

MINUTES

**Tuesday, May 24, 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 11:21 a.m. in the Administration Building Boardroom.

ROLL CALL

Directors John A. Coleman, Andy Katz, Lesa R. McIntosh, Frank Mellon, Marguerite Young, and President Doug A. Linney were present at roll call. Director William B. Patterson joined the meeting at 11:22 a.m.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Special Assistant III Derry L. Moten (Item 1).

PUBLIC COMMENT

- Addressing the Board were the following: 1) Ross Spinner, EBMUD employee commented on harassment experienced by new employees and the evaluation process during the probationary period for new employees; and 2) Ivette Rivera, EBMUD ratepayer, commented on Mr. Spinner's remarks and asked the Board to direct staff to grant an extension for additional time to respond to a determination letter from the Office of Diversity and Inclusion.

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 1:16 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 Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President Linney led the Pledge of Allegiance.

PRESENTATION

Richard P. Stage, California State Chairman and volunteer with the Employer Support of the Guard and Reserve (ESGR) presented the ESGR Above and Beyond Award to the District on behalf of the National Guard and Reserve Forces for outstanding service and continuing support to national defense. The award is given in limited quantities to employers who have gone above and beyond the legal requirements for their enlisted employees. EBMUD Electrical Technician and Chief Warrant Officer in the United States Navy Reserve Robert F. Musick nominated EBMUD for the award in recognition of the District's support for employees that are members of the National Guard and Reserve. Mr. Stage highlighted efforts by the District to support its enlisted employees and veterans and Mr. Musick expressed appreciation for the District's continued support while he was mobilized and away from work. General Manager Clifford C. Chan reported that last year, his father posthumously received the Congressional Gold Medal awarded to Chinese Americans who served in World War II. Board members thanked Mr. Musick for the nomination and his service. President Linney thanked Mr. Stage for the award and Mr. Musick for the nomination, his service to our country, and his work at the District.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Ivette Rivera, EBMUD ratepayer commented remarks by public speakers at the May 10, 2022 Legislative/Human Resources Committee meeting were not fully reported in the meeting minutes and asked the Board to direct staff to grant an extension for more time to respond to a determination letter from the Office of Diversity and Inclusion.

President Linney asked staff to provide information on Ms. Rivera's request.

CONSENT CALENDAR

- Items 1, 4 and 9 were pulled from the Consent Calendar for separate discussion.
- Motion by Director Mellon, seconded by Director Patterson to approve the recommended actions for Items 3, 5-8, and 10-13 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. Approve the Regular Meeting minutes of May 10, 2022.

Director Mellon asked that the minutes be updated to clarify the three veterans he acknowledged during Director comments - Mickey Ganitch, Peter Schantz, and Glen Barth - were part of the Greatest Generation, also known as the G.I. Generation and the World War II generation.

- Motion by Director Mellon, seconded by Director Patterson to approve the recommended actions for Item 1 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. 099-22 – Approved the Regular Meeting minutes of May 10, 2022 with corrections.

2. The following correspondence was filed with the Board: 1) Presentation entitled, “Resolution Continuing Virtual Meetings of the Board,” dated May 24, 2022; 2) Presentation entitled, “Update on Emergency Declaration for the Repair of the South Interceptor,” dated May 24, 2022; and 3) Email from Ivette Rivera to Rischa S. Cole, Board members and others dated May 24, 2022 regarding reading 5 bullet points for the public comment section of the May 24, 2022 afternoon Board meeting.
3. **Motion No. 090-22** – Awarded a contract to the lowest responsive/responsible bidder, Sunflower Lab LLC, for supplying network switch replacement equipment and a five-year subscription for hardware and software technical support, beginning on or after May 25, 2022 for a total cost, after the addition of taxes, not to exceed \$217,307 under Request for Quotation No. 2208.
4. **Award a contract to the lowest responsive/responsible bidder, Cratus, Inc., in an amount not to exceed \$25,100,000 for construction of the Oakland Inner Harbor Pipeline Crossing under Specification 2155.**

Addressing the Board was Stanley Cooper, President, Cooper Construction and Engineering who asked the Board to consider postponing action on the contract to allow Cooper Construction and Engineering the opportunity to discuss working on the project as a subcontractor with Cratus, Inc. and commented on local business participation on District contracts and EBMUD community involvement and contracting. There was considerable Board discussion and Contract Equity Administrator Beverly D. Johnson commented on Mr. Cooper’s request to delay action on the contract, the Contract Equity Office’s work with Mr. Cooper, and the District’s efforts to ensure diverse small businesses and subcontractors are working with prime contractors on District projects. Ms. Johnson reported the District is reestablishing an external advisory committee to work with local, small businesses on the bidding process for District and other agency projects. Addressing the Board was Bendu Griffin, Board member, National Association of Minority Contractors, who commented on Ms. Johnson’s outreach regarding EBMUD’s work with small, diverse, minority firms and asked if the District can provide technical assistance for small firms. The Board asked staff to proactively reach out to subcontractors; consider a quantitative method to apply bid discounts; and to resume the construction business forums and roundtables that were previously conducted by the Contract Equity Office.

- Director Mellon left the room at 2:04 p.m. and returned at 2:08 p.m.

- Motion by Director Patterson, seconded by Director Mellon to approve the recommended actions for Item 4 carried (6-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (Mellon).

Motion No. 100-22 – Awarded a contract to the lowest responsive/responsible bidder, Cratus, Inc., in an amount not to exceed \$25,100,000 for construction of the Oakland Inner Harbor Pipeline Crossing under Specification 2155.

5. **Motion No. 091-22** – Awarded a sole source contract to Amaya Solutions Inc. dba American Water Chemicals for supplying threshold inhibitor anti-scalant for the Richmond Advanced Recycled Expansion facility for one year, beginning on or after May 24, 2022, with two options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$380,744.
6. **Motion No. 092-22** – Authorized an agreement beginning on or after May 24, 2022 with Pall Corporation in an amount not to exceed \$1,003,464 for the procurement and installation oversight of replacement microfiltration membrane modules at the East Bayshore Recycled Water Project and programming work at the Richmond Advanced Recycled Expansion facility.
- 7.1. **Motion No. 093-22** – Authorized an agreement beginning on or after May 24, 2022 with Guaranteed Plumbing in an amount not to exceed \$111,360 for installation of 36 pressure reducing valves to rezone customers located on Fernwood Court, Center Street and B Street in Hayward from the Bayview Pressure Zone to the higher Quarry Pressure Zone.
- 7.2. **Motion No. 094-22** – Authorized an agreement beginning on or after May 24, 2022 with Jackson & Son Plumbing in an amount not to exceed \$130,800 for installation of 46 pressure reducing valves to rezone customers located on Kelly Street and Wildwood Street in Hayward from the Bayview Pressure Zone to the higher Quarry Pressure Zone.
8. **Motion No. 095-22** – Authorized the Microsoft Unified Support agreement, which supersedes the Microsoft Premier Support agreement authorized under Board Motion No. 189-20 and extend the agreement term to January 23, 2023.
9. **Authorize an amendment to the contract previously awarded under Board Motion No. 069-21 with Cambridge Brass Inc., to increase the contract amount by \$485,820 to a total amount not to exceed \$821,765 for supplying 6-inch and 8-inch service clamps.**

Director Coleman asked about the need to increase the contract. General Manager Clifford C. Chan explained more District projects are using PVC pipe that require these clamps and the original contract underestimated the number needed. Director of Finance Sophia D. Skoda clarified supply chain issues and other factors impacted the District's ability to procure the clamps. Staff will work collaboratively to ensure there is an adequate supply of clamps going forward.

- Motion by Director Coleman, seconded by Director Patterson to approve the recommended actions for Item 9 carried (6-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (Mellon).

Motion No. 101-22 – Authorized an amendment to the contract previously awarded under Board Motion No. 069-21 with Cambridge Brass Inc., to increase the contract amount by \$485,820 to a total amount not to exceed \$821,765 for supplying 6-inch and 8-inch service clamps.

- 10a.- **Motion No. 096-22** – Authorized the General Manager to negotiate and execute a one-year water purchase and sale agreement (PSA) with Placer County Water Agency (PCWA) for the following: a) Purchase of up to 20,000 acre-feet (AF) of transfer water made available through reservoir reoperation (“Transfer”); b) Costs to include a purchase price of \$720 per AF for up to 20,000 AF, for a total maximum water purchase cost of up to \$14.4 million; and c) Reimbursement to PCWA for permitting and administrative expenses at a maximum of \$50,000. Authorized the General Manager to d) Negotiate and execute a companion Warren Act Contract with the U.S. Bureau of Reclamation (Reclamation) to set forth the terms and conditions of water moving through Folsom Reservoir and of the District’s use of the Folsom South Canal to deliver the transfer water to the East Bay and reimburse Reclamation’s fees and costs arising from the conveyance in an amount not to exceed \$900,000; and e) Negotiate and execute a companion Power Letter of Agreement with Reclamation, if needed, and to pay for the power bypass costs to Reclamation up to an estimated amount of \$200,000.
- 10e.
- 11.1.- **Motion No. 097-22** – Accepted a Proposition 1 Round One Integrated Regional Water Management Implementation Grant from the Department of Water Resources, made available through the Association of Bay Area Governments (ABAG), in the amount of \$4,177,875 to implement the Bay Area Regional Water Conservation Project (Regional Project) which will fund the water conservation projects of the East Bay Municipal Utility District (EBMUD) and 10 other Bay Area water agencies including customer rebates and outreach, training programs, device installation, and water loss analysis; authorized a Local Project Sponsor Agreement with ABAG which provides for disbursement of the Proposition 1 grant funding by ABAG to EBMUD for the implementation of the Regional Project; and authorized a Memorandum of Understanding with Alameda County Water District, Bay Area Water Supply and Conservation Agency, City of Napa, Contra Costa Water District, Marin Municipal Water District, Santa Clara Valley Water District, San Francisco Public Utilities Commission, Solano County Water Agency, Sonoma County Water Agency, and Zone 7 Water Agency which provides for disbursement of the Proposition 1 grant funding by EBMUD to those agencies for the implementation of each of their respective individual projects within the Regional Project.
- 11.2.
12. **Motion No. 098-22** – Approved the April 2022 Monthly Investment Transactions Report.
13. **Resolution No. 35290-22** – Adopting Revised Policy 4.07; Investment Policy and Renewing Existing Delegation of Authority for the Management of Investments on Behalf of East Bay Municipal Utility District and Its Joint Powers Authorities to the Director of Finance, as the Treasurer of the District.

DETERMINATION AND DISCUSSION

14. **Make requisite findings and adopt a resolution to hold meetings of the Board of Directors via teleconference under Government Code section 54953(e) until the State of Emergency resulting from the COVID-19 pandemic no longer impacts the ability of Board members to meet safely in person.**

Director of Operations and Maintenance David A. Briggs reported on COVID-19 positive cases in Alameda and Contra Costa counties and said the number of employee positive cases at the District is 547 to date. There have been no significant changes to COVID-19 regulations or guidelines and the District continues to use Alameda County’s more protective quarantine protocol. Weekly onsite testing for employees will continue for the next few weeks and District

safety protocols will be updated to reflect the latest California Department of Public Health recommendations and local health orders. The District is still requiring face coverings indoors but may lift this requirement when pandemic conditions improve and transition to off-site employee testing in June. General Manager Clifford C. Chan reviewed Section 54953(e) of the Ralph M. Brown Act and said the Board is being asked to consider adopting the resolution in light of the increase in COVID-19 positive cases in Bay Area counties and at the District and to for teleconferencing as an option for all Board meetings. If the Board adopts the resolution, Board members will have the option of attending the June 14 meetings in person; however, the public would only be allowed to participate in meetings via webinar or teleconference. In response to questions regarding legislation to revise the Ralph M. Brown Act, Manager of Legislative Affairs Marlaigne K. Dumaine reported several bills are being discussed and that there should be more information available in a couple of months. There was discussion on how other agencies are conducting hybrid meetings under AB 361. Staff was asked to provide information on how other public agencies are implementing AB 361 for their meetings.

- Motion by Director McIntosh, seconded by Director Patterson to approve the recommended actions for Item 14 carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young,); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35291-22 – Authorizing the Utilization of Teleconferencing for Meetings of the East Bay Municipal Utility District Board of Directors.

15. **Legislative Report.**

Manager of Legislative Affairs Marlaigne K. Dumaine discussed AB 2639 (Quirk) San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Water Quality Control Plan: Water Right Permits in Legislative Report No. 03-22. Staff presented the bill as a part of Legislative Report No. 02-22 on May 10 with a recommendation for the Board to consider approving a position of Oppose Unless Amended. AB 2639, as amended on April 19, 2022, would implement several recommendations from the February 2022 Planning and Conservation League report titled “Updating California Water Laws to Address Drought and Climate Change.” The bill as written could impact the District’s water rights and staff proposed amendments to the bill author to delete the hard deadline by which the State Water Resources Control Board (SWRCB) must adopt a final update to the Sacramento River portion of the Bay-Delta Plan and instead require it as soon as practicable, and also require the SWRCB to submit a report to the legislature by December 31, 2023 that details the progress on completion of the final update; delete the requirement that the SWRCB must implement the San Joaquin River/Southern Delta Plan through regulation or other appropriate implementation methods and instead require the SWRCB to release for public review any draft environmental review it has prepared in compliance with CEQA by December 31, 2023; and delete provisions that prohibit new water right permits from being approved if the SWRCB fails to meet the deadlines in the bill. At the May 10 meeting, the Board asked staff to continue to work with the bill author to seek amendments and to bring the measure back for reconsideration. Ms. Dumaine reported staff has reached out to the bill author and the author’s staff regarding the requested amendments with no progress to date. Director Coleman reported reaching out and receiving no response from the bill author. Ms. Dumaine said staff is again recommending the Board consider approving a position of Oppose Unless Amended for AB 2639. The Board asked staff to emphasize the reasons for the District’s position of Oppose Unless Amended in the District’s letter to the bill author.

- Motion by Director Coleman, seconded by Director McIntosh to approve the recommended actions for Item 15 carried (7-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Mellon, Patterson, and Young,); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 102-22 – Received Legislative Report No. 03-22 and approved a position on the following bill: OPPOSE UNLESS AMENDED AB 2639 (Quirk) San Francisco Bay/Sacramento-San Joaquin Delta Estuary: Water Quality Control Plan: Water Right Permits.

16. Appoint Manager of Distribution Maintenance and Construction.

General Manager Clifford C. Chan announced this item was being pulled from the agenda.

17. General Manager's Report.

Emergency Declaration Update – South Interceptor

Director of Wastewater Eileen M. White presented the update. On March 28, 2022, a contractor informed the District a portion of the 66-inch South Interceptor near the intersection of Kennedy Street and Dennison Street in Oakland had collapsed and formed a sinkhole. No regulatory violations resulted from the incident. Ms. White reviewed the incident location and photos of the damaged infrastructure, inspections, and repairs. Total contractor and District repair costs to date total \$2.51 million. Based on inspections of the interceptor, staff is developing a plan to prioritize repairs of the most impacted sections over the summer. Work on the Special Structures Rehabilitation Project which includes rehabilitation to portions of the interceptor is scheduled to commence in July. Ms. White acknowledged and thanked the team working on the repairs and responded to questions from the Board on whether staff has noticed a pattern where some areas of the interceptor are weaker than others and alternative methods for addressing corrosion control for wastewater.

REPORTS AND DIRECTOR COMMENTS

18. Committee Reports.

- Filed with the Board were the Minutes for the May 10, 2022 Planning and Legislative/Human Resources Committees.
- President Doug A. Linney reported the Board met earlier in the day in workshop session for updates on the Key Performance Indicators in the District's Strategic Plan, the Fiscal Years 2022 and 2023 Mid-Cycle Budget, and proposed Fiscal Year 2023 Rates, Charges, Fees, and Regulations not subject to Proposition 218.
- Finance/Administration Chair William B. Patterson reported the Committee met earlier in the day and received updates on the April 2022 Monthly Investment Transactions Report and the annual review of Policy 4.07 – Investment Policy.
- Los Vaqueros Reservoir JPA representative John A. Coleman reported the JPA met on May 11 to consider a resolution approving a letter of interest to apply for a loan under the Water Infrastructure Finance and Innovation Act, discuss the Fiscal Year 2023 budget, and review the JPA Board policy and action calendar.

- Dublin San Ramon Services District/EBMUD Recycled Water Authority (DERWA) representative Frank Mellon reported the JPA met on May 16 to discuss and consider approving minutes and Treasurer's reports; approving the Fiscal Year 2022-2023 Capital and Operating Expenditure Budget; approving the location, time, and place of regular DERWA Board meetings; approving the appointment of Jan Lee as Authority Manager; using DERWA resolutions for approval of Board actions; and an update on DSRSD's Tri-Valley residential fill station.

19. **Other Items for Future Consideration.**

None.

20. **Director Comments.**

- Director Coleman reported attending the following remotely: Los Vaqueros JPA Board meeting on May 11; DERWA Board meeting on May 16; and Castle Crest and Sydney Drive Community meeting on May 23. He reported on plans to attend the Los Vaqueros JPA Finance Committee meeting on May 26 (remote) and to present at the Real Estate Marketing Association meeting in Danville on June 2; the Alamo Rotary meeting in Alamo on June 8; the District Ward 2 briefing event in Lafayette on June 9; and a San Ramon City Council meeting in San Ramon on June 14.
- President Linney and Directors Katz, McIntosh, Mellon, Patterson and Young had no reports.

ADJOURNMENT

President Linney announced that each year the District honors its employees and retirees who have passed away in the last year. He adjourned the meeting in memory of District employees and retirees who passed away between May 17, 2021 and May 15, 2022. The names of these employees were displayed onscreen while the Board and staff observed a moment of silence.

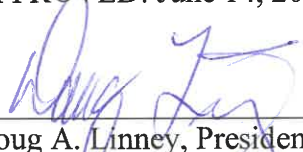
President Linney adjourned the meeting at 2:48 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: June 14, 2022



Doug A. Linney, President of the Board