MINUTES

Tuesday, May 10, 2022
East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California

Regular Closed Session Meeting

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:05 a.m. in the Administration Building Boardroom.

ROLL CALL

Directors John A. Coleman, Lesa R. McIntosh, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. Director Andy Katz arrived in the Administration Building Training Resource Center at 11:10 a.m.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Attorney III Felicity Grisham (Item 1a); Assistant General Counsel Jon Salmon (Item 1b); Director of Wastewater Eileen M. White (Item 1b); Assistant General Counsel Fred Etheridge (Item 2, first matter); Director of Water and Natural Resources Michael T. Tognolini (Item 2, first matter); Environmental Affairs Officer Jose D. Setka (Item 2, first matter); Assistant General Counsel Lourdes Matthew (Item 2, second matter); Director of Operations and Maintenance David A. Briggs (Item 2, second matter); and Interim Director of Human Resources Winnie W. Anderson (Item 2, second matter).

General Counsel Derek T. McDonald was not present for Item 1a.

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Linney announced the closed session agenda and the Board convened to the Administration Building Training Resource Center for discussion.

Regular Business Meeting

President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:31 p.m. in the Administration Building Boardroom.

ROLL CALL

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

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Assistant to the General Manager Janetta M. Johnson.

BOARD OF DIRECTORS

President Linney led the Pledge of Allegiance.

PRESENTATION

General Manager Clifford C. Chan announced the District received the National Association of Clean Water Agencies' National Environmental Achievement Award in the Operations and Environmental Performance category for the District's Odor Management Program, which combines new technology with a back-to-basics approach. The District replaced and upgraded its odor control system at the Main Wastewater Treatment Plant. This, coupled with other low-cost operational changes helped reduce the number of odor reports for the plant. Mr. Chan thanked and congratulated staff for their contributions and President Linney presented the award to the following team members: former Manager of Wastewater Treatment Maura Bonnarens; Treatment Plant Superintendent Kevin Dickison; Senior Environmental Health and Safety Specialist Paula Hansen; Manager of Wastewater Engineering Doug Higashi; Associate Civil Engineer Kevin Jim; Laboratory Supervisor Jason Mitchel; Assistant Engineer Raul Ruiz; Wastewater Shift Supervisor Mark Schmitz; Wastewater Operations Coordinator Carol Weir; and Administrative Assistant Bonnie Yee. The Board commended staff for their work.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Nick Lawrence commented on a dangerous condition on public property on Tappan Terrace in Orinda; 2) Kelly A. commented on the District's drought surcharge; and 3) Ivette Rivera, EBMUD ratepayer, commented on the state auditor's report regarding harassment in governmental workplaces.

CONSENT CALENDAR

- Motion by Director McIntosh, seconded by Director Young to approve the recommended actions for Items 1-6 on the Consent Calendar carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

1. **Motion No. 082-22** – Approved the Regular Meeting minutes of April 26, 2022.

2. The following correspondence was filed with the Board: **1)** Presentation entitled, "Fiscal Year 2023 Proposed Non-Prop 218 Rates, Charges, and Regulations," dated May 10, 2022; **2)** Presentation entitled, "Implement Stage 2 Drought Surcharge," dated May 10, 2022; **3)** Presentation entitled, "Water Shortage Emergency Action Plan," dated May 10, 2022; **4)** Presentation entitled, "Coronavirus Update," dated May 10, 2022; **5)** Speakers Bureau and Outreach Record for CY22 dated May 6, 2022; **6)** Contra Costa Times Proof of Publication of East Bay Municipal Utility District Notice of Summary of Drought Resolution No. 35287-22 published April 29, 2022; **7)** Oakland Tribune Proof of Publication of East Bay Municipal Utility District Notice of Summary of Drought Resolution No. 35287-22 published April 29, 2022; **8)** West County Times Proof of Publication of East Bay Municipal Utility District Notice of Summary of Drought Resolution No.

35287-22 published April 29, 2022; **9)** Email dated May 10, 2022 from Ivette Rivera to the Board of Directors regarding "Los Angeles Times Article re: Metropolitan Water racial discrimination;" and **10)** Email dated May 10, 2022 from Ivette Rivera to the Board of Directors regarding EBMUD Placement Goals.

3. **Motion No. 083-22** - Authorized an agreement beginning on or after May 10, 2022, with the Peralta Colleges Foundation in an amount not to exceed $418,000 to cover the administrative costs and stipends to EBMUD interns participating in a variety of internship programs through June 30, 2023.

4. **Motion No. 084-22 -** Authorized an agreement beginning on or after July 1, 2022, with Rural Pig Management, Inc. for five years for a total amount not to exceed $266,990 for controlling feral pigs on East Bay watershed lands.

5. **Motion No. 085-22 -** Authorized an amendment to the agreement previously authorized under Board Motion No. 135-20 with Langan Engineering and Environmental Services, Inc. to increase the agreement amount by $428,551 to a total amount not to exceed $1,399,576 for additional engineering services during construction of the Moraga Creek Flood and Erosion Control Project.

6. **Resolution No. 35288-22** - Delegating Authority to the General Manager to Lease District Property for Fifteen Years for Telecommunication Purposes.

DETERMINATION AND DISCUSSION

7. **Appointment to Manager of Distribution Maintenance and Construction.**

General Manager Clifford C. Chan announced this item was being pulled from the agenda and would be presented for Board consideration at its meeting on May 24, 2022.

8. **Legislative Update.**

Manager of Legislative Affairs Marlaigne K. Dumaine reviewed Legislative Report No. 02-22 which included the following eight bills for Board consideration: AB 2026 (Friedman) Recycling: Plastic: Packaging and Carryout Bags; AB 2419 (Bryan) Environmental Justice: Federal Infrastructure Investment and Jobs Act: Justice40 Oversight Committee; AB 2895 (Arambula) Water: Permits and Licenses: Temporary Changes: Water or Water Rights Transfers; SB 1392 (McGuire) Fish and Wildlife: Steelhead Trout: Fishing Report-Restoration Card; SB 1490, SB 1491, and SB 1492 (Committee on Governance and Finance) Validations; and S. 3956 (Merkley) Wastewater Infrastructure Pollution Prevention and Environmental Safety Act. Ms. Dumaine highlighted each measure and bill co-sponsors as applicable; potential impacts from each bill, costs and benefits to the District, whether the Board has taken a position on similar or prior legislation; and whether each bill had an official support/opposition list available. Legislative/Human Resources Committee Chair Lesa R. McIntosh announced the Committee met earlier in the day and supported staff's recommendations. Ms. Dumaine responded to questions regarding envelope padding, source of Association of Clean Water Agencies opposition on AB 2419, and AB 2639 options on position. The Board asked staff to continue working with the bill author to seek amendments on AB 2639 and return with a recommended position. Director Young asked the Board to consider taking a separate roll call vote on AB 2369.

- Director Coleman left the meeting at 2:08 p.m. and returned at 2:09 p.m.

- Motion by Director Young, seconded by Director Coleman to approve positions on the bills in Legislative Report No. 02-22 excluding AB 2639 carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

  Motion No. 086-22 - Received Legislative Report No. 02-22 and approved positions on the following bills: SUPPORT AB 2026 (Friedman) Recycling: plastic packaging and carryout bags; SUPPORT IN CONCEPT AB 2419 (Bryan) Environmental justice: federal Infrastructure Investment and Jobs Act: Justice40 Oversight Committee; OPPOSE UNLESS AMENDED AB 2895 (Arambula) Water: permits and licenses: temporary changes: water or water rights transfers; SUPPORT SB 1392 (McGuire) Fish and wildlife: steelhead trout: fishing report-restoration card; SUPPORT SB 1490, SB 1491, SB 1492 (Committee on Governance and Finance) Validations; and SUPPORT S. 3956 (Merkley) Wastewater Infrastructure Pollution Prevention and Environmental Safety Act.

  The Board expressed concern about taking a position of Oppose Unless Amended on AB 2639. There was considerable discussion on the Board's ability to postpone taking a position; whether there is time for staff to meet with the bill author regarding the District's proposed amendments; and clarification on a position of Oppose Unless Amended versus a position of Support If Amended. Ms. Dumaine commented that the bill as written, would effect the District's operations and water rights. She also noted taking a position of Oppose Unless Amended signals the District's concern with the bill as written and allows staff to continue discussions regarding the District's requested bill amendments. Directors Coleman and Linney indicated they are willing to speak with the bill author about the District's requested bill amendments. The Board asked staff to continue working with the author on amending the bill and to return with a recommended position for Board consideration on May 24, 2022.

- Motion by Director Coleman, seconded by Director Mellon to approve a position of Oppose Unless Amended on AB 2639. There was additional discussion about the staff recommendation for the Board to take a position of Oppose Unless Amended. Director Coleman withdrew his motion and Director Mellon concurred.

- Substitute Motion by Director Katz, seconded by Director Coleman to direct staff to continue working with the bill author to seek amendments on AB 2639 (Quirk) San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Water Quality Control Plan: Water Right Permits and to return with a recommended position on AB 2639 for Board consideration on May 24, 2022 carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

  Motion No. 087-22 – Directed staff to continue working with the bill author to seek amendments on AB 2639 (Quirk) San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Water Quality Control Plan: Water Right Permits and to return with a recommended position on AB 2639 for Board consideration on May 24, 2022.

9.1.- **File the Report and Recommendation of the General Manager for Revisions to the Water**

9.2. **and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject to Proposition 218, and Regulations for FY23; and set a Public Hearing for Tuesday, June 14, 2022, during the Board's regular meeting to consider the Report and Recommendation.**

Director of Finance Sophia D. Skoda provided the presentation. She reviewed the prior Board actions related to the FY22/23 budget and rates. The FY23 Water System rates of 4.0 percent and Wastewater System rates of 4.0 percent were adopted by the Board June 8, 2021 and will go in effect July 1, 2022. Staff is proposing revisions to Water System schedules, fees, and regulations as follows: Schedule B – Account Establishment Charge; Schedule C – Charges for Special Services; Schedule D – Water Service Installation Charges; Schedule E – Private Fire Service Installation Charges; Schedule F – Public Fire Hydrant Installation Charges; Schedule G – Water Main Extension Charges; Schedule H – Standard Participation Charge; Schedule J – System Capacity Charge; Schedule N – Water Mitigation Fees; Public Records Act Fee Schedule; Real Property Use Application Fees; Recreation Use Fees; Section 3 – Standard Service; Section 4 – Main Extensions; and Section 15 – Discontinuation of Service. Staff is also proposing revisions to Wastewater System schedules as follows: Schedule G – Wastewater Department Capacity Fees; and Schedule H – Wastewater Department Wastewater Interceptor Connection Review, Coordination, and Inspection Fee. The Board will review these changes at its May 24, 2022 Mid-Cycle Budget Workshop. The public hearing and adoption are scheduled for June 14, 2022. If affirmed, the water and wastewater rates will go into effect July 1, 2022.

- Motion by Director Mellon, seconded by Director McIntosh to approve the recommended actions for Items 9.1-9.2 carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 088-22 - Filed the Report and Recommendation of the General Manager for Revisions to the Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject to Proposition 218, and Regulations for Fiscal Year 2023; and set a Public Hearing for Tuesday, June 14, 2022, during the Board's regular meeting to consider the Report and Recommendation.

10.1.- 10.2. **Receive and affirm the updated drought budget prepared by District staff which summarizes the projected impact of the current water shortage emergency on the District's cost to provide water service; and authorize implementation of the Stage 2 Drought Surcharge, which was previously fixed by Board Resolution Nos. 35046-17 and 35224-21, at the rate of eight percent of the Water Flow Charge, which shall be charged on each unit of potable water used on or after July 1, 2022, consistent with Schedule L – Drought Surcharge Rate Schedule for Water Service of the District's Water System Schedule of Rates, Charges, and Fees for Customers of the District and the updated cost-of-service analysis summarized in the drought budget.**

Director of Finance Sophia D. Skoda provided the presentation. The Drought Surcharge allows the District to recover additional incurred costs to provide water service during a drought and may be imposed during a Stage 2 or greater drought. The Board declared a Stage 2 Drought on April 26, 2022. During a Stage 2 drought the maximum approved surcharge is 8 percent of the Water Flow Charge imposed on each unit of potable water. Next, Ms. Skoda discussed the drought's expected fiscal impacts. Staff prepared a drought budget which has the projected costs of $64.5 million. Because the projected drought budget amount exceeds the projected $30.8

million expected revenue from an 8 percent surcharge staff recommends implementing the 8 percent surcharge. The remaining drought costs will be funded through reserves. The Drought Surcharge if implemented, would remain in place until modified or suspended by the Board. Ms. Skoda responded to a question on how the surcharge funds will be used.

- Motion by Director Patterson, seconded by Director Young to approve the recommended actions for Item 10 carried (6-1-0) by the following voice vote: AYES (Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (Coleman); ABSTAIN (None); ABSENT (None).

Resolution No. 35289-22 - Implementing Stage 2 Drought Surcharge.

11. **Approve the Water Shortage Emergency Action Plan in accordance with the Water Shortage Contingency Plan, District Policy 9.03 - Water Supply Availability and Deficiency, and Board Resolution No. 35287-22 which describes outreach, education, and water conservation measures which would be implemented to help achieve the 10 percent mandatory District-wide water use reduction goal.**

Manager of Water Conservation Alice E. Towey provided the presentation. She reviewed the Water Shortage Emergency Action Plan's background and goals, drought communication plan, key messages to each customer class, communication tools being used by the District, and the proposed advertising plan. She highlighted revisions to some water conservation programs, District actions to enforce water restriction regulations, and additional resources needed to implement the plan. Lastly, she discussed the plan's implementation schedule. Ms. Towey and General Manager Clifford C. Chan responded to questions regarding staff messaging around main breaks during the drought and whether the District is able to divert water used to flush pipes after main breaks to nearby parks. The Board asked staff to advertise how to report a leak on social media platforms and to ensure the emergency number to report a leak is visible on the District's website homepage.

- Motion by Director McIntosh, seconded by Director Patterson to approve recommended actions for Item 11 carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 089-22 - Approved the Water Shortage Emergency Action Plan in accordance with the Water Shortage Contingency Plan, District Policy 9.03 - Water Supply Availability and Deficiency, and Board Resolution No. 35287-22 which describes outreach, education, and water conservation measures which would be implemented to help achieve the 10 percent mandatory District-wide water use reduction goal.

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

Coronavirus Update

Director of Operations and Maintenance David A. Briggs presented the update. He reviewed COVID-19 positive cases in Alameda and Contra Costa counties and the number of employee positive COVID-19 cases (497) to date. There continues to be an increase in positive cases in Bay Area counties, however hospitalization and death rates remain low. The California Department of Public Health and Cal/OSHA no longer recommend quarantine if asymptomatic, regardless of vaccination status although testing is still recommended 3-5 days from exposure. Alameda

Public Health and Cal/OSHA no longer recommend quarantine if asymptomatic, regardless of vaccination status although testing is still recommended 3-5 days from exposure. Alameda County continues to recommend quarantine if asymptomatic and unvaccinated. The District is still requiring face coverings indoors. Weekly testing for employees with a vaccination exemption was suspended on May 1. Mr. Briggs noted if positivity rates at the District continue to increase, weekly testing will be re-instated. Beginning May 16, employees who need to test to return to work or avoid quarantine may access off-site, as-needed medical facilities (Concentra Medical) on District time. Staff will continue monitoring and updating District safety protocols as needed.

- Director McIntosh left the meeting at 3:13 p.m. and returned at 3:16 p.m.

General Manager's Monthly Report – April 2022

General Manager Clifford C. Chan said he is available to answer questions regarding the report.

REPORTS AND DIRECTOR COMMENTS

13. **Committee Reports.**

- Filed with the Board were the Minutes for the April 26, 2022 Sustainability/Energy and Finance/Administration committee meetings.

- Planning Committee Chair Marguerite Young reported the Committee met earlier and received updates on the Willow Service Center Project, Long-Term Infrastructure Plan and Resources Needs, and the 2021 Recreation Report.

- Legislative/Human Resources Committee Chair Lesa R. McIntosh reported the Committee met earlier and received information on Legislative Report No. 02-22, Diversity, Equity, and Inclusion Strategic Plan, and Peralta Colleges Foundation Internship Stipend Administration.

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

None.

15. **Director Comments.**

- Director Coleman reported attending the following events: Los Vaqueros JPA Finance Committee meeting on April 28 (remote); ACWA Spring Conference from May 3 to May 5 in Sacramento; meetings with CCWD Board members, San Joaquin County Board members, and Placer County Water Agency staff on May 4 in Sacramento; Los Vaqueros JPA Board meeting on May 11 (remote); and DERWA Board meeting on May 16 (remote). He reported on plans to attend the following: Los Vaqueros JPA Finance Committee meeting on May 25 (remote); Real Estate Marketing Association meeting on June 2 in Danville; Alamo Rotary meeting on June 8 in Alamo; Ward 2 Briefing on June 9 in Lafayette; and San Ramon City Council meeting on June 13 in San Ramon.

- Director Mellon reported on the passing of three Castro Valley military veterans who were part of the Greatest Generation, also known as the G.I. Generation and the World War II generation: Mickey Ganitch, Peter Schantz, and Glen Barth.

- Director Patterson reported plans to attend the "Justice on Trial" screening event at the Oakland Grand Lake Theatre on May 22.

- President Linney and Directors Katz, McIntosh, and Young had no reports.

ADJOURNMENT

President Linney adjourned the meeting at 3:23 p.m.

SUBMITTED BY:

Janetta M. Johnson, Acting Secretary of the District

APPROVED: May 24, 2022

Doug A. Linney, President of the Board

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