Expected completion date: First week of November.**

**Disclaimer** "Funding for these projects has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."



## **Allegheny County Water District General Manager (GM) Report October 2018**

Lead Service line inventory The annual report that was submitted to the State Division of Drinking Water (SDDW) in June was bounced back because a Lead Service Line Inventory (a new requirement) was not included.

The inventory was completed in early Sept and the entire annual report was re-submitted with the required survey certification. This was requested by the State to verify that none of ACWD's service lines or other components contain lead (a reaction to Flint Michigan no doubt). Luckily all of the components of our system are less than 41 years-old and I was able to find the materials specifications for both the 1977 project and the 1995 project, in addition to talking to Bruce to satisfy this request. (It took approximately three hours to fulfill this request)

Website [alleghanywater.org](http://alleghanywater.org) All board members are encouraged to take a look at the site periodically and report back to me with any suggested changes and/or corrections. If anybody wants to help maintain a specific section of the website please let me know. It is very user-friendly and users can be set-up with permission to access specific sections of the site which is a good idea if more than one person is working on it.

The website does have a place for a "mission statement" which I filled in, but technically this should be adopted by the Board. Normally a mission statement is incorporated into the bylaws and I suggest we adopt one the next time that we revise the by-laws.

In the meantime, if anybody would like to take a stab at coming up with a mission statement, please feel free to do so and provide your ideas to me to incorporate into the next bylaw revision (or add to the agenda as a stand-alone item). A mission statement ideally is not be more than one or two sentences in length. Below is what is currently on the website (with a disclaimer that it is not an "official" mission statement).

To provide safe and reliable drinking water to the community of Allegheny including a fire hydrant system for fire protection.

Agenda item 5 b Contingency fund review schedule. It was requested at the last meeting that this be added to this month's agenda. There was a suggestion that the board should review the financial status of the district every six-months rather than once a year (current policy) in order to decide if funds can be added to the contingency fund.

From a financial accounting view-point it would NOT make sense to make this change to the existing policy. It needs to be done at the end of each accounting cycle because that is the only time that we know what the results are for the current budget cycle. It is all based on the budget cycle and actual cash-flow results.

Also, it took about 3 hours to prepare last year's cash-flow analysis (even though it does not look like much). We don't need to create extra work.



## EMPLOYMENT DETERMINATION GUIDE

### Purpose:

This worksheet is to be used by the proprietor of a business to determine whether a worker is most likely an employee or an independent contractor.

### General Information:

Generally, whether a worker is an employee or an independent contractor can be determined through the application of the factors contained in common law or employment and statutory provisions of the California Unemployment Insurance Code.

If a worker is an employee under common law, the business that employs the worker must report the worker's earnings to the Employment Development Department (EDD) and must pay employment taxes on those wages. If the worker is an independent contractor and the business pays the worker \$600 or more in payments, the business must file a Form 1099-MISC with the Internal Revenue Service (IRS). The business must also file a *Report of Independent Contractor(s)* (DE 542) with the EDD within 20 days of either making payments totaling \$600 or more, or entering into a contract for \$600 or more with an independent contractor in any calendar year. For more detailed information regarding your independent contractor reporting requirements, view the latest revision of the *California Employer's Guide* (DE 44) available on the EDD website at [www.edd.ca.gov/Payroll\\_Taxes/Forms\\_and\\_Publications.htm](http://www.edd.ca.gov/Payroll_Taxes/Forms_and_Publications.htm).

The basic test for determining whether a worker is an independent contractor or an employee is whether the principal has the right to control the manner and means by which the work is performed. When the principal has the "right of control," the worker will be an employee even if the principal never actually exercises the control. If the principal does not have the right of control, the worker will generally be an independent contractor.

If, on the face of the relationship, it is not clear whether the principal has the "right of control," there are secondary factors that are considered to determine the existence or nonexistence of the right of control.

The enclosed worksheet addresses the basic test and secondary factors through a series of questions. If use of the worksheet clearly demonstrates that a worker is an employee, you should contact the EDD and arrange to report the worker and pay the relevant taxes. You may also want to contact the IRS and your workers' compensation insurance carrier to ensure that you are in compliance with federal tax laws and with state workers' compensation statutes.

If after completing the worksheet you are not sure whether the worker is an independent contractor or employee, you may request a written ruling by completing a *Determination of Employment Work Status* (DE 1870) or contact the Taxpayer Assistance Center for advice by calling 888-745-3886. The DE 1870 is designed to analyze a working relationship in detail and serves as the basis for a written determination from the EDD on employment status.

# WORKSHEET ON EMPLOYMENT STATUS

Questions 1 – 3 are significant questions. If the answer to any of them is "Yes," it is a strong indication that the worker is an employee.

1. Do you instruct or supervise the person while he or she is working? Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors are free to do jobs in their own way, using specific methods they choose. A person or firm engages an independent contractor for the job's end result. When a worker is required to follow company procedure manuals and/or is given specific instructions on how to perform the work, the worker is normally an employee.

2. Can the worker quit or be discharged (fired) at any time? Yes \_\_\_\_\_ No \_\_\_\_\_

If you have the right to fire the worker at will and without cause, it indicates that you have the right to control the worker.

Independent contractors are engaged to do specific jobs and cannot be fired before the job is complete unless they violate the terms of the contract. They are not free to quit and walk away until the job is complete. For example, if a shoe store owner hires a licensed painter to paint the store, and the work had started, the store owner would not be able to just terminate the painter without there being a good reason or just cause for doing so.

3. Is the work being performed part of your regular business? Yes \_\_\_\_\_ No \_\_\_\_\_

Work which is a necessary part of the regular trade or business is normally done by employees. For example, a sales clerk is selling shoes in a shoe store. A shoe store owner could not operate without sales clerks to sell shoes. On the other hand, a plumber engaged to fix the pipes in the bathroom of the store is performing a service on a one-time or occasional basis that is not an essential part of the purpose of the business enterprise. A certified public accountant engaged to prepare tax returns and financial statements for the business would also be an example of an independent contractor.

A "No" answer to questions 4 – 6 indicates that the individual is not in a business for himself or herself and would, therefore, normally be an employee.

4. Does the worker have a separately established business? Yes \_\_\_\_\_ No \_\_\_\_\_

When individuals hold themselves out to the general public as available to perform services similar to those performed for you, it is evidence that the individuals are operating separately established businesses and would normally be independent contractors. Independent contractors are free to hire employees and assign the work to others in any way they choose. Independent contractors have the authority to fire their employees without your knowledge or consent. Independent contractors can normally advertise their services in newspapers and/or publications, the Internet, yellow page listings, radio, television, and/or seek new customers through the use of business cards.

5. Is the worker free to make business decisions which affect his or her ability to profit from the work? Yes \_\_\_\_\_ No \_\_\_\_\_

An individual is normally an independent contractor when he or she is free to make business decisions which impact his or her ability to profit or suffer a loss. This involves real economic risk, not just the risk of not getting paid. These decisions would normally involve the acquisition, use, and/or disposition of equipment, facilities, and stock in trade which are under his or her control. Further examples of the ability to make economic business decisions include the amount and type of advertising for the business, the priority in which assignments are worked, and selection of the types and amounts of insurance coverage for the business.

6. Does the individual have a substantial investment in their job which would subject him or her to a financial risk of loss? Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete their tasks. To the extent necessary for the specific type of business, independent contractors provide their own business facility.

Questions 7 – 13 are additional factors that should be considered. A "Yes" answer to any of the questions is an indication the worker may be an employee, but no one factor by itself is deciding. When those factors are considered, a determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relationship to the service being performed. However, the greater the number of "Yes" answers to questions 7 – 13, the greater the likelihood the worker is performing services as an employee.

7. Do you have employees who do the same type of work? Yes \_\_\_\_\_ No \_\_\_\_\_

If the work being done is basically the same as work that is normally done by your employees, it indicates that the worker is an employee. This applies even if the work is being done on a one-time basis. For instance, to handle an extra workload or replace an employee who is on vacation, a worker is hired to fill in on a temporary basis. This worker is a temporary employee, not an independent contractor.

(Note: If you contract with a temporary agency to provide you with a worker, the worker is normally an employee but may be an employee of the temporary agency. You may refer to the EDD *Information Sheet: Temporary Services and Employee Leasing Industries* [DE 231F] on the subject of temporary service and leasing employers.)

8. Do you furnish the tools, equipment, or supplies used to perform the work? Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete their tasks.

9. Is the work considered unskilled or semi-skilled labor? Yes \_\_\_\_\_ No \_\_\_\_\_

The courts and the California Unemployment Insurance Appeals Board have held that workers who are considered unskilled or semi-skilled are the type of workers the law is meant to protect and are generally employees.

10. Do you provide training for the worker?

Yes \_\_\_\_\_ No \_\_\_\_\_

In skilled or semi-skilled work, independent contractors usually do not need training. If training is required to do the task, it is an indication that the worker is an employee.

11. Is the worker paid a fixed salary, an hourly wage, or based on a piece rate basis?

Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors agree to do a job and bill for the service performed. Typically, payments to independent contractors for labor or services are made upon the completion of the project or completion of the performance of specific portions of the project.

12. Did the worker previously perform the same or similar services for you as an employee?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the worker previously performed the same or similar services for you as an employee, it is an indication that the individual is still an employee.

13. Does the worker believe that he or she is an employee?

Yes \_\_\_\_\_ No \_\_\_\_\_

Although belief of the parties is not controlling, intent of the parties is a factor to consider when making an employment or independent contractor determination. When both the worker and principal believe the worker is an independent contractor, an argument exists to support an independent contractor relationship between the parties.

## Interpretations of Answers

Depending on the services being performed and the type of occupation, this questionnaire may produce a variety of results. There may be some factors which lean toward employment and some which lean toward independence. The answers to questions 1 – 6 provide a strong indication of the presence or absence of right to control. The answers to questions 7 – 13 when joined with other evidence may carry greater weight when indicating the presence or absence of direction and control.

1. If all of the answers to questions 1 – 3 are "No" and all of the answers to questions 4 – 6 are "Yes," there is an indication of independence. When this is the case, there are likely to be a number of "No" answers to questions 7 – 13 which add to the support of the determination.
2. If all of the answers to questions 1 – 3 are "Yes" and all of the answers to questions 4 – 6 are "No," it is very strong indication that the worker in question is an employee. When this is the case, there are likely to be a number of "Yes" answers to questions 7 – 13 which add to the support of the determination.
3. If the answer to question 1 or 2 is "Yes" or the answer to any one of questions 4 – 6 is "No," there is a likelihood of employment. At the very least, this pattern of answers makes the determination more difficult since the responses to questions 7 – 13 will probably be mixed. In such situations, the business owner would be well advised to complete a DE 1870, giving all of the facts of the working relationship and requesting a ruling from the EDD.
4. If the answer to question 3 is "Yes" and the answer to question 4 is "No," there is a likelihood of employment. Given this pattern of answers, it is probable that the answers to questions 5 and 6 will also be "No." When this happens you may also see more "Yes" answers to the last group of questions (7 – 13). This scenario would support an employment determination.

These four scenarios illustrate only a few combinations of answers that could result from the use of this Employment Determination Guide, depending on the working relationship a principal may have with a worker and the type of occupation. The more the pattern of answers vary from the above four situations, the more difficult it is to interpret them. In situations 1 and 2, there is a greater chance that the interpretation will be accurate, and they present the least risk to the business owner of misclassifying the worker. With other combinations of answers, the EDD recommends that business owners complete a DE 1870, giving a complete description of the working relationship and requesting a ruling from the EDD.

**NOTE:** Some agent or commission drivers, traveling or city salespeople, homeworkers, artists, authors, and workers in the construction industry are employees by law even if they would otherwise be considered independent contractors under common law. If you are dealing with workers in any of these fields, access *Information Sheet: Statutory Employees* (DE 231SE) from the EDD website at [www.edd.ca.gov/Payroll\\_Taxes/Forms\\_and\\_Publications.htm](http://www.edd.ca.gov/Payroll_Taxes/Forms_and_Publications.htm) or contact the Taxpayer Assistance Center at 888-745-3886.

## SOME EXAMPLES OF INDEPENDENT CONTRACTORS AND COMMON LAW EMPLOYEES

### Independent Contractors

An attorney or accountant who has his or her own office, advertises in the yellow pages of the phone book under "Attorneys" or "Accountants," bills clients by the hour, is engaged by the job or paid an annual retainer, and can hire a substitute to do the work is an example of an independent contractor.

An auto mechanic who has a station license, a resale license, buys the parts necessary for the repairs, sets his or her own prices, collects from the customer, sets his or her own hours and days of work, and owns or rents the shop from a third party is an example of an independent contractor.

Dance instructors who select their own dance routines to teach, locate and rent their own facilities, provide their own sound systems, music and clothing, collect fees from customers, and are free to hire assistants are examples of independent contractors.

A repairperson who owns or rents a shop, advertises the services to the public, furnishes all of the tools, equipment, and supplies necessary to make repairs, sets the price for services, and collects from the customers is an example of an independent contractor.

**NOTE:** Payroll tax audits conducted by the EDD have disclosed misclassified workers in virtually every type and size of business. However, certain industries seem more prone to have a higher number of misclassified workers than others. Historically, industries at higher risk of having misclassified workers include businesses that use:

- Construction workers
- Seasonal workers
- Short-term or "casual" workers
- Outside salespersons

### Employees

An attorney or accountant who is employed by a firm to handle their legal affairs or financial records, works in an office at the firm's place of business, attends meetings as needed, and the firm bills the clients and pays the attorney or accountant on a regular basis is an example of an employee.

An auto mechanic working in someone's shop who is paid a percentage of the work billed to the customer, where the owner of the shop sets the prices, hours, and days the shop is open, schedules the work, and collects from the customers is an example of an employee.

Dance instructors working in a health club where the club sets hours of work, the routines to be taught and pays the instructors from fees collected by the club are examples of employees.

A repairperson working in a shop where the owner sets the prices, the hours and days the shop is open, and the repairperson is paid a percentage of the work done is an example of an employee.



DATA FROM ACWD MONTHLY TREASURER'S REPORTS compiled on 10/9/2018

Compiled by Nancy Finney

From Oct. 9 report:

Income deposited from ACWD water sales during September 2018: **\$2,679.95**

Expenditures for water production during September 2018: **\$853.84**

From Sept. 11 report:

**\$1,978.77**

Income deposited from ACWD water sales during August 2018: ~~\$2,838.83~~

Expenditures for water production during August 2018: **\$1,528.24**

From August 14 report:

**\$5,421.00**

Income deposited from ACWD water sales during July 2018: ~~\$4,241.00~~

Expenditures for water production during July 2018: **\$1,528.24**