

MINUTES

Tuesday, February 22, 2022
East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California
Virtual

Regular Closed Session Meeting

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:39 a.m. He announced that in accordance with Government Code section 54953(e), this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting.

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. All Directors participated remotely.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Director of Operations and Maintenance David A. Briggs (Item 1), Interim Director of Human Resources Winnie W. Anderson (Items 1 and 2), Director of Finance Sophia D. Skoda (Item 2), and IEDA representatives Jeff Bailey and Gregory Ramirez (Item 2).

PUBLIC COMMENT

- Addressing the Board were the following: 1) George Cleveland, Chief Steward, AFSCME Local 2019, commented on the ongoing contract negotiations and delays in receiving documentation requested by Local 2019 regarding compensation packages for legacy and PEPRA employees; 2) Ivette Rivera, EBMUD Gardener Foreman, commented on three documents submitted to the Secretary's Office to be filed with the Board and read excerpts from the documents; and 3) Joey D. Smith, President, AFSCME Local 2019, expressed disappointment on the District's delay in providing documentation requested by Local 2019 regarding compensation packages for legacy and PEPRA employees and asked the Board to direct management to return to the negotiates table with Local 2019.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Linney announced the closed session agenda and the Board convened for discussion (remotely).

Regular Business Meeting

President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:18 p.m. He announced that in accordance with Government Code section 54953(e), this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting.

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. All Directors participated remotely. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President Linney 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: 1) Julia Halsne, EBMUD Retiree, commented on retaliation, the conflict-avoidance culture and hiring practices at the District; 2) Nick Lawrence, Orinda, commented on the dangerous conditions on public property on Tappan Terrace; 3) Kasie Evans thanked Nick Lawrence, Ivette Rivera and Julia Halsne for their comments; 4) Sean Barrow, EBMUD Construction and Maintenance Superintendent, commented on inequities in the District's promotion process for internal employees; and 5) Ivette Rivera, EBMUD Gardener Foreman, expressed appreciation for the previous commenters; commented on the Board's concern regarding the District's culture; and read the date and time for the upcoming hearing regarding the Saji Pierce and Ayriel Bland case.

CONSENT CALENDAR

- Motion by Director Coleman, seconded by Director McIntosh to approve the recommended actions for Items 1-9 on the Consent Calendar carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 043-22** – Approved the Special Meeting and Regular Meeting Minutes of February 8, 2022.
 2. The following correspondence was filed with the Board: **1)** Presentation entitled, "Fontaine Pumping Plant Replacement Project Final Mitigated Negative Declaration and Project Approval," dated February 22, 2022; **2)** Presentation entitled, "Diversity, Equity, and Inclusion Strategic Plan Adoption," dated February 22, 2022; **3)** Presentation entitled, "Coronavirus Update," dated February 22, 2022; **4)** Presentation entitled, "Water Supply Update," dated February 22, 2022; **5)** Email dated February 22, 2022 from Ivette Rivera to Rischa Cole transmitting a screenshot from the AFSCME 444 DFEH Position Statement (undated); **6)** Email dated February 21, 2022 from Ivette Rivera to Rischa Cole transmitting screenshots of PacerMonitor information regarding the date and time for the *Pierce et al. versus East Bay Municipal Utility District et al.* case; **7)** Email dated February 22, 2022 from Ivette Rivera to Rischa Cole transmitting a screenshot of a January 6,

2016 letter from the Department of Fair Employment & Housing to Ivette Rivera regarding Response to Fourth Level Appeal, DFEH Number 247831-105330, Rivera/AFSCME Local 444; and 8) Text of public comments (undated) from Julia Halsne to the Board of Directors.

3. **Motion No. 044-22** – Awarded a contract to the lowest responsive/responsible bidder, Ranger Pipelines Incorporated, in an amount not to exceed \$17,345,000 for construction of the Happy Valley and Sunnyside Pumping Plants, and Happy Valley Pipeline Phase 2 Improvements under Specification 2120.
- 4a.- **Motion No. 045-22** – Authorized agreements with Berry Bros. Towing & Transport, Inc. and Freeman’s Tow Service, Inc. beginning on or after February 22, 2022 for three years with two options to renew for additional one-year periods, in an aggregate amount, including option years, not to exceed \$425,000 for towing and vehicle relocation services; and authorized additional agreements for towing and vehicle relocation services on an as-needed basis, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability. The Board of Directors will be notified of additional qualified service providers by means of the General Manager’s monthly report.
- 4b.
5. **Motion No. 046-22** – Authorized additional funds for the contract previously awarded under Board Motion No. 016-21 with CDW Government LLC to increase the contract amount by \$415,732 to a total amount not to exceed \$1,856,507 for supplying Microsoft Office 365 licenses for additional staff.
6. **Motion No. 047-22** – Authorized the Office of General Counsel to continue the employment of the law firm of Best, Best & Krieger, LLP, for specialized legal services related to federal and state water law, rates, charges, taxes, liens, real estate and bankruptcy, and litigation involving such matters in an additional amount not to exceed \$100,000.
7. **Motion No. 048-22** – Approved the financing plan for the upcoming bond sales in Fiscal Year 2022.
8. **Motion No. 049-22** – Approved the January 2022 Monthly Investment Transactions Report.
9. **Resolution No. 35272-22** – Accept the East Bay Municipal Utility District Employees’ Retirement System Actuarial Valuations and Adopt the Pension and Health Insurance Benefit Employer Contribution Rates for Fiscal Year 2023.

DETERMINATION AND DISCUSSION

- 10a. **Adopt the Final Mitigated Negative Declaration (MND) for the Fontaine Pumping Plant Replacement Project (Project); make findings in accordance with the California Environmental Quality Act (CEQA); adopt the Mitigation Monitoring and Reporting Plan in accordance with CEQA; adopt the Practices and Procedures Monitoring and Reporting Plan; and approve the Project.**
- 10e.

Associate Civil Engineer Daniel G. Jones provided the presentation. The District plans to replace the Fontaine Pumping Plant which is in Oakland in a landslide zone adjacent to the main trace of the Hayward Fault and is at the end of its useful life. The pumping plant was constructed

in 1963, has a capacity of 20 million gallons per day (MGD) and is the primary supply to the Upper San Leandro (USL) pressure zone when the USL Water Treatment Plant is out of service. A new 20 MGD pumping plant and rate control station will be constructed at 9601 MacArthur Boulevard in Oakland which is outside of the active fault and landslide area and approximately 4,600 feet of 30-inch pipelines will be installed to connect the new pumping plant to the water distribution system. Once the project is complete, the existing pumping plant will be demolished, new retaining walls will be installed at the existing site, and approximately 2,100 feet of existing, buried suction and discharge pipelines will be abandoned in place. The estimated cost for the Project design and construction is \$27 million. Mr. Jones discussed analysis results in the Draft MND that determined Project-related construction could potentially generate environmental impacts to aesthetics and transportation; mitigation measures incorporated into the Project that would reduce these impacts to less than significant levels; and public outreach efforts. If the Board approves the Project, design would take approximately 18 to 24 months, beginning in 2026, and construction of the new pumping plant and demolition of the existing pumping plant would take approximately two years, beginning in 2028. In response to Board questions, Mr. Jones confirmed two individuals participated in the public meetings; the existing pumping plant location will be used for a 48-inch transmission pipeline and to potentially store soil; and that as the Project advances, the District will hold additional public meetings and continue reaching out to the community. The Board asked staff to ensure adequate community outreach is conducted since constructions isn't scheduled to start until 2028 and to consider alternative long-term uses for the land where the existing pumping plant is located.

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

**Although visible online, due to technical difficulties, Director Patterson did not vote on Items 10a-10e.*

Resolution No. 35273-22 – Adopting the Mitigated Negative Declaration for the Fontaine Pumping Plant Replacement Project, Making Findings, Adopting the Mitigation Monitoring and Reporting Plan and Practices and Procedures Monitoring and Reporting Plan, and Approving the Project.

11. **Adopt the District's Diversity, Equity, and Inclusion (DEI) Strategic Plan.**

Special Assistant to the General Manager Derry L. Moten provided the presentation. The DEI Strategic Plan is the District's five-year strategy to cultivate diversity, advance equity, and maintain an inclusive work culture. The plan's strategic approach is grounded in three key principles: employee involvement and engagement, use of equity toolkits, and commitment to continuous improvement. These principles are applied to the plan's five strategic pillars: 1) Leadership Accountability, 2) Workforce Diversity, 3) Inclusive Culture, 4) Supplier Diversity, and 5) Social Responsibility. The five pillars contain 11 goals, 36 objectives, and 114 actionable items over the next two years. Mr. Moten reviewed modifications to the plan based on feedback received during the January 25 workshop; the three key principles; the DEI governance model; and how the plan will be implemented through staff projects, Equity Core Team projects, and advisory and steering committees. If the Board adopts the plan, staff will continue plan implementation and identify the resources required to ensure the goals and objectives in the plan's five strategic pillars are achieved. Staff would also provide regular updates and seek

feedback during Legislative/Human Resources Committee and Regular Board meetings. Mr. Moten responded to Board questions on whether the District has been or is planning to reach out to the staff who have provided comments during the Board's review of the DEI Strategic Plan; specifics on how some of the plan initiatives will be implemented; the proposed approach that will be used to include community feedback; and leveraging and building relationships with Bay Area environmental justice advocates. Mr. Moten confirmed that staff documents the public comments regarding DEI that are made during Board meetings to ensure staff concerns are addressed and explained the DEI Strategic Plan includes a structured community engagement process. Board members expressed continued support and commented the entire organization must be committed to supporting the DEI Strategic Plan. The Board asked staff to involve the external environmental justice community on the District's actions around environmental justice and to include Board members when engaging Bay Area environmental justice groups. The Board also requested updates on DEI community engagement efforts.

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

Motion No. 050-22 – Adopted the District's Diversity, Equity, and Inclusion Strategic Plan.

12a- **Approve the 2021-2025 Memorandum of Understanding (MOU) and other special**
12c. **agreements between the District and the International Federation of Professional and Technical Engineers Local 21; approve revisions to District salary schedules; and amend all existing Civil Service Rules, Policy Statements and Procedures, and other pertinent resolutions to conform to revisions contained in the MOU and in the resolution.**

- Motion by Director Young, seconded by Director Patterson to approve the recommended actions for Items 12a–12c carried (6-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Patterson, Young, and Linney); NOES (None); ABSTAIN (Mellon); ABSENT (None).

Director Mellon said he abstained from voting based on his reason for abstaining on the vote to approve the MOU and other special agreements with International Union of Operating Engineers, Local 39 on January 25, 2022 (*although the District added Juneteenth as a paid holiday, the District still observes President's Day which honors presidents that were either slaveholders or segregationists*).

Resolution No. 35273-22 – Approve Implementation of the 2021-2025 Memorandum of Understanding and Other Special Agreements with International Federation of Professional and Technical Engineers, Local 21.

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

Coronavirus Update

General Manager Clifford C. Chan announced all Board members are scheduled to participate in the March 8 Board meetings in the Board room; however, the public will still participate in the meetings via webinar or teleconference. 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 (439) and contractor (33) positive COVID-19 cases to date, noting the surge of employee cases lasted about one month. Fourteen employees were off work or unable to telecommute as of February 18 and no employees are presently hospitalized with COVID-19. Leading indicators such as wastewater COVID-19 concentrations and health-related metrics are rapidly improving in the Bay Area and there have been minimal impacts on essential operations due to the District's high vaccination rate as exposed and asymptomatic employees are permitted to continue work. Staff that has been primarily telecommuting during the pandemic will begin transitioning back to the office one to two days per week on February 28. The District will support employees using additional District-paid COVID-19 leave pursuant to the 2022 COVID-19 Supplemental Paid Sick Leave Law, which was signed into law by Governor Newsom on February 9, 2022 and took effect on February 19. The District also continues offering testing five days per week but will decrease testing frequency as infection rates at the District decline.

There was considerable Board discussion regarding the process for Board members returning to in-person meetings on March 8 and protocols for individuals and Board members that may test positive or have been exposed to COVID-19; screening protocols and symptom check requirements for in-person Board meetings; whether the District will continue holding hybrid meetings using Zoom; Americans with Disabilities Act requirements in the Brown Act for teleconference locations; and if the Board has the option to participate in meetings in-person and continue to adopt resolutions to hold Board meetings via teleconference under Assembly Bill 361 until the COVID-19 pandemic ends. General Counsel Derek T. McDonald responded to questions regarding the requirements for the Board to continue to adopt resolutions to hold Board meetings via teleconference under Assembly Bill 361.

- Addressing the Board were the following: 1) Max Fefer, President of the District's Disability Advocacy and Rights Team Affinity Group commented on the District's return to work plan and its impact on employees with disabilities and comorbidities and asked the Board to direct staff to allow exemptions for staff that have requested to continue working from home full time; 2) Gus Cicala, AFSCME Local 2019 Liaison to the District's Emergency Operations Team, commented on the District's return to work plan, potential impacts to employees with disabilities and employees with children that cannot be vaccinated; and 3) George Cleveland, Chief Steward, AFSCME Local 2019, commented on the District's return to work plan and employees facing challenges obtaining medical documentation needed to request accommodations.

There was Board discussion regarding the public comments and Interim Director of Human Resources Winnie W. Anderson responded to questions on how the District is addressing exemption requests from employees with small children and the District's interactive and accommodation processes. Ms. Anderson said all requests are being reviewed and processed on a case-by-case basis. The Board requested information on the Brown Act requirements for Board members who may participate in meetings remotely after the pandemic; options for the Board to participate in meetings remotely if they are ill, or are required to quarantine or isolate due to COVID-19; and a copy of the District's COVID-19 screening checklist before the March 8 meeting.

Water Supply Update

Director of Operations and Maintenance David A. Briggs presented the update. Runoff forecasts have been adjusted to account for lower soil moisture, and operations at the Freeport facility

restarted on February 8. The District has diverted 23,300 acre-feet of its 35,250 acre-feet allocated by the United States Bureau of Reclamation which includes 2,310 acre-feet between February 8 and February 17. Contract year 2022 Central Valley Project supply is still pending and imports will be re-suspended if hydrology improves. Mr. Briggs reported on the following as of February 17: the District's current water supply including gross water production; precipitation in the Mokelumne watershed which was 30.15 inches or 98 percent of average; precipitation in the East Bay which was 18.5 inches or 102 percent of average; the snow depth at Caples Lake; and total system storage which was 529,490 acre-feet or 91 percent of average and 69 percent of capacity. He highlighted the status of the state's water supply, Mokelumne precipitation for Rainfall Year 2022, and projected total system storage for Water Year 2022. The Board asked questions about the accuracy of the graphic and data on slide 9 and if imports from Freeport would be included if the District's projected 2022 total system storage ended up at 470,000 acre-feet. General Manager Chan said staff will provide a drought update to the Board on March 8. The Board asked that future water supply updates include a graphic comparing the most recent and past state automated snow water equivalents as shown on slide 9.

- Director Mellon left the meeting at 3:11 p.m. and returned at 3:13 p.m.

REPORTS AND DIRECTOR COMMENTS

14. Committee Reports.

- None.
- Finance/Administration Committee Chair William B. Patterson reported the Committee met earlier (remotely) and received updates on the Quarterly Investment Report for the period ending December 31, 2021; Semi-Annual Internal Audit Report; Interest Rate Swap Portfolio Summary Report; Monthly Investment Transactions Report for January 2022; Financing Plan for Fiscal Year 2022 Bond Sales; and the Employees' Retirement System Fiscal Year 2021 Actuarial Valuations and Fiscal Year 2023 Employer Contribution Rates.
- President Linney reported the Board met earlier today (remotely) for the Long-Term Water Supply Workshop and received an overview and updates on key challenges facing the District's long term water supplies and new information on the strategy for continuing to make the District's water supply portfolio both resilient and sustainable. He said due to time constraints, staff would schedule another workshop to present the remaining materials on desalination, the District's involvement in the Los Vaqueros Reservoir Expansion project, groundwater, and the Bay Area Regional Reliability Partnership..
- UMRWA representative John A Coleman reported the Board met on January 28 and received an update on the Mokelumne Watershed Maintenance project and the MAC plan.
- Los Vaqueros Reservoir Joint Powers Authority (LVR JPA) representative John A. Coleman reported the JPA met on February 9 and reviewed the JPA bylaws and purchasing policy and that he was appointed to the JPA Finance Committee.

15. Other Items for Future Consideration.

None.

16. **Director Comments.**

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

ADJOURNMENT

President Linney announced the Board would close today's meeting in honor of Bishop Ernestine Cleveland-Reems from the Center of Hope Community Church in Oakland, who passed away on December 29, 2021, and Forrest Williams, Jr. Program Manager for the Freeport Regional Water Authority, and long-time employee with the Sacramento County Water Agency, who passed away on February 12, 2022. Director Patterson recounted Bishop Reems' accomplishments and contributions to the Oakland community and Director Coleman recounted Mr. Williams' accomplishments, his work with the District on the Freeport project, and his love for his wife and children.

- Director McIntosh left the meeting at 3:30 p.m.

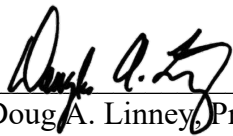
President Linney adjourned the meeting at 3:38 p.m. in honor of Bishop Ernestine Cleveland-Reems and Forrest Williams, Jr.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: March 8, 2022



Doug A. Linney, President of the Board