

## MINUTES

**Tuesday, October 25, 2016**

**East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California**

### Regular Closed Session Meeting

President Frank Mellon called to order the Regular Closed Session Meeting of the Board of Directors at 11:03 a.m. in the Administration Center Board Room.

#### ROLL CALL

Directors John A. Coleman, Andy Katz, Doug Linney, Lesa R. McIntosh, William B. Patterson, Marguerite Young, and President Frank Mellon were present at roll call.

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Manager of Real Estate Services Matt Elawady (Item 1a), Attorney Derek T. McDonald (Item 1a), and Attorney Lourdes Matthew (Item 1b).

#### PUBLIC COMMENT

There was no public comment.

#### ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Frank Mellon announced the closed session agenda. The Board convened to Conference Room 8 for discussion.

#### Regular Business Meeting

President Mellon called to order the Regular Business Meeting of the Board of Directors at 1:15 p.m. in the Administration Center Board Room.

#### ROLL CALL

Directors John A. Coleman, Andy Katz, Doug Linney, Lesa R. McIntosh, William B. Patterson, Marguerite Young, and President Frank Mellon were present at roll call.

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, and Secretary of the District Lynelle M. Lewis.

#### BOARD OF DIRECTORS

President Mellon led the Pledge of Allegiance.

## **PRESENTATION**

General Manager Coate announced the 2016 WaterSmart Business Certification award winners. This program helps business customers identify and implement water efficient measures in their facilities. This year, 17 new businesses were certified and together they saved nearly three million gallons of water annually. Additionally, eight businesses were recertified for continuing their water-efficient practices. On behalf of the Board, President Mellon presented awards to: Mr. Luis Gomez, Owner of Alameda Auto Lab in Alameda; Mr. Matt Hussain, Owner of Alameda Cellars Wines & Liquor in Alameda; Mr. Arthur Ratner, Owner of Arts Automotive in Berkeley; Mr. Hamed Mohammadbagher, Manager of Barney's Gourmet Hamburger in Berkeley; Mr. Fahad Ahad, Manager of Boulevard Auto in Castro Valley; Mr. Tom Burrough, Owner of Burrough & Sons Auto in El Sobrante; Mr. Larry Gagnon, Owner of Choicelunch in Danville; Ms. Leah Talley, Manager of Aging Services, North Berkeley Senior Center in Berkeley; Ms. Katherine Brown, South Berkeley Senior Center Manager in Berkeley; Ms. Dina Quan, City of Berkeley West Berkeley Senior Center in Berkeley; Mr. Dana Meyer, Owner of Dana Meyer Auto Care in Albany; Mr. Daria Hosseinyoun, Vice-President/Broker for FH One in Oakland; Ms. Arlene Giordano, Owner of Le Bateau Ivre in Berkeley; Mr. Duane Watson, Owner of Lee Auto Supply in Alameda; Ms. Elizabeth Poy-Wing, Owner of Oakland Auto Works in Oakland; and Mr. Kurt Caudle, Triple Rock Brewery in Berkeley.

President Mellon also presented awards to the following eight recertified businesses for their continued commitment to water conservation: Berkeley Minicar in Berkeley; Blackhawk Master Association in Danville; Captain Vineyards in Moraga; Castro Valley Sanitary District in Castro Valley; Clif Bar in Emeryville; Hollis Street Investors LLC (2 locations) in Emeryville; and Temple Isaiah, Contra Costa Jewish Day School in Lafayette.

Additionally, General Manager Coate announced that the following EBMUD facilities achieved WaterSmart certification: Administration Building in Oakland; Fleet Building at Adeline Maintenance Center in Oakland; South Area Service Yard in San Lorenzo; Orinda Water Treatment Plant in Orinda; Castaneda Pumping Plant in Danville; East Area Service Center in Walnut Creek; Central Service Area in Oakland; and the Adeline Maintenance Building in Oakland. The Board thanked and applauded the successful businesses for their efforts to conserve water.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

## **PUBLIC COMMENT**

- Addressing the Board were the following persons: 1) Steve Garrett, Lamorinda resident, commented on the January 2016 Moraga landslide damage and he asked the Board to take immediate action to restore the area; 2) Dan Alipsaz, Moraga resident, said EBMUD has a responsibility to its ratepayers to repair the damages caused by the Moraga landslide; 3) Mark Robeson, Moraga resident, urged the District to repair damage to the trail area near the slide and provide an update to residents; 4) Rebecca Cingolani, Moraga resident, commented on damage to the creek and trails done by the Moraga landslide and said EBMUD needs to mitigate the damage; 5) Julie Wheeler, Moraga resident, commented that the trails near the slide are unusable and expressed concern about the residents' safety; 6) Carrie Avica, Moraga resident, said that EBMUD needs to repair the damaged slide area and provide residents with a schedule

for completion; 7) Laura Bercersa, former resident of Augusta Drive in Moraga, commented that the unrepaired landslide area has negatively impacted the community (i.e., mosquitos from standing water, hot pipes, blight, etc.) and said EBMUD needs to make repairs and keep residents updated; and 8) Debra Smith, Moraga resident, commented that the landslide displaced residents, caused unsafe conditions, and left the area blighted. She urged EBMUD to take responsibility to clean up the area.

Board members commented and asked questions about the status of the repairs. They requested an update on repairs to the area including monitoring and mitigation efforts for the trails and creek, status of the above ground mains, and coordination efforts with other local entities. The Board directed staff to provide updates to the residents and notice when the item will be discussed at future Board meetings.

### **CONSENT CALENDAR**

- Motion by Director Coleman, seconded by Director Katz, to approve the recommended actions for Items 1-7 on the Consent Calendar, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 179-16** – Approved the Special and Regular Meeting Minutes of October 11, 2016.
  2. The following correspondence was filed with the Board: 1) Revised Policy 6.04R - Ethics Policy of EBMUD Board of Directors, dated October 25, 2016; 2) Presentation entitled “Extend Standby Bond Purchase Agreement for Water Revenue Bond Series 2008 A-1 and A-4” dated October 25, 2016; 3) Presentation entitled “Response To Wells Fargo’s Banking Practices” dated October 25, 2016; 4) Presentation entitled “Water Supply Board Briefing” dated October 25, 2016; and 5) Presentation entitled “2016 Statistical Opinion and Customer Outreach Research Plan” dated October 25, 2016.
  3. **Motion No. 180-16** – Awarded a contract to the lowest responsive/responsible bidder, Capital Flow Waterworks, in the estimated annual amount of \$179,035, after the addition of taxes, for supplying fire service detector check valves to the District for three years, beginning on or after November 1, 2016, with two options to renew for an additional one-year period for a total cost of \$895,175 under Request for Quotation No. 1625.
  4. **Motion No. 181-16** – Authorized an agreement beginning on or after October 25, 2016 with National Plant Services, Inc., in an amount not to exceed \$3,000,000 for flow monitoring and related services for the Satellite Field Services Project in support of the East Bay communities’ Infiltration and Inflow reduction activities in the communities’ collection systems through June 30, 2021.
  5. **Motion No. 182-16** – Authorized an amendment to the existing Western Area Power Administration Custom Product Agreement to extend the termination date from September 30, 2020 to December 31, 2024 for electricity purchases at District facilities.

6. **Motion No. 183-16** – Approved the Water Supply Assessment requested by the City of Oakland for the MacArthur Station Project pursuant to California Water Code, Sections 10910-10915.
7. **Resolution No. 35008-16** – Adopting Revised Policy 2.19, Tuition Refund For Employee Education; Revised Policy 4.02, Cash Reserves And Debt Management; Revised Policy 4.10, Public Service Enterprises; Revised Policy 6.04, Ethics Policy Of The EBMUD Board of Directors; Revised Policy 7.13, Security; and Revised Policy 8.02, Biosolids Management.
  - Director Coleman pointed out that the Legislative/Human Resources Committee requested additional revisions to Policy 6.04 to incorporate the recent amendment regarding late arrival to board meetings found in Resolution No. 35000-16.

### **DETERMINATION AND DISCUSSION**

8. **Authorize Execution of Legal Documents Associated with Extending Wells Fargo Bank's Standby Bond Purchase Agreement for Water Revenue Bond Series 2008A-1 and 2008A-4.**

Treasury Manager Dari Barzel presented the staff recommendation to authorize execution of legal documents associated with extending Wells Fargo Bank's Standby Bond Purchase Agreement (SBPA) for Water Revenue Bond Series 2008A-1 and 2008A-4. Wells Fargo Bank provides liquidity support to Water Revenue Bond Series 2008A-1 and A-4, outstanding in the total amount of \$56.7 million. These bond series are variable rate demand obligations and liquidity support is an essential component of their financing structure. The liquidity support takes the form of a SBPA. The District's SBPA with Wells Fargo Bank expires in December 2016. Wells Fargo Bank has proposed to extend the SBPA for three years at the current fee of 0.27 percent (27 basis points) per annum. This proposal is extremely competitive in light of recent fee increases and the high cost of implementing alternative options. Wells Fargo Bank's proposal was discussed at the October 11, 2016 Board meeting at which time the Board approved use of the Wells Fargo Bank SBPA. The purpose of the current action is to adopt a resolution authorizing execution of the related legal documents.

- Motion by Director McIntosh, seconded by Director Coleman, to approve the recommended action for Item 8, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35009-16** – Authorizing Execution Of Certain Amendments To Standby Bond Purchase Agreements And Related Amended And Restated Fee Agreements And Other Matters In Connection Therewith.

9. **Adopt Actions in Response to Wells Fargo & Company's Banking Practices.**

Director of Finance Sophia D. Skoda presented the staff recommendations to adopt the following actions in response to Wells Fargo & Company's ("Wells Fargo") banking practices: A) Suspend the District's use of Wells Fargo for the following activities, consistent with the suspensions declared by the Treasurer of the State of California, for a minimum of one year: (i) investments in

all Wells Fargo securities, (ii) use of Wells Fargo as a broker-dealer for purchasing investments, (iii) use of Wells Fargo as underwriter on negotiated sales of bonds; B) Notify the Association of California Water Agencies and the California Association of Sanitation Agencies that the District has taken these steps; C) Notify *The Bond Buyer*, the primary municipal bond market periodical, that the District has taken these actions; and D) Send a letter to Wells Fargo notifying them that the District has taken the approved actions based on the bank's recent activities which do not align with standards of business conduct required by the District. Ms. Skoda said staff will begin implementing Board approved actions immediately upon their approval and anticipates completion within three weeks.

- Addressing the Board was Susan Harman, Oakland resident, who suggested that EBMUD consider joining a Financial Services Organization (FSO) to avoid Wall Street banks and urged the Board to divorce itself from all dealings with Wells Fargo Bank.

There was discussion regarding the viability of joining a FSO and a concern was raised about financial impacts it could have on the District. There was also discussion regarding the impacts of EBMUD's actions to Wells Fargo's employees (i.e. layoffs) since 25 percent of its employees are EBMUD customers. Board members presented their viewpoints and there was general consensus to support the staff recommendations with modifications to the letter to Wells Fargo. The Board recommended that the Attorney General of the State of California and the Attorney General of the United States of America review whether criminal investigation of Wells Fargo senior management and officers is warranted. If these managers are found criminally accountable, the financial bonuses given to these managers should be returned. Additionally, the Board recommended that Wells Fargo provide full disclosure of the actions taken to remedy the illegal banking practices, including legal actions taken against its Board members and senior management, and evidence of resolved internal practices and safeguards that eliminate the possibility of these actions occurring in the future. Further, the Board recommended adding language to the recommendation to revisit Wells Fargo's response in one year to determine whether the District should sustain its current actions. Lastly, the Board recommended notifying the League of California Cities of the District's actions.

- Motion by Director Young, seconded by Director Mellon, to approve staff recommended actions A, B, and C and then revisit Wells Fargo's corrective actions before the year is out, carried (6-1) by the following voice vote: AYES (Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (Coleman); ABSTAIN (None); ABSENT (None).
- Motion by Director Coleman, seconded by Director Paterson, to strengthen the letter to Wells Fargo (recommendation D) notifying them that the District is requesting a criminal investigation of the senior management decision makers and rescission of the bonuses of those implicated, and that the League of California Cities will be informed of EBMUD's actions, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35010-16 – Authorizing Actions In Response To Wells Fargo & Company's Banking Practices.**

10. **Adopt the 2016 East Bay Municipal Utility District Local Hazard Mitigation Plan.**

- Motion by Director McIntosh, seconded by Director Mellon, to approve the recommended action for Item 10, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35011-16** – Adopt The 2016 East Bay Municipal Utility District Local Hazard Mitigation Plan.

11. **General Manager's Report.**

Operations and Maintenance Department Manager Eileen M. White presented an update on Water Year 2016 (WY 2016) which ended September 30, 2016. Total runoff was 695,000 acre-feet (AF) and total system storage was 608,000 AF. Cumulative precipitation as of October 23, 2016 was 2.44 inches in the East Bay and 5.21 inches for the 4-station average. Ms. White highlighted current water production, water supply operations, and regional water supply projections. She reviewed the planned operational changes to allow a complete shutdown of the Orinda Water Treatment Plant for improvements. The outage is planned for November 2016 through February 2017 and Ms. White pointed out that customers may notice changes to the taste and smell of their water during this period.

Next, Special Assistant to the General Manager Alison A. Kastama reported on the 2016 Statistical Opinion and Customer Outreach Research Plan. In consultation with EMC Research Inc., staff has crafted a statistical sample set with a goal to achieve 1,200 completed surveys. The survey seeks to gauge customers' perception of the District's operations, management, and services to guide District outreach in 2017. The survey will be offered by phone in English, Spanish and Cantonese. Once finalized, the survey will be conducted between November 10 and December 6, 2016. The survey results will be presented to the Board in January 2017. There was a lengthy question and answer period regarding the survey (i.e. questions about cost of water; embedding favorable bias; seeking out areas of concern; and ways to target our messages). The Board asked staff to include a question about whether customers have sufficient water supplies to last during and after an emergency.

Ms. Kastama also reported on a new online mapping tool that shows ongoing construction in areas of the District. The Board commended staff for implementing this new feature and asked to have a ward boundary layer placed on the mapping tool in the Board section of [www.ebmud.com](http://www.ebmud.com).

**REPORTS AND DIRECTOR COMMENTS**

12. **Committee Reports**

- Filed with the Board were the Planning Committee Minutes of October 11, 2016.

**13. Other Items for Future Consideration.**

- Explore joining a Financial Services Organization
- Update on water bottle filling stations
- Status update on Board succession plan

**14. Director Comments.**

- Director Coleman reported attending/participating in the following events: ACWA teleconference meetings on October 12, 17, and 24 in Oakland; meeting with Sasha Harris-Lovett from U.C. Berkeley on October 13 in Oakland; Contra Costa County Mayors' Conference on October 13 in Martinez; East Bay Leadership Council Board meeting on October 21 in Walnut Creek; and the Dublin San Ramon Services District/EBMUD Water Authority Board meeting on October 24 in Dublin. He reported on plans to attend/participate in the following upcoming events: Bay Area Council Dinner on October 26 in San Francisco; John Nejedly memorial service on October 27 in Livermore; ACWA teleconference meeting on October 31 in Oakland; recycled water meeting on November 2 in Orinda; ACWA teleconference meeting on November 7 in Oakland; and ACWA Executive Director evaluation meeting on November 7 in Lafayette.
- Director Katz reported attending the Bay Area Air Quality Management District Conference on October 13-14 in San Francisco and the Environmental Law Conference on October 20-23 in Fish Camp, CA.
- Director Linney had no report.
- Director McIntosh had no report.
- Director Patterson reported attending Congresswoman Barbara Lee's 25<sup>th</sup> Anniversary Gala Dinner on October 18 in Oakland; Peralta College Foundation Scholarship Awards Banquet on October 20 in Oakland; and the 50<sup>th</sup> Anniversary of the Black Panther Party event on October 21-24 in Oakland.
- Director Young had no report.
- President Mellon reported attending the Alameda County Mayors' Conference on October 12 in Emeryville and the Contra Costa County Special Districts meeting on October 17 in Martinez.


**ADJOURNMENT**

President Mellon adjourned the meeting at 3:44 p.m.

SUBMITTED BY:

  
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Lynelle M. Lewis, Secretary of the District

APPROVED: November 8, 2016

  
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Frank Mellon, President of the Board

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