MINUTES

Tuesday, January 24, 2023
East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California

Regular Closed Session Meeting

President John A. Coleman called to order the Regular Closed Session Meeting of the Board of Directors at 11:02 a.m. in the Administration Center Boardroom. He announced that the Board would be holding a joint closed session with the Retirement Board on Item 4 of the closed session agenda.

ROLL CALL

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

Retirement Board President Timothy R. McGowan called the roll of the Retirement Board.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Attorney Felicity Grisham (Item 1a), Assistant General Jon Salmon (Items 1b and 2), Director of Wastewater Amit K. Mutsuddy (Items 1b and 3), Director of Finance Sophia D. Skoda (Item 1b), Attorney George A. Croton (Item 2), Director of Operations Maintenance David A. Briggs (Items 2 and 3), Director of Water and Natural Resources Michael T. Tognolini (Item 2); Chief Information Officer Orlando W. Leon (Item 3); Manager of Facilities, Maintenance and Construction Tony J. Montano (Item 3), Information Services Supervisor Andrew Szeto (Item 3), Senior Electrical Engineer Hendrick W. Scholten (Item 3), Assistant General Counsel Lourdes Matthew (Item 4a); Director of Human Resources Cindy R. Charan (Item 4a); Principal Management Analyst Valerie R. Weekly (Item 4a); and Retirement Board members Timothy R. McGowan and Jae Y. Park (Item 4a).

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

PUBLIC COMMENT

- Addressing the Board was Ivette Rivera who commented on documents provided to the Board regarding closed session agenda Item 1a and a Public Records Act request regarding information pertaining to closed session agenda Item 4a.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Coleman announced the closed session agenda and that he would recuse himself from participation in closed session agenda Item 4a. The Board convened to the Administration Building Training Resource Center for discussion.

Regular Business Meeting

President John A. Coleman called to order the Regular Business Meeting of the Board of Directors at 1:30 p.m. in the Administration Center Boardroom.

ROLL CALL

Directors April Chan, Andy Katz, Doug A. Linney, Lesa R. McIntosh, William B. Patterson, Marguerite Young, and President John A. Coleman 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

Director Chan led the Pledge of Allegiance.

2023 Committee Assignments

President Coleman noted the proposed 2023 board committee assignment were included in the regular meeting packet.

- Motion by Director Linney, seconded by Director McIntosh, to approve the 2023 Committee assignments, carried (7-0) by the following roll call: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

  Motion No. 011-23 – Approved the following 2023 Board Committee assignments:

Planning	***2nd Tuesday of the month at 9:15 a.m.***
Director Linney, Chair	Administration Center Building
Director Chan	
Director Young	
Legislative/Human Resources	***2nd Tuesday of the month at 10:15 a.m.***
Director McIntosh, Chair	Administration Center Building
Director Chan	
Director Patterson	
Finance/Administration	***4th Tuesday of the month at 10:00 a.m.***
Director Patterson, Chair	Administration Center Building
Director Chan	
Director Katz	
Sustainability/Energy	***4th Tuesday, quarterly, time to be determined***
Director Katz, Chair	Administration Center Building
Director Linney	
Director Young	

DSRSD/EBMUD Recycled Water Authority (DERWA)
Director Chan
Director Coleman
Director Young, Alternate

1st Monday in Feb.;
3rd Monday in May;
4th Monday in March, July, Sept., and Nov. meets at 6:00 p.m.

Freeport Regional Water Authority
Director Coleman
Director Patterson
Director Katz, Alternate

2nd Thursday, quarterly at 10:00 a.m., location to be announced

Los Vaqueros Reservoir Joint Powers Authority
Director Coleman
Director McIntosh (Alternate)

2nd Wednesday of the month at 9:30 a.m., location to be determined

Retirement Board
Director Chan
Director Young

3rd Thursday odd numbered months at 8:30 a.m.
Administration Center Building
Training Resource Center, 2nd Floor

Upper Mokelumne River Watershed Authority
Director Coleman
Director Chan, Alternate
Director Katz, Alternate
Director Patterson, Alternate
Director Young, Alternate

4th Friday, quarterly at 1:30 p.m.
McLean Hall, Pardee Center

Business Forum (Ad Hoc)
Director Linney
Director McIntosh
Director Patterson

Meeting dates, times, and location to be determined

EBMUD/EBRPD Liaison
Director Katz
Director Young
Director Chan, Alternate

Meeting dates, times, and location to be determined

Oakland Chamber of Commerce
Director Linney
Director Patterson, Alternate

Special Districts Association of Alameda County/Special Districts Selection Committee
Director Patterson, Member
Director Chan, Alternate
Director Katz, Alternate

Special Districts Association of Contra Costa County
Director Chan, Member
Director Coleman, Alternate

Presentation of Certificate of Achievement for Excellence in Financial Reporting

General Manager Chan stated for the 17th consecutive year, the District has received this award from the Government Finance Officers Association for its Annual Comprehensive Financial Report. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

The core team responsible for final production of the report consists of Winsun Hsieh, Melody Wang, and Matt Houck. These individuals demonstrate teamwork and integrity in financial reporting which exemplifies the values of EBMUD. In addition to the core team, all the accounting staff (represented by Kevin Ma), and various staff throughout the District provided critical information to ensure a "clean audit' and an award-winning report. Director Patterson presented the award on behalf of the Board.

ANNOUNCEMENTS FROM CLOSED SESSION

President Coleman announced the Board met in closed session this morning to consider a request by the General Counsel to authorize initiation in two related matters. All Directors were present at the closed session. The Directors voted to authorize the General Counsel to initiate litigation in the matters. The action, defendants and other particulars will be disclosed, upon inquiry, once the action is formally commenced.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Ivette Rivera commented on documents she provided to the Board by email related to the Saji Pierce and Ariel Bland lawsuit. Ms. Rivera also commented Derry Moten's response to the Board' request for information misrepresented her statements at a Board meeting.

CONSENT CALENDAR

- Items 1, 6, 10, and 11 were pulled from the Consent Calendar for separate discussion.

- Motion by Director McIntosh, seconded by Director Linney to approve the recommended actions for Items 2-5, 7-9 on the Consent Calendar carried (7-0) by the following voice vote: AYES (Chan, Coleman, Katz, McIntosh, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

1. **Motion No. 019-23** – Filed correspondence with the Board.

    - President Coleman pulled Item 1 to receive public comment.

    - Addressing the Board was Ivette Rivera who commented on Agenda Item 1.

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

  The following correspondence were filed with the Board: **1)** Presentation entitled, "Drought Update," dated January 24, 2023; **2)** Presentation entitled, "Water Supply Update," dated January 24, 2023; **3)** Presentation entitled, "Wet Weather Update," dated January 24, 2023; **4)** Presentation entitled, "Service Award Recipients (October-December 2022), dated January 24, 2023; **5)** Revised District Policy 4.12 – Purchasing and Materials Management **6)** Speakers' Bureau and CY 2023 Record dated January 23, 2023; **7)** Excessive Use Violations Memo dated January 24, 2023; **8)** Ayriel Bland Declaration in Pierce and Bland case, filed January 13, 2023; **9)**; Saji Pierce Declaration in Pierce and Bland case, filed January 13, 2023 **10)** D. Jan Duffy Declaration in Pierce and Bland case, filed January 13, 2023; **11)** Sara Hachim Declaration in Pierce and Bland case, filed January 13, 2023; and **12)** Exhibits 1 and 2 – Compiled Declarations in Pierce and Bland case, Compliant Settlement McIntoch and Irving vs EBMUD.

2. **Motion No. 012-23** – Awarded a contract to the lowest responsive/responsible bidder, Crayon Software Experts LLC, for supplying Microsoft Enterprise Agreement for Microsoft Office 365, Enterprise Mobility and Security, Endpoint Operating Systems, and management software required to manage the District's workstation fleet for three years, beginning on or after January 24, 2023 for a total cost, after the addition of taxes, not to exceed $2,234,554.

3. **Motion No. 013-23** – Authorized an agreement beginning on or after January 24, 2023 with Blue Sky Environmental, Inc. for two years, with two options to renew for additional one-year periods for a total amount, including option years, not to exceed $235,780 for air emissions source testing.

4. **Motion No. 014-23** – Authorized an agreement beginning on or after January 24, 2023 with Lee + RO, Inc. in an amount not to exceed $2,780,000 for engineering services for the Main Wastewater Treatment Plant Grit Dewatering Equipment Replacement and Reactor Drain Improvements Project under SD-432 and the Process Water (3W) System, Gallery and Vault Drain Improvements, and Wet Weather Storage Basin Concrete Rehabilitation Project under SD-439.

5. **Motion No. 015-23** – Authorized an agreement beginning on or after January 31, 2023 with The Tharpe Company, Inc. dba Engage2Excel for one year, with two options to renew for additional one-year periods for a total amount, including option years, not to exceed $270,000 for the provision of employee service and retirement awards and an online peer recognition platform per the District's Employee Recognition and Service Awards Program.

6. **Motion No. 020-23** – Authorized an additional amount of $500,000 to a total amount not to exceed $2,300,000 to the agreement previously authorized under Board Resolution No. 35171-20 with Axiom Medical Consulting, LLC for COVID-19 contact tracing services, employee interviews, return to work clearance, and recordkeeping for COVID-19 positive employees.

   - President Coleman pulled Item 6 to receive public comment.

   - Addressing the Board was Eric Larsen, President, AFSCME Local 444 who commented on concerns with return-to-work clearance by the proposed service provider.

The Board asked question regarding home test kits, and requested staff continue discussions with represented groups regarding return to work and home test kit availability.

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

7. **Motion No. 016-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 197-17 with Sensus USA, Inc. to increase the amount by $650,000 to a total amount not to exceed $2,665,496 and to extend the agreement terms for five years to continue providing Advanced Metering Infrastructure services and equipment.

8. **Motion No. 017-23** – Authorized the Office of General Counsel to continue the employment of the law firm of Ellison, Schneider, Harris & Donlan, LLP, for specialized legal services related to water and energy law and litigation matters in an additional amount not to exceed $80,000.

9. **Motion No. 018-23** – Approved the November and December 2022 Monthly Investment Transactions Reports.

10. **Resolution No. 35334-23 –** Confirming Appointment of Standby Officers For The Board Of Directors Under The Emergency Succession Plan For The Board Of Directors President Coleman pulled Item 10 to receive public comment.

    - Addressing the Board was Ivette Rivera who expressed concern about the appointment of a Standby Officer.

    - Director Young noted we look to select standby officers who have a knowledge of the District so they can stand in in the event of an emergency. President Coleman reminded the Board to work to fill their vacant standby officer slots and to notify the Board President, Board Secretary and General Manager when traveling out of the service area.

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

11. **Resolution No. 35335-23 -** Adopting Revised Policy 1.14, Customer Assistance Policy; Revised Policy 4.12, Purchasing And Materials Management; Revised Policy 4.23, Interest Rate Swap Policy; Revised Policy 4.26, Municipal Securities Disclosure; Revised Policy 4.28, Cybersecurity; Revised Policy 6.08, Contract Equity Program; Revised Policy 6.09, Contractors' Compliance With Equal Employment Opportunity; And Revised Policy 6.11, Performance Management

    - President Coleman pulled item 11 to receive public comment.

    - Addressing the Board was Ivette Rivera who expressed concerns the department managing Policy 6.11.

- President Coleman noted there was a revision during today's Finance/Administration Committee for Policy 4.12 – Purchasing and Materials Management made in 1.g. Changed word "avoid" to "make every reasonable effort not to."

- Motion by Director Linney, seconded by Director Patterson to approve the recommended action for Item 11 on the Consent Calendar carried (7-0) by the following roll call vote: AYES (Chan, Coleman, Katz, McIntosh, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

DETERMINATION AND DISCUSSION

12. **Consider and approve an adjustment of the Board of Directors' annual salary by an amount not to exceed 5 percent each year since 2020, effective February 1, 2023.**

Ivette Rivera submitted a speaker card for this time but was not present when the items was called.

General Manager Chan introduced the item and stated the Board last adjusted its compensation in 2020. He explained the MUD Act requirements for the Board to adjust its compensation. The board can adjust for 2023, 2022, or 2021 with a maximum of five percent based on staff increase.

There was Board discussion as to why the Board delayed receiving compensation in the last few years however acknowledged the need to adjust compensation to encourage others consider running for a Board seat.

- Motion by Director Katz, seconded by Director Patterson to approve the recommended action for Item 12 on the Consent Calendar carried (5-1-1) by the following voice vote: AYES (Katz, McIntosh, Patterson, Young, and Linney); NOES (Coleman); ABSTAIN (Chan); ABSENT (None).

Motion No. 021-23 – Approved increasing the Board's monthly compensation effective February 1, 2023 by $163 per month which will result in the Board's monthly compensation changing from $1,367 to $1,530. The adjustments for years 2021, 2022, 2023 are 3.0%, 4.0%, and 4.5%, respectively. The Board had not previously adjusted its salary in those years.

13. **Appoint a Centennial Celebration Ad Hoc Committee to provide perspective and support for staff in planning and implementing centennial celebration activities.**

General Manager Clifford C. Chan announced this is the District's centennial year and the main celebration is scheduled for May 2023.

President Coleman introduced a motion to appoint Director Patterson, Director McIntosh, and himself to the ad hoc committee.

Motion No. 022-23 – Director Young provided a substitute motion to appoint Directors Patterson (Chair), McIntosh, and Young to the ad hoc committee. Seconded by Director Linney to appoint an ad hoc committee carried (7-0) by the following roll call vote: AYES (Chan, Coleman, Katz, McIntosh, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

14. **General Manager's Report.**

Wet Weather Update.

Director of Wastewater Amit Mutsuddy presented the update. Highlighted was the December 31, 2022 storm, the wastewater system performance, and the consent decree. The December 31st storm was stronger and longer than anticipated. Due to ground saturation, all wet weather facilities including the Main Wastewater Treatment Plant received significantly larger flows. Due to the storm three of our overflow structures overflowed however is diluted sewage and flows directly into the Bay. The storm also caused manholes to overflow at three locations. The District responded immediately, posted signage and reported to all appropriate regulatory agencies. Next, Amit discussed the role of the Consent Decree. He noted staff continues to educate the media to deepen their understanding of inflow and infiltration and the relationship between the wastewater system, city sewers, and private sewer laterals and also pointed out the focus on community efforts and reductions in discharges.

There was considerable Board discussion. The Board asked for presentation on combined sewer overflow at a future Planning Committee.

Water Supply Update – water production, precipitation, reservoir storage and release levels, and water year forecasts.

Director of Operations and Maintenance David A. Briggs provide a water supply update for the District and the State. He also discussed early water supply projections (forecasted through October 1, 2023). He reported current total system storage as of January 19, 2023 is 663 thousand acre-feet. Pardee and Camanche reservoirs' storage is 98 percent and 75 percent, respectively. The East Bay reservoirs is 101 percent of capacity.

There was considerable Board discussion on how we are managing excess water.

2023 Drought Update – District operations, Water Shortage Emergency Action Plan implementation including a summary of conservation activities, the Excessive Water Use Penalty Ordinance including the excessive user, list, and media coverage.

General Manager Clifford C. Chan introduced the item and noted that at the February 14 Board meeting staff will propose moving from a Stage 2 to Stage 1 Drought. Director of Operations and Maintenance provided a water supply update and supply projections. Manager of Water Supply Improvements discussed supplemental supplies needs for the next year and highlighted staff will continue to develop partnerships for future water transfer agreements. Engineering Manager Brad Ledesma discussed the State's curtailment status. Director of Customer of Customer and Community Services Andrew Lee discussed the Excessive Use Penalty Ordinance. He noted to date number of violators and the process to appeal the violation. Manager of Public Affairs Kelly Zito discussed media coverage in December and January. Director of Customer of Customer and Community Services Andrew Lee next discussed drought messaging. Engineering Manager Brad Ledesma next discussed future considers to changing the District's drought stage. Next Manager of Public Affairs Kelly Zito discussed next steps that include working with other agencies on long-term drought/water supply messaging, drought outreach to customers, monitoring excessive use customers and provide assistance, evaluate water supply in February, and provide Water Supply Availability and Deficiency Report to the Board in April.

Employees With Milestone Service Years

Senior Human Resources Analyst Laura Salangsang presented the names of employees that have achieved employment milestones between October through December 2022 from 5 years to over 40 years. The Board viewed the presentation and applauded the employees for their years of service.

REPORTS AND DIRECTOR COMMENTS

15. **Committee Reports.**

- Finance/Administration Committee chair Williams B. Patterson reported the Committee met earlier in the day and received the November and December 2022 monthly reports, the quarterly financial reports for investments, payroll, disbursement, and real estate ending December 31, 2022; and a number of revisions to District policies.

- President Coleman reported on the Fiscal Years 2024/2025 Budget Workshop No. 1 where staff reviewed the approach to develop the 2024/2025 budget and rates, preliminary assumptions for rate increases, operating and capital priorities, and staffing.

16. **Other Items for Future Consideration.**

None.

17. **Director Comments.**

Director Coleman reported participating in the Los Vaqueros Reservoir JPA Board meeting (remote) on January 11; Board Agenda Review with General Manager (remote) on January 18; ACWA Council of Past Presidents meeting (remote) on January 23; UMRWA Board Meeting at Pardee Reservoir on January 27; East Bay EDA Lunch with Rob Bonta in Oakland on January 30; DERWA Board meeting in Dublin on January 30; Los Vaqueros Joint Meeting (remote) on January 31; Los Vaqueros Reservoir JPA Board Meeting (remote) on February 8; EBMUD Water Wednesday (remote) on February 15; Los Vaqueros Finance Committee Meeting (remote) on February 23.

- Director Patterson reported he attend two events last week: McClymonds High School honored Bill Russell and Paul Silas; and was sworn in by the Oakland NAACP.

- Director Young reported she will attend the Water Walk this Saturday at Lafayette Reservoir.

- Director Chan requested February 25, 2023 Water Walk be rescheduled because of damage to Chabot Road.

- President Linney reported he attended the swear-in ceremony for Alameda County Supervisor Lena Tam.

- Directors Katz and McIntosh had no reports.

ADJOURNMENT

President announced that today's meeting would be adjourned in memory of Rischa S. Cole and her family and what they are going through.

President adjourned the meeting at 3:27 p.m.

SUBMITTED BY:

Janetta M. Johnson, Assistant to the General Manager

APPROVED: February 14, 2023

Andy Katz, Acting President of the Board

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