

## **MINUTES**

**Tuesday, July 12, 2022**  
**East Bay Municipal Utility District**  
**Board of Directors**  
***\*Virtual\****

### **Regular Closed Session Meeting**

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:01 a.m. and announced in accordance with Government Code section 54953(e), this meeting was being conducted by webinar and teleconference only. A physical location was not provided for this meeting.

### **ROLL CALL**

Directors John A. Coleman, Frank Mellon, Marguerite Young, William B. Patterson, and President Doug A. Linney were present at roll call. Director Andy Katz arrived at 11:06 a.m. and Director Lesa R. McIntosh arrived at 12:20 p.m. (excused).

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Workers Compensation Manager/Risk Specialist Penny Terry (Item 1a), Assistant General Counsel Lourdes M. Matthew (Item 1b) and Principal Management Analyst Valerie R. Weekly (Item 1a). Director John A. Coleman recused himself from Item 1b. Director Lesa R. McIntosh was not present for Items 1a and 1b.

### **PUBLIC COMMENT**

There was no public comment.

### **ANNOUNCEMENT OF CLOSED SESSION AGENDA**

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

### **Regular Business Meeting**

At 12:57 p.m., General Manager Clifford C. Chan informed Secretary of the District Rischa S. Cole that due to an extended Closed Session Meeting, the Regular Business Meeting would start at 1:30 p.m. At 1:26 p.m., General Manager Chan informed the Secretary the Regular Business Meeting would start at 1:45 p.m. President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:46 p.m. and announced in accordance with Government Code section 54953(e), this meeting was being 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, Marguerite Young, William B. Patterson, 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.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

## **PUBLIC COMMENT**

There was no public comment.

## **CONSENT CALENDAR**

- Item 1 was pulled from the Consent Calendar for separate discussion.
- Motion by Director McIntosh, seconded by Director Coleman to approve the recommended actions for Items 2-8 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 June 28, 2022.**

Director Patterson requested corrections to his Director comments regarding the June 19 event at Defremery Park.

- Motion by Director Patterson, seconded by Director Mellon 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. 141-22** – Approved the Regular Meeting minutes of June 28, 2022 with corrections.

- ### **2.**
- The following correspondence was filed with the Board: **1)** Presentation entitled, “Wet Weather Facilities Charge on 2022-2023 Property Tax Rolls,” dated July 12, 2022; **2)** Affidavit of Posting Notice of Time and Place of a Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager Revisions to Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject Proposition 218, and Regulations for Fiscal Year 2023, dated July 19, 2022; **3)** Amador Ledger Dispatch Proof of Publication of Notice of the Time and Place of a Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager Revisions to Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject Proposition 218, and Regulations for Fiscal Year 2023 (No. W377 published May 20 and May 27, 2022); **4)** Calaveras Enterprise Proof of Publication of Notice of the Time and Place of a Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager Revisions to Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject Proposition 218, and Regulations for Fiscal Year 2023 (published May 19 and May 26, 2022); **5)** Lodi News-Sentinel Proof of Publication of Notice of the Time and Place of a Public

Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager Revisions to Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject Proposition 218, and Regulations for Fiscal Year 2023 (No. 201043 published May 20 and May 27, 2022); 6) The Record Proof of Publication of Notice of the Time and Place of a Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager Revisions to Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject Proposition 218, and Regulations for Fiscal Year 2023 (published May 20 and May 27, 2022); 7) Contra Costa Times Proof of Publication of Notice of the Time and Place of a Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager Revisions to Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject Proposition 218, and Regulations for Fiscal Year 2023 (Legal No. 0006669741 published May 20 and May 27, 2022); 8) Oakland Tribune Proof of Publication of Notice of the Time and Place of a Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager Revisions to Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject Proposition 218, and Regulations for Fiscal Year 2023 (Legal No. 0006669741 published May 20 and May 27, 2022); 9) West County Times Proof of Publication of Notice of the Time and Place of a Public Hearing on the East Bay Municipal Utility District Report and Recommendation of the General Manager Revisions to Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject Proposition 218, and Regulations for Fiscal Year 2023 (Legal No. 0006669741 published May 20 and May 27, 2022); 10) Affidavit of Posting of Notice of the Time and Place of a Public Hearing of the East Bay Municipal Utility District on the Collection by East Bay Municipal Utility District of Unpaid Delinquent Charges Through Property Tax Bills for Multi-Family Accounts and Filing Report, dated July 19, 2022; 11) Oakland Tribune Proof of Publication of Notice of the Time and Place of a Public Hearing of the East Bay Municipal Utility District on the Collection by East Bay Municipal Utility District of Unpaid Delinquent Charges Through Property Tax Bills for Multi-Family Accounts and Filing Report (Legal No. 0006676464 published June 17 and June 24, 2022); 12) Affidavit of Posting of Notice of the Time and Place of a Public Hearing of the East Bay Municipal Utility District to Consider a Resolution Ordering the Wet Weather Facilities Charge to be Collected on the Property Tax Roll, dated July 19, 2022; 13) Oakland Tribune Proof of Publication of Notice of the Time and Place of a Public Hearing of the East Bay Municipal Utility District to Consider a Resolution Ordering the Wet Weather Facilities Charge to be Collected on the Property Tax Roll (Legal No. 0006676456 published June 17 and June 24, 2022); and 14) West County Times Proof of Publication of Notice of the Time and Place of a Public Hearing of the East Bay Municipal Utility District to Consider a Resolution Ordering the Wet Weather Facilities Charge to be Collected on the Property Tax Roll (Legal No. 0006676456 published June 17 and June 24, 2022).

3. **Motion No. 137-22** – Authorized an agreement beginning on or after July 12, 2022 with Mott MacDonald Group, Inc. in an amount not to exceed \$3,162,061 for geotechnical engineering, environmental permitting, and trenchless design and construction inspection services for the San Leandro Channel Pipeline Crossing.
4. **Motion No. 138-22** – Authorized an agreement beginning on or after July 12, 2022 with Network Environmental Systems, Inc. in an amount not to exceed \$174,982 for Mokelumne Aqueduct No. 1 coating characterization services.

- 5a-b. **Motion No. 139-22** – Authorized amendments to the agreements previously authorized under Board Motion No. 116-21, with Bay Line Cutting & Coring, Inc., Concrete Demo Works, Inc., Concrete Wall Sawing Co., Inc., Fine Line Sawing and Drilling, Inc., and Penhall Company to increase the aggregate amount of those agreements by \$765,000 to a total aggregate amount not to exceed \$1,615,000 and extend term of the agreements to July 12, 2023 for asphaltic cement and concrete saw cutting services; and authorized additional agreements for asphaltic cement and concrete saw cutting 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.
6. **Motion No. 140-22** – Approved the assignment of an agreement previously authorized under Board Motion No. 148-20 from Innovyze Inc. to Innovyze LLC, a subsidiary of Autodesk, Inc., for hydraulic modeling software maintenance and support.
7. **Resolution No. 35301-22** – Authorizing An Application To The United States Bureau Of Reclamation For A Watersmart Water And Energy Efficiency Grant For Fiscal Year 2023 And Designating An Authorized Presentative To Execute A Grant Agreement.
8. **Resolution No. 35302-22** – Adopting Revised Policy 6.04, Ethics Of The EBMUD Board Of Directors.

## **PUBLIC HEARING**

- 9.1. **Conduct a public hearing to consider objections and protests to the General Manager's report to Transfer Delinquent EBMUD Charges to the Alameda County 2022-2023 Property Tax Roll.**

President Linney opened the public hearing at 1:50 p.m. He announced the hearing is to consider objections and protests to the General Manager's report to Transfer Delinquent EBMUD Charges to the 2022-2023 Property Tax Roll. He reviewed the processes for commenting, objecting to, or protesting the charges as well as for seeking assistance from staff. He asked if there was anyone participating via webinar or teleconference to lodge an objection or protest to the actions being considered by the Board. There was no one online to lodge an objection or protest. President Linney asked for a motion to close the public hearing and closed the public hearing at 1:51 p.m.

- Motion by Director Patterson, seconded by Director Katz to close the public hearing 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. 142-22** – Conducted a public hearing to consider objections and protests to the General Manager's report to Transfer Delinquent EBMUD Charges to the 2022-2023 Property Tax Roll.

- 9.2. **Adopt the General Manager's report dated June 14, 2022 and authorize the General Manager to exclude from the report any affected parcels or amounts as appropriate, including those that the District receives payment for on or before August 10, 2022, the date in which the report will be sent to Alameda County.**

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

**Resolution No. 35303-22 – Approving Transfer Of Unpaid Delinquent Charges To The Alameda County 2022-2023 Property Tax Roll.**

## **PUBLIC HEARING**

- 10.1. Conduct a public hearing to consider objections and protests to EBMUD's written report describing each parcel of real property subject to the Wet Weather Facilities Charge (WWFC) and amount of the WWFC to be imposed on each parcel for the counties' Fiscal Year (FY) 2022-2023 Property Tax Rolls.**

President Linney opened the public hearing at 1:53 p.m. He announced the hearing is to consider objections and protests to EBMUD's written report describing each parcel of real property subject to the WWFC and amount of the charge to be imposed on each parcel for the Alameda and Contra Costa counties' 2022-2023 Property Tax Rolls.

Manager of Wastewater Engineering Douglas Y. Higashi provided the presentation which included an overview of the District's wastewater collection system and treatment processes and explained the WWFC funds capital expenses for the District's inflow and infiltration facilities (including wet weather facilities, interceptors, pumping stations and storage basins). For 2022-2023, the WWFC totals approximately \$30.7 million and represents 20 percent of total revenue for the Wastewater System. Mr. Higashi reviewed the procedural requirements in the State's Health and Safety Code (H&SC) that authorize the District to collect the WWFC on the counties' property tax rolls. In compliance with H&SC section 5473, staff filed a report with the Secretary of the District on June 9, 2022 that contains the parcel number and amount of the charge for each parcel. Mr. Higashi discussed how the WWFC is structured into three generalized lot sizes (or bins) and said for FY 2022-2023, the amount charged by lot size is: \$125.16 for lots of 0 to 5,000 square feet (sq. ft.); \$195.50 for lots 5,001 to 10,000 sq. ft. (the report filed with the Secretary on June 9, 2022 listed \$195.60); and \$446.80 for lots over 10,000 sq. ft. In accordance with California Government Code section 6066, the District published notices of the public hearing in the Oakland Tribune and West County Times on June 17 and June 24. Mr. Higashi said staff is recommending the Board consider approving the actions outlined in agenda Items 10.2a-10.2d. If approved (by two-thirds of the members of the Board as outlined in the H&SC), the Secretary of the District will file a copy of the report with the auditors of Alameda and Contra Costa counties on or before August 10. President Linney called for Board questions. Director of Finance Sophia D. Skoda responded to questions on whether the District will cease collecting the WWFC once the District meets all conditions under the U.S. Environmental Protection Agency Wet Weather Consent Decree. Next, President Linney called for public comment. There was no public comment. President Linney announced the District did not receive any protests to the written report, asked for a motion to close the public hearing, and closed the public hearing at 2:03 p.m.

- Motion by Director Coleman, seconded by Director Young to close the public hearing 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. 143-22** – Conducted a public hearing to consider objections and protests to EBMUD’s written report describing each parcel of real property subject to the Wet Weather Facilities Charge (WWFC) and amount of the WWFC to be imposed on each parcel for the counties’ Fiscal Year 2022-2023 Property Tax Rolls.

10.2a- **Adopt the written report describing each parcel of real property subject to the Wet**  
10.2d **Weather Facilities Charge (WWFC) and amount of the WWFC to be imposed on each parcel for the counties’ Fiscal Year (FY) 2022-2023 Property Tax Rolls by at least two-thirds of the members of the Board (i.e., five Board members); authorize the District to collect the FY 2023 WWFC on the property tax rolls of Alameda and Contra Costa counties; authorize District staff to adjust the FY 2023 WWFC for any affected parcels as new information is provided by the counties; and direct the Secretary of the District to file a copy of the Report on or before August 10, 2022, with the Alameda County Auditor and the Contra Costa County Auditor.**

- Motion by Director Young, seconded by Director Patterson to approve the recommended actions for Items 10.2a – 10.2d carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35304-22** – Adopting The Report Of The East Bay Municipal Utility District Wet Weather Facilities Charge And Directing The Secretary To File Said Report With The Alameda County Auditor And The Contra Costa County Auditor And To Request The Auditors To Place The Fiscal Year 2023 Wet Weather Facilities Charge On the Property Tax Rolls.

## **DETERMINATION AND DISCUSSION**

### **11. Legislative Update.**

Special Assistant Debra L. Michel provided an overview of two bills for Board consideration in Legislative Report No. 05-22. A prior version of SB 222 (Dodd) Water Rate Assistance Program (Program) was considered by the Board on July 13, 2021. At that time, the Board adopted a “Support if Amended” position with amendments to clarify that the obligations of the water system’s role in the Program are limited to applying program funds to eligible low-income customer accounts and to address Proposition 218 concerns. Amendments were secured and reflected in the August 30, 2021 version of the bill and EBMUD moved to a full “Support” position. The bill was substantially amended on June 23, 2022 and recast in such a manner that EBMUD’s concerns are no longer addressed. Staff is recommending a change in position back to “Support if Amended.” SB 1063 (Skinner) Energy: Appliance Standards and Cost-effective Measures as amended on June 20, 2022, would authorize the Energy Commission to make energy- and water-efficiency standards for appliances effective sooner than one year after adoption or revision if the Energy Commission adopts a finding of good cause. Staff is recommending a position of “Support.” Legislative/Human Resources Committee member John A. Coleman reported the Committee met earlier and supported the staff recommendations for both bills. There was discussion regarding the requested amendments and staff recommendation for SB 222. The Board asked staff to convey its concern regarding the August 30, 2021 amendments to SB 222 and potential issues with Propositions 218 and 26.

Next, Ms. Michel provide an update on the state budget and reported Congresswoman Barbara Lee is advancing a \$4.2 million funding request on behalf of the District for a water recycling project that would tie into the District's East Bayshore Recycled Water Project.

- Motion by Director Coleman, seconded by Director Patterson to approve the recommended actions for SB 222 carried (7-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
- Motion by Director Coleman, seconded by Director Patterson to approve the recommended actions for SB 1063 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. 144-22** – Received Legislative Report No. 05-22 and approved positions on the following bills: 1) SUPPORT IF AMENDED SB 222 (Dodd) Water Rate Assistance Program; and 2) SUPPORT SB 1063 (Skinner) Energy: Appliance Standards and Cost-Effective Measures.

12. **Make requisite findings and adopt a resolution to continue to hold meetings of the Board of Directors (Board) 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.**

General Manager Clifford C. Chan reported the number of COVID-19 positive cases in the service area remain high and provided an update on the number of District employee positive cases to date. The Board is being asked to adopt the resolution to continue providing flexibility for conducting Board meetings in light of the uptick in positive cases.

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

**Resolution No. 35305-22** – Authorizing The Utilization Of Teleconferencing For Meetings Of The East Bay Municipal Utility District Board Of Directors.

13. **Appoint Board members to serve on an ad hoc committee to negotiate amendments to the employment agreements with the General Manager and the General Counsel.**

Acting Director of Human Resources Vincent L. James stated a Board-appointed ad hoc committee would be responsible for negotiating amendments to the employment agreements with the General Manager and General Counsel. President Linney announced he would serve on the ad hoc committee and asked for two additional Board members. Directors Katz and Young agreed to serve on the committee.

- Motion by President Linney, seconded by Director Patterson to appoint President Doug A. Linney, and Directors Andy Katz and Marguerite Young to the Ad Hoc Committee 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. 145-22** – Appointed President Doug A. Linney, and Directors Andy Katz and Marguerite Young to the Ad Hoc Committee to negotiate amendments to the employment agreements with the General Manager and General Counsel based on their 2022 performance evaluations.

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

General Manager Clifford C. Chan announced the June 2022 Monthly Report had been provided in the meeting materials and responded to a question on the District's water savings to date.

**REPORTS AND DIRECTOR COMMENTS**

**15. Committee Reports.**

- Filed with the Board were the Minutes for the June 28, 2022 Finance/Administration Committee.
- Planning Committee Chair Marguerite Young reported the Committee met earlier in the day and received updates on the Pipeline Rebuild Program; Lead Sampling in Schools; and the Regulatory Compliance Semi-Annual Report – January through June 2022.
- Legislative/Human Resources Committee member John A. Coleman reported Committee met earlier in the day and received updates on Legislative Report No. 05-22 and the Diversity, Equity, and Inclusion Strategic Plan.

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

None.

**17. Director Comments.**

- Director Coleman reported attending the following: San Ramon City Council meeting in San Ramon on June 14; East Bay Leadership Council Water Task Force meeting on June 21 (remote); Los Vaqueros Reservoir JPA Finance Committee meeting on June 23 (remote); UMRWA Ad Hoc JPA Review meeting on July 6 (remote); and Pleasant Hill City Council meeting on July 11 (remote). He reported on plans to attend the Los Vaqueros Reservoir JPA Board meeting on July 13 (remote); Los Vaqueros Reservoir JPA Finance Committee meeting on July 28 (remote) and Los Vaqueros Reservoir JPA Board meeting on August 10 (remote). Director Coleman acknowledged Community Affairs Representative Kathryn Horn for assisting with the presentation to the Pleasant Hill City Council and commented on the Watch Duty app which provides real-time push notifications about wildfires in California.
- Director Young reported John Silva with Give Back Adventures completed the Mokelumne River Source to the Sea Multi-Sport Expedition two weeks ago and announced that on June 30, Nina Gordon-Kirsch began a 240-mile walk from her home in Oakland to the headwaters of the Mokelumne River. Director Young asked staff to provide the hyperlinks to Gordon-Kirsch's website and social media pages to Board members and to have District staff make contact with Gordon-Kirsch for a potential tour of the Mokelumne River Fish Hatchery. She also asked staff to reach out to Silva and Gordon-Kirsch to explore ideas on how the District can share their journeys with customers.



- President Linney reported participating in the Alameda 4<sup>th</sup> of July Parade and thanked Heavy Transport Operator Jerry Ryan for driving and staff for the posters and decorations for the truck. He also reported participating in a tour of the Demonstration Recharge, Extraction and Aquifer Management (DREAM) Project in Lokeford on July 6.
- Directors Katz, McIntosh, Mellon and Patterson had no reports.

### **ADJOURNMENT**

President Linney announced today's meeting would be adjourned in honor of Elizabeth Creer-Johnson, founder and operator of Liz and Company Salon in Oakland. Ms. Creer-Johnson passed away on May 29. Director Patterson recounted Ms. Creer-Johnson's career, contributions to the NAACP Oakland Branch and the Bay Area community, as well as her many years of support for his various endeavors including his role on the EBMUD Board.

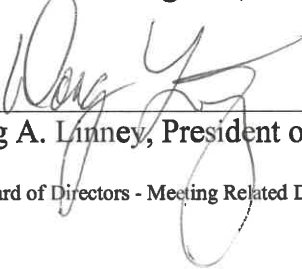
President Linney adjourned the meeting at 2:45 p.m. in honor of Elizabeth Creer-Johnson.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: August 9, 2022



Doug A. Linney, President of the Board