MINUTES

Tuesday, February 14, 2023

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

Regular Closed Session Meeting

Director Coleman announced that on February 8, 2023 he stepped down as Board President for personal reasons. Vice-President Katz called to order the Regular Closed Session Meeting of the Board of Directors at 11:24 a.m. in the Administration Building Board Room.

ROLL CALL

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

Staff participants included General Manager Clifford Chan, General Counsel Derek McDonald, Attorney Felicity Grisham (Item 1a), Manager of Real Estate Services Matt Elawady (Item 1a); Attorney Ruby Acevedo (Item 1b and 1c), Director of Finance Sophia D. Skoda (Item 1b and 1c); Attorney George A. Croton (Item 2), Director of Operations and Maintenance David A. Briggs (Item 2), and Director of Wastewater Amit K. Mutsuddy (Item 2).

PUBLIC COMMENT

- Addressing the Board were the following: 1) Ivette Rivera who commented on difficulty gaining access to staff employment records; 2) Joe Pangelinan, Chief Steward, AFSCME Local 444 commented on managers harassing and intimidating two Local 444 members; and 3) George Cleveland, Chief Steward, AFSCME Local 2019 commented on his support of Joe Pangelinan's comments regarding managers harassing and intimidating members.

  President Coleman requested additional information on the matter discussed by Joe Pangelinan and George Cleveland.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

Director Coleman announced that on February 8, 2023 he stepped down as Board President for personal reasons. Vice-President Katz called to order the Regular Business Meeting of the Board of Directors at 1:16 p.m.

ROLL CALL

Directors John A. Coleman, Doug Linney, Lesa R. McIntosh, and William B. Patterson, Marguerite A. Young, and Vice-President Andy Katz were present at roll call. Director April Chan arrived at 1:20 p.m.

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

BOARD OF DIRECTORS

Vice President Katz led the Pledge of Allegiance.

Election of President of the Board

Vice-President Katz opened the floor for nominations for President of the Board for the remainder of 2023.

- Motion by Director McIntosh, seconded by Director Coleman, to nominate Director Andy Katz for President of the Board of Directors for the remainder of 2023.

Motion by Director McIntosh, seconded by Director Linney to close the nomination period. The motions to close the nomination period and to elect Director Katz as President of the Board, carried (6-0) by the following voice vote: AYES (Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (Chan).

Motion No. 023-23 – Elected Director Andy Katz as President of the Board of Directors for 2023.

Election of Vice-President of the Board

President Katz opened the floor for nominations for Vice-President of the Board for the remainder of 2023.

- Motion by Director Young, seconded by Director Patterson, to nominate Director Lesa McIntosh for Vice-President of the Board of Directors for the remainder of 2023.

Motion by Director Linney, seconded by Director Young to close the nomination period. The motions to close the nomination period and to elect Director McIntosh as Vice-President of the Board, carried (7-0) by the following voice vote: AYES (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 024-23 – Elected Director Lesa R. McIntosh as Vice-President of the Board of Directors for 2023.

2023 Committee Assignments

President Katz asked if Board members would like to make changes to current 2023 committee assignments in consideration of the change of Board officers. Director Coleman requested to replace President Katz on the Finance/Administration Committee; Director Coleman asked to be

removed from the Los Vaqueros Reservoir Joint Powers Authority and Director of Water and Natural Resources Michael T. Tognolini was designated as the replacement; Director Chan requested to be removed from the Planning Committee and Legislative/Human Resources Committee; Director McIntosh replaced Director Chan on the Planning Committee; Director Coleman replaced Director Chan on the Legislative/Human Resources Committee; Director Young requested to be the chair of the Sustainability/Energy Committee.

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

  Motion No. 025-23– Approve the following revisions 2023 Board assignments to committees, joint powers authorities and associations:

Planning Director Linney, Chair Director McIntosh Director Young	***2nd Tuesday of the month at 9:15 a.m.*** Administration Center Building
Legislative/Human Resources Director McIntosh, Chair Director Coleman Director Patterson	***2nd Tuesday of the month at 10:15 a.m.*** Administration Center Building
Finance/Administration Director Patterson, Chair Director Chan Director Coleman	***4th Tuesday of the month at 10:00 a.m.*** Administration Center Building
Sustainability/Energy Director Young, Chair Director Katz Director Linney	***4th Tuesday, quarterly, time to be determined*** Administration Center Building
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 — *2nd Wednesday of the month at 9:30 a.m., location to be determined*
Director of Water and Natural Resources Tognolini
Director McIntosh (Alternate)

Retirement Board — *3rd Thursday odd numbered months at 8:30 a.m.*
Director Chan — Administration Center Building
Director Young — Training Resource Center, 2nd Floor

Upper Mokelumne River Watershed Authority — *4th Friday, quarterly at 1:30 p.m.*
McLean Hall, Pardee Center
Director Coleman
Director Chan, Alternate
Director Katz, Alternate
Director Patterson, Alternate
Director Young, Alternate

Business Forum (Ad Hoc) — *Meeting dates, times, and location to be determined*
Director Linney
Director McIntosh
Director Patterson

EBMUD/EBRPD Liaison — *Meeting dates, times, and location to be determined*
Director Katz
Director Young
Director Chan, Alternate

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

ANNOUNCEMENTS FROM CLOSED SESSION

The Board met in closed session this morning to consider a request by the General Counsel to authorize initiation in one matter. All Directors were present at the closed session. The Directors voted to authorize the General Counsel to initiate litigation in the matter. 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) Frank Mellon commented on Item #12 from the January 24, 2023 agenda and requested the Board to either correct the action or grant him retroactive pay; and 2) Ivette Rivera commented on denied access to employment records. She also provided three documents to the Board.

President Katz requested additional information on the matter discussed by Frank Mellon.

CONSENT CALENDAR

- Item 5 was pulled from the Consent Calendar for separate discussion.

  - Motion by Director Linney, seconded by Director McIntosh, to approve the recommended actions for Items 1-4, 6, and 7 on the Consent Calendar, carried (7-0) by the following roll call vote: AYES (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

1. **Motion No. 026-23** – Approved the Regular Meeting Minutes of January 24, 2023.

2. The following correspondence were filed with the Board: **1)** Presentation entitled, "USL WTP Maintenance and Reliability and USL and Sobrante WTPs Chemical Systems Safety Improvements," dated February 14, 2023; **2)** Presentation entitled, " 2023 Preliminary Water Supply Availability and Deficiency Report," dated February 14, 2023; **3)** Presentation entitled, "Modifications to District Drought Response Actions," dated February 14, 2023; **4)** Presentation entitled, "Ad Hoc Committee Centennial Celebration," dated February 14, 2023; **5)** Frank Mellon letter dated February 14, 2023; **6)** Saji Pierce case pretrial schedule; **7)** Saji Pierce and Ayriel Bland opposition document; **8)** "Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motion to Compel Answers to Interrogatories" in the *McIntosh v. EBMUD* case; **(9)** "Declaration of G. Todd Withy in Reply to Defendant's Opposition to Plaintiffs' Motion to Compel Answers to Interrogatories" in the *McIntosh v. EBMUD* case; **10)** Two documents related to Delores Turner; **11)** Excerpt from The Winters report; **12)** Speakers' Bureau and Outreach Records for Calendar Year 2023 dated February 14, 2023; **13)** RCO Jobsite Inspection Checklist, Adeline Maintenance Center, dated 11/17/19; and **14)** President Coleman notification to step down as Board President dated February 8, 2023.

3. **Motion No. 027-23** – Authorized an agreement beginning on or after February 14, 2023 with 4th of July Backflow Testing for $130,000 for a term of five years for a total amount not to exceed $650,000 for inspecting and testing residential backflow devices.

4. **Motion No. 028-23** – Authorized an agreement beginning on or after February 14, 2023, with Jacobs Engineering Group Inc. in an amount not to exceed $1,949,813 for engineering services for the Influent Pump Station Resiliency Project.

5. **Motion No. 031-23** – Authorized an agreement beginning on or after February 14, 2023 with KBM Office Equipment dba KBM-Hogue in an amount not to exceed $120,000 to furnish and install upholstered fixed audience seating units in the Administration Building Board Room.

- Director Coleman pulled Item 5 to ask for clarification on the scope of work for the project and that the item be held over until the next meeting. President Katz requested additional information on the Board Room renovation project.

- Motion by Director Linney, seconded by Director Young, to approve the recommended action for Item 5 on the Consent Calendar carried (6-1) by the following roll call vote: AYES (Chan, Linney, McIntosh, Patterson, Young, and Katz); NOES (Coleman); ABSTAIN (None); ABSENT (None).

6. **Motion No. 029-23** – Authorized an agreement beginning on or after February 14, 2023, with Simpson Gumpertz & Heger Inc. in an amount not to exceed $1,119,291 for engineering and design services for the Main Wastewater Treatment Plant Support Facilities Seismic Retrofit Project under SD-433.

7. **Motion No. 030-23** – Authorized an amendment to the contract previously awarded under Board Motion No. 039-20, with Western Area Power Administration to extend the contract termination date from December 31, 2024, to December 31, 2029 for electricity purchases at select District facilities.

DETERMINATION AND DISCUSSION

8. **Legislative Update.**

Manager of Legislative Affairs Kathryn C. Viatella reviewed Legislative Report No. 01-23 which included bill ACA 1 (Aguiar-Curry) Local Government Financing: Affordable Housing and Public Infrastructure: Voter Approval.

Motion No. 032-23 – Received Legislative Report No. 01-23 and approved a position on the following bill: SUPPORT ACA 1 (Aguiar-Curry) Local Government Financing: Affordable Housing and Public Infrastructure: Voter Approval; and received information about Governor Newsom's Proposed 2023-24 State Budget.

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

Next, Ms. Viatella provided information on Governor Newsom's Proposed 2023-24 State Budget.

9.1-9.4 **Motion No. 033-23 – Awarded contracts and authorized agreements for construction, engineering services during construction (ESDC), and materials for the projects at the Upper San Leandro (USL) and Sobrante water treatment plants (WTP), and as-needed design and ESDC services for other treatment facilities.**

Director of Engineering and Construction Olujimi O. Yoloye reviewed the project purpose and scope, reviewed the contracts and agreements for Board consideration, and the community outreach schedule. He responded to Board questions regarding concerns of the neighbors, coordination process between the two projects, contractor practices, and federal funding.

- Addressing the Board were the following: 1) Andrew Giacomini, attorney with Hanson Bridgett, stated EBMUD prequalified Flat Iron. He also stated letters of protest are only legal from parties who have an interest in the contracts; 2) Sarah Tacker, Flat Iron, stated 80 percent of Flat Iron is union labor and that Helix is also a subcontractor on EBMUD's Orinda project; 3) Gladys Nagao, Helix Electric, testified to her experience on the training and advancement she received while employed with Helix Electric; 4) Brian Jordan, Helix Electric, stated the training opportunities provided to those in Helix Electric's apprentice program and the company's diversity, equity, and inclusion efforts; 5) Victor Romero, Helix Electric, testified to his promotional opportunities while working for Helix Electric; 6) Kyle Lamson, Helix Electric, stated he left union job to work at Helix Electric and has had a positive experience; and 7) Kelly A. shared displeasure of Board discussion around labor relations and not the cost of acre-feet of water.

- Director Coleman left the meeting at 2:27 p.m. and returned at 2:29 p.m.
- Director Chan left the meeting at 2:37 p.m. and returned at 2:41 p.m.
- Director McIntosh left the meeting at 2:46 p.m. and returned at 2:48 p.m.

The Board had considerable discussion about labor compliance, how safety issues are addressed, benefits, and improvement processes.

- Motion by Director Coleman, seconded by Director McIntosh, to approve the recommended action for Items 9.1.-9.4. carried (7-0) by the following roll call vote: AYES (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

9.1. Awarded contract to the lowest responsive/responsible bidder, Flatiron West, Inc., in an amount not to exceed $237,332,710 for construction of the USL WTP Maintenance and Reliability and USL and Sobrante WTPs Chemical Systems Safety Improvements projects, under Specification 2128.

9.2. Awarded a sole-source contract to Honeywell International Inc. for purchase of two remote input/output control system cabinets and associated hardware for the temporary chemical systems at the USL and Sobrante WTPs, for a total cost, after the addition of taxes, not to exceed $175,000.

9.3. Approved agreement beginning on or after February 14, 2023, with Stantec Consulting Services, Inc. in an amount not to exceed $8,263,665 for ESDC for the USL and Sobrante WTPs Chemical System Safety Improvements projects and for as-needed chemical system improvements design services and ESDC for other raw water treatment facilities.

9.4. Approved agreement beginning on or after February 14, 2023, with Jacobs Associates, Inc. dba Delve Underground in an amount not to exceed $427,724 for specialized shoring ESDC for the USL WTP Maintenance and Reliability Project under Specification 2128.

10. **Motion No. 034-23 – Filed the Preliminary Water Supply Availability and Deficiency Report in conformance with District Policy 9.03 – Water Supply Availability and Deficiency.**

Engineering Manager Bradley Ledesma discussed the purpose of the preliminary report, reviewed the District's Drought Management Plan and noted 475 thousand acre-feet of total system water storage is the trigger for a District declared Stage 1 drought. He noted the District's customers met and exceeded the 10 percent water use reduction goal from June through December 2022 as compared to water use in 2020. He noted the Mokelumne and East Bay precipitation for rainfall year 2023. Next, he discussed the current and forecasted total system storage and noted the Central Valley Project water and water transfers will not be needed in 2023. He discussed the State's snow water content and reservoir storage. The State's emergency regulation imposing Level 2 drought requirement expires in June and could even be terminated sooner by the State Water Resources Control Board. He discussed next steps for Board consideration.

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

11.1.-11.5. **Resolution No. 35336-23 –** Rescinding Declarations Of Water Shortage Emergency And Stage 2 Drought, Rescinding Section 28 Of The District's Regulations Governing Water Service To Customers, Declaring A Stage 1 Drought, Establishing A District-Wide Voluntary Water Use Reduction Goal Of Ten Percent, Confirming Suspension Of Implementation Of Certain Provisions Of The Excessive Water Use Penalty Ordinance, Making Necessary Findings, And Directing Deferred Implementation Of The Aforementioned Actions Consistent With Applicable Regulatory Requirements

Director of Water and Natural Resources Michael T. Tognolini discussed modifications to District drought response actions. He reminded the Board of the District current adopted drought actions. He noted based on the District's preliminary water supply availability and deficiency report the total system storage is well above the 475,000 acre-feet which is the trigger for District drought actions. He reviewed the State's drought regulations.

- Motion by Director Young, seconded by Director Patterson, to approve the recommended action for Items 11.1-11.5. carried (7-0) by the following roll call vote: AYES (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

12. **Motion No. 035-23 –** Suspended implementation of the Stage 2 Drought Surcharge effective March 1, 2023.

Director of Finance Sophia D. Skoda discussed the status of drought revenue from the Drought Surcharge. She noted drought revenue from July 2022, and projected through February 28, 2023, is sufficient to pay actual drought costs. The Board is asked to consider suspending the drought surcharge effective March 1, 2023.

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended action for Item 12 carried (7-0) by the following roll call vote: AYES (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

13. **General Manager's Report.**

Centennial Celebration Ad Hoc Committee Meeting

Special Assistant to the General Manager Kelly A. Zito presented recommendations from the Centennial Celebration Ad Hoc Committee. The Committee provided recommendations on videos, advertising opportunities, digital assets, giveaways, and centennial outreach activities.

There was considerable Board discussion regarding budget, sponsorship proceeds usage, shuttle service and mobility access at the Temescal event.

General Manager's Monthly Report

General Manager Clifford C. Chan announced he was available to respond to questions regarding the January 2023 Monthly Report.

REPORTS AND DIRECTOR COMMENTS

14. **Committee Reports.**

- Filed with the Board were the Minutes for the January 24, 2023 Finance/Administration Committee.

- Planning Committee Chair Doug Linney reported the Committee met earlier in the day and received an update on the GreenGen Pumped Storage Project; the July 2022-December 2022 Regulatory Compliance Semi-Annual Report; and the Annual Readiness Report for fiscal year 2022.

- President Katz reported the Board met earlier and received information on the 2022 Customer Assistance Program activities; arrearage trends; customer assistance strategies; Customer Support Program goals; and proposed enhancements to address affordability for customers facing financial difficulties.

15. **Other Items for Future Consideration.**

None.

16. **Directors Comments.**

- Director Coleman reported participating in the Upper Mokelumne River Water Authority Board meeting on January 27; East Bay EDA Lunch with Rob Bonta on January 30; DERWA Special Board meeting on January 30; Los Vaqueros Joint meeting (remote) on January 31; Los Vaqueros Board meeting (remote) on February 8; FRWA Board meeting (remote) on February 8; East Bay Leadership Council Board meeting (remote) on February 17; and Los Vaqueros Finance Committee meeting (remote) on February 23. He submitted, his February 8, 2023 email notification regarding stepping down Board President.

- Director Young reported participating in the Lafayette Water Walk on January 28; meeting with Wholly H2O, Clifford Chan, and Alice Towey (phone) on January 30; and Orinda Treatment Plant meet and greet on February 12.

- Director Patterson reported attending San Jose State University's exhibit for Chuck Alexander on February 11; the funeral for Chuck Alexander was on February 12.

ADJOURNMENT

President Katz announced the Board would adjourn today's meeting in honor of El Cerrito Councilmember Janet Abelson and Alameda County Supervisor Richard Valle who passed away.

President Katz adjourned the meeting at 3:55 p.m.

SUBMITTED BY:

Janetta M. Johnson, Assistant to the General Manager

APPROVED: February 28, 2023

Andy Katz, President of the Board

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