

## **MINUTES**

**Tuesday, December 8, 2015**

**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 11:01 a.m. in the Administration Center Board Room.

### **ROLL CALL**

Directors John A. Coleman, Andy Katz (via teleconference), 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, Director of Finance Sophia D. Skoda (Item 1b), Attorney Derek T. McDonald (Item 1b), Attorney Saji T. Pierce (Item 1b), Director of Water and Natural Resources Richard G. Sykes (Item 2), Manager of Water Supply Improvements Michael T. Tognolini (Item 2), and Attorney Frederick S. Etheridge (Item 2).

### **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 8a/b for discussion.

### **Regular Business Meeting**

President Mellon called to order the Regular Business Meeting of the Board of Directors at 1:17 p.m. in the Administration Center Board Room.

### **ROLL CALL**

Directors John A. Coleman, Andy Katz (via teleconference), 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.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

## **PUBLIC COMMENT**

- Addressing the Board were the following persons: 1) Rachel Garza, representing the LGBTQ Affinity Group, said that the group filed a complaint of discrimination in October citing disparate treatment, presented the LGBTQ Affinity Group's report for the Board's review, said that their concerns have been brought to staff's attention, and pointed out that the group is asking for the same rights and courtesy afforded to other affinity groups; and 2) Louis Gidrgi, Alamo resident, asked the Board to grant an appeal for the excessive use charges on his water bill that was a result of an undetected water leak which he subsequently had repaired. He said that even though he made efforts to conserve the water leak caused his water use to skyrocket. Mr. Gidrgi was referred to staff for assistance.

## **CONSENT CALENDAR**

- Item 9 was pulled for comment.
  - Motion by Director Patterson, seconded by Director Linney, to approve the recommended actions for Items 1-8 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. 197-15** – Approved the Regular Meeting Minutes of November 24, 2015.
  2. The following correspondence was filed with the Board: 1) Memorandum dated December 8, 2015, to Board of Directors from Rachel Garza, LGBTQ Committee Chairperson, regarding discrimination and disparate treatment; 2) E-mail from Helen Burke, Sierra Club, to Lynelle Lewis, dated December 2015, regarding Sierra Club statement before EBMUD Planning Committee on staff's proposal for a trail cycling access pilot study; 3) E-mail from Kristen Anderson to Directors Andy Katz and Marguerite Young, dated December 7, 2015, regarding cycling access to EBMUD fire roads and trails; 4) E-mail from Pablo Ortiz Peña to Director Marguerite Young, dated December 7, 2015, regarding request for support for bicycle access to trails aligned to Bay Area Ridge Trail; 5) E-mail from Tim Parkyn to Director Marguerite Young, dated December 6, 2015, regarding bicycle access in EBMUD lands; 6) E-mail from Greg Ikonen to Director Marguerite Young, dated December 7, 2015, regarding trail access; 7) E-mail from Dave Wolden to Director Marguerite Young, dated December 6, 2015, regarding support for bicycle access to trails; 8) E-mail from Jeff Barker to Director Marguerite Young, dated December 6, 2015, regarding in favor of bicycling; 9) E-mail from Dane Carlson to Director Marguerite Young, dated December 7, 2015, regarding EBMUD trail access; 10) E-mail from Scott Byram to Sharla Sullivan, dated December 7, 2015,

regarding request for bicycle access to EBMUD trails; 11) Letter dated December 8, 2015 from Katherine K. Evatt, President, Foothill Conservancy, to Director Doug Linney, regarding EBMUD Forest Initiative; 12) Presentation entitled, "Amendment to EBMUD Retirement System Ordinance (No. 40) - Section 7 Second Reading," dated December 8, 2015; and 13) Presentation entitled, "Water Supply Board Briefing," dated December 8, 2015.

3. **Motion No. 198-15** – Awarded a contract to the lowest responsive/responsible bidder, Aztec Consultants, in the amount of \$2,358,500 for construction of the Diablo Pumping Plant Rehabilitation project under Specification 2084.
4. **Motion No. 199-15** – Authorized an agreement beginning on or after January 9, 2016 with Everbridge, Inc., in an amount not to exceed \$35,000 annually, for supplying emergency notification service for four years with three options to renew for an additional one-year period for a total cost of \$197,000, which includes a one-time fee of \$8,000 for training and configuration.
5. **Motion No. 200-15** – Authorized an amendment to an agreement with Pacific Gas & Electric Company beginning January 1, 2016 to provide High-Efficiency Clothes Washer Rebate Program services for one year at an annual cost of \$100,000, with an option to renew for an additional one-year period for a cost not to exceed \$200,000.
6. **Motion No. 201-15** – Authorized the General Manager to negotiate and execute Water Purchase Option Agreements with Glenn-Colusa Irrigation District, Sycamore Mutual Water Company, and Reclamation District 1004 for up to a total of 36,000 acre-feet of water at a maximum total cost of \$750,000, whereby EBMUD would secure the right of first refusal to negotiate with sellers for the purchase of transfer water in 2016.
7. **Motion No. 202-15** – Authorized the Office of General Counsel to continue the employment of the law firm of Hanson Bridgett, LLP, for specialized legal services related to construction, public contract and procurement, claims, trademark services, pension, employment, and litigation matters matters in an additional amount not to exceed \$175,000.
8. **Motion No. 203-15** – Authorized the Office of General Counsel to continue the employment of the law firm of Remcho, Johansen & Purcell, LLP, for specialized legal services related to elections and conflicts of interest matters in an additional amount not to exceed \$60,000.
9. **Resolution No. 34063-15** Appointing Frederick S. Etheridge To The Position of Assistant General Counsel (effective December 14, 2015).
  - Item 9 was pulled by President Mellon to offer congratulatory remarks.
  - Motion by Director Mellon, seconded by Director Linney, to approve the recommended action for Item 9, carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).

Attorney Fred Etheridge thanked the Board and said that he looked forward to serving in the capacity of Assistant General Counsel.

## **DETERMINATION AND DISCUSSION**

### **10. Legislative Update.**

Manager of Legislative Affairs Marlaigne K. Dumaine reported that in response to the Board's direction, staff investigated local, state and federal efforts to promote healthy forest and watershed initiatives, including any pending legislative actions. She reported that at the state level there are no pending legislative initiatives on watershed health, but there is considerable discussion on the Public Goods Charge which would fund various public interest programs. At the federal level, she said it is doubtful any legislation would be introduced this year and that any funding opportunities may be rolled up into an omnibus bill. She said that staff recommends the following legislative initiatives for the 2016 legislative year: 1) Support implementation of the locally driven Cornerstone Project by recommending that the Upper Mokelumne River Water Authority (UMRWA) formalize agreements with the United States Forest Service to implement the project; 2) Recommend that UMRWA seek grants and other funds to help provide the required cost share for the Cornerstone Project; 3) Request that funds in the National Forest Foundation's Mokelumne River Watershed Restoration Fund be directed towards the required cost share for the Cornerstone Project; 4) Support state agencies, such as CalFire, in their advocacy that federal forest management funding is spent on forest management and not redirected to suppression or other efforts; 5) Monitor federal legislation on forest and watershed health and identify potential opportunities for EBMUD to engage; and 6) Continue to gather information from stakeholders at the local, state and federal levels and provide updates to the Board, as appropriate.

Director of Water and Natural Resources Richard G. Sykes presented an update on local stakeholder discussions related to forest health initiatives. He said that the general consensus was to work with the Upper Mokelumne River Water Authority (UMRWA) to advocate for forest health projects and to seek additional funding sources. He noted that staff had received recommendations and funding requests from several stakeholder groups but staff recommends vetting all efforts through UMRWA. There was discussion about the best approach to respond to the stakeholder proposals. Mr. Sykes said that staff would be preparing responses to the groups, will continue to follow these efforts, and report back to the Board in early 2016. Director Young suggested a modification to recommendation #3 to request that the National Forest Foundation work collaboratively with UMRWA and Amador-Calaveras Consensus Group on the Cornerstone Project.

- Motion by Director Coleman, seconded by Director Patterson, to approve the staff recommendations. Director Young requested to eliminate recommendation #3. Following discussion, there was consensus to amend staff recommendation #3 to request that the National Forest Foundation work with the Upper Mokelumne River Water Authority and other stakeholders on how to support watershed health for the Cornerstone Project. The motion carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, Young, and Mellon); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 204-15** – Approved legislative initiative (addendum #1 to state legislative initiatives for 2016 legislative year) to investigate local, state and federal efforts to promote healthy forest and watershed initiatives and identify opportunities for EBMUD to engage in the following actions: 1) Support implementation of the locally driven Cornerstone Project by recommending that Upper Mokelumne River Water Authority (UMRWA) formalize agreements with the United States Forest Service to implement the project; 2) Recommend that UMRWA seek grants and other funds to help provide required cost share for the Cornerstone Project; 3) Request that the National Forest Foundation work with UMRWA and other stakeholders to determine how to best support watershed health for the Cornerstone Project; 4) Support state agencies, such as CalFire, in their advocacy that federal forest management funding is spent on forest management and not redirected to suppression or other efforts; 5) Monitor federal legislation on forest and watershed health and identify potential opportunities for EBMUD to engage; and 6) Continue to gather information from stakeholders at the local, state and federal levels and provide updates to the Board, as appropriate.

President Mellon asked for clarification on the December 8 letter from Katherine K. Evatt, Foothill Conservancy, welcoming EBMUD to take a larger role in watershed protection and restoration upstream of its own lands and to become a member of the Amador-Calaveras Consensus Group. Mr. Sykes said that staff will look into this to better understand the diverse opinions about how forest health initiatives should proceed upcountry and report back to the Board with a recommendation.

**11. Conduct A Second And Final Reading, And Vote To Approve An Ordinance Amending the East Bay Municipal Utility District Employees' Retirement System Ordinance No. 40 to Update Section 7.**

Manager of Employee Services Lisa A. Sorani presented an overview of the recommended action to conduct a second and final reading and vote to approve an amendment to Employees' Retirement System Ordinance (Ordinance No. 40). Section 7(b) of the Retirement Ordinance entitled "Allowance for Service" is being updated to include requirements that arise from the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act"). The HEART Act provides, in part, that when a plan member dies while performing qualified military service, the plan must allow the beneficiaries of the plan member to be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the plan had the participant resumed employment and then terminated employment on account of death.

Ms. Sorani reported that at the May 21, 2015 meeting of the Retirement Board, the Board unanimously authorized tax counsel to seek renewal of the Internal Revenue Service's (IRS) favorable determination that the plan constituting the EBMUD Retirement Ordinance continues to be a tax-qualified plan. Based on tax counsel's review of the criteria under which the IRS will review the plan, a further amendment to the Retirement Ordinance is required and the Retirement Board has authorized staff to bring this amendment to the EBMUD Board of Directors. The Ordinance will take effect 30 days after its passage by the Board of Directors. The first reading of the Ordinance took place at the November 24, 2015 meeting of the Board of Directors and after today's second reading, the amendments will be

published once a week for two successive weeks in a newspaper of general circulation published in the District.

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

**Ordinance No. 366-15** – An Ordinance Amending Section 7 Of Ordinance No. 40, Which Is The Employees' Retirement System Ordinance.

**12. General Manager's Report.**

Operations and Maintenance Department Manager Eileen White presented updates on Water Year 2015 including summaries of precipitation, system storage, and drought operations activities. She reported that Water Year 2015, which ended September 30, 2015, concluded with 352,000 acre feet in storage (46% of capacity). Despite drought conditions, the EBMUD system was in better shape than most of the state's reservoirs. She attributed this to increased customer conservation efforts and delivery of supplemental supply from the Freeport facility and the Folsom South Canal. To date water savings is 22 percent less than in calendar year 2013 and 28 percent less than the average of 2005-2007. She pointed out that Water Year 2016 has begun and the state is hopeful that the El Nino weather pattern will bring much needed rain. Director Linney requested that future presentations to the Board include information on El Nino projections and statistics on state-wide water supply. In concluding, General Manager Coate reported that the 2015 Critical Drought Action Plan Update as well as the Monthly Report for November 2015 was provided in the Board's packet.

**REPORTS AND DIRECTOR COMMENTS:**

**13. Committee Reports.**

- Filed with the Board were the Finance/Administration Committee Minutes of November 24, 2015.

**14. Other Items for Future Consideration.**

None.

**15. Director Comments.**

- Director Coleman reported attending/participating in the following events: ACWA/JPIA Board Meeting on November 30 in Palm Desert; ACWA Fall Conference December 1-4 in Palm Desert; ACWA Executive Committee teleconference meeting on December 7 in Oakland; and UMRWA Executive Committee teleconference meeting on December 8 in Oakland. He reported on plans to attend/participate in the following upcoming events: ACWA Article X Amendment meeting on December 9 in Sacramento; ACWA Carlsbad Desalination Opening event on December 14 in Carlsbad; ACWA Executive Committee teleconference meeting on December 14; ACWA staff luncheon on December 16 in

Sacramento; and ACWA Executive Committee teleconference meeting on December 21 in Oakland.

- Director Katz reported that he was attending the 2015 United Nations Climate Change Conference in Paris, France. He requested that staff provide an updated drought report at the end of the month.
- Director Linney had no comment.
- Director McIntosh reported attending the ACWA Fall Conference December 1-4 in Palm Desert.
- Director Patterson thanked those who sent him condolences following the passing of his former Pastor Violet Kietley of Shiloh Church in Oakland.
- Director Young had no comment.
- President Mellon reported attending the Contra Costa County Mayors' Conference on December 3 in Concord and the San Ramon Mayor's Breakfast on December 4 in San Ramon. He reported on plans to attend the Alameda County Mayors' Conference on December 9 in Alameda.

#### **ADJOURNMENT**

President Mellon adjourned the meeting at 2:34 p.m.

SUBMITTED BY:

  
Lynelle M. Lewis, Secretary of the District

APPROVED: January 12, 2016

  
Frank Mellon, President of the Board