

## **MINUTES**

**Tuesday, August 23, 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 11:05 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, 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, Director of Operations and Maintenance David A. Briggs (Items 1 and 2a); Manager of Regulatory Compliance David M. Woodard (Item 1); Manager of Security and Emergency Preparedness David M. Cook (Item 1); Secretary of the District Rischa S. Cole (Item 1); Assistant General Counsel Fred S. Etheridge (Item 2a); Assistant General Counsel Jon D. Salmon (Item 2a); and Director of Water and Natural Resources Michael T. Tognolini (Item 2a).

General Manager Clifford C. Chan and General Counsel Derek T. McDonald were not present for Item 3.

### **PUBLIC COMMENT**

- Addressing the Board was Ivette Rivera who commented on the Mirsad Hajro and Saji Pierce/Ayriel Bland lawsuits filed against the District and said she would submit documents to the Board regarding these cases.

### **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 1:15 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, 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.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

## **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Kelly A. commented on EBMUD's Excessive Water Use Penalty Ordinance notices to customers and the release of excessive users' information under the Public Records Act; 2) Ivette Rivera commented on Director Coleman's reappointment to the Board, his lawsuit against the District, and documents submitted to the Board regarding the Mirsad Hajro and Saji Pierce/Ayriel Bland lawsuits; and 3) George Cleveland, Chief Steward, AFSCME Local 2019 commented on redacted Statement of Grievance forms being subject to the Public Records Act (PRA) and asked staff to re-consider providing these documents under the PRA.

## **CONSENT CALENDAR**

- Item 3 and Item 6 were pulled from the Consent Calendar for separate discussion.
  - Motion by Director McIntosh, seconded by Director Young to approve the recommended actions for Items 1, 2, 4, 5, 7 and 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. **Motion No. 156-22** – Approved the Regular Meeting minutes of August 9, 2022.
  2. The following correspondence was filed with the Board: **1)** Presentation entitled, "Resolution Continuing Virtual Meetings of the Board," dated August 23, 2022; **2)** Affidavit of Posting of Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District (July 12), dated August 19, 2022; **3)** Affidavit of Posting of Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District \*Rescheduled\* (August 9), dated August 19, 2022; **4)** Affidavit of Posting of Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District (August 9), dated August 19, 2022; **5)** West County Times Proof of Publication Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District (July 12) (Legal No. 0006680962 published July 1 and July 8, 2022); **6)** Contra Costa Times Proof of Publication Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District (July 12) (Legal No. 0006680962 published July 1 and July 8, 2022); **7)** Oakland Tribune Proof of Publication Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District (July 12) (Legal No. 0006680962 published July 1 and July 8, 2022); **8)** Oakland Tribune Proof of Publication Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District (August 9) (Legal No. 0006687224 published July 29 and August 5, 2022); **9)** Contra Costa Times Proof of Publication Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District (August 9) (Legal No. 0006687224 published July 29 and August 5, 2022); **10)** West County Times Proof of Publication Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District (August 9) (Legal No. 0006687224 published July 29 and August 5, 2022) **11)** Oakland Tribune

Proof of Publication Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District \*Rescheduled\* (August 9) (Legal No. 0006682127 published July 8, 2022); **12) Contra Costa Times** Proof of Publication Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District \*Rescheduled\* (August 9) (Legal No. 0006682127 published July 8, 2022); **13) West County Times** Proof of Publication Notice of Public Hearing Public Health Goal Report East Bay Municipal Utility District \*Rescheduled\* (August 9) (Legal No. 0006682127 published July 8, 2022); **14) *Hajro vs. EBMUD*** Motion for Summary Judgement Reply Brief filed 09/14/21; **15) *Hajro vs. EBMUD*** Motion to Dismiss filed 08/17/21; **16) *Hajro vs. EBMUD*** Amended Complaint filed 06/14/19; **17) *Pierce and Bland vs. EBMUD*** Joint Further Case Management Statement filed 08/11/22; **18) *Pierce and Bland vs. EBMUD*** Case Management Conference Minute Entry, dated August 12, 2022; and **19) Speakers' Bureau and Outreach Record CY22** dated August 23, 2022.

3. **Authorize an agreement beginning on or after August 23, 2022 with Bradley Tanks, Inc. for five years in an amount not to exceed \$7,946,496 for slurry waste management services.**

Addressing the Board was Eric Larsen, President, AFSCME Local 444 who commented the union objects to contracting out slurry waste management services and demanded the District bargain with the union over regular and routine union work. He asked the Board to reject the agreement. Manager of Maintenance and Construction/Water Operations Michael A. Ambrose and General Manager Clifford C. Chan discussed the recommendation to contract for these services. There was considerable Board discussion and staff was asked to evaluate the District's long-term approach for slurry waste management and provide an update to the Board at a future meeting. The Board also asked staff to begin discussions with other General Managers on potential regional efforts to address slurry waste management.

- Motion by Director Mellon, seconded by Director Coleman to approve the recommended actions for Item 3 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. 161-22** – Authorized an agreement beginning on or after August 23, 2022 with Bradley Tanks, Inc. for five years in an amount not to exceed \$7,946,496 for slurry waste management services.

4. **Motion No. 157-22** – Authorized a second amendment to the agreement previously authorized under Board Motion No. 203-19 with Brown and Caldwell to increase the agreement amount by \$898,170, to a total amount not to exceed \$1,973,161, for additional engineering and construction support services for the San Pablo Reservoir Hypolimnetic Oxygenation System (HOS) Project and urgent needs of other construction projects.

Regarding Agenda Items 4 and 5, Director Coleman commented that during the Annual Internal Audit Report at the Finance/Administration Committee meeting earlier in the day, staff was asked to provide information to the Board explaining increases to budgeted operating and capital costs as a result of inflation and/or supply chain challenges. General Manager Clifford C. Chan advised staff will provide this information in an upcoming semi-annual budget performance report.

5. **Motion No. 158-22** – Authorized amendments to the contracts previously awarded under Board Motion No. 123-17, with Univar USA Inc. and Olin Corporation to increase the aggregate amount of those contracts, after the addition of taxes, by \$7,836,290 to a total aggregate amount

not to exceed \$29,454,838 and extend the term of the contracts to July 31, 2023 for supplying liquid sodium hypochlorite for water and wastewater.

- 6a-6b. **Authorize amendments to the agreements previously authorized under Board Motion No. 150-21, with the following service providers to increase the aggregate amount of those agreements by \$4,900,000 to a total aggregate amount not to exceed \$19,150,000 and extend the terms of the agreements to August 23, 2023 for dump truck services: Allied Materials, Inc.; Channa Trucking; CIA Trucking; Curbside Trucking LLC; Darrah Trucking & Excavating, Inc.; E.M. Blair Trucking; Gloria Washington Trucking, Inc.; Hills Trucking; Ibarra Trucking; Inder Trucking; Jackson Transportation; JD Trucking Company; Just Because Trucking Inc.; Mae Trucking; Sky Rock, Inc.; S.M.G. Trucking; Sudden Sam's Trucking; Sunny Motors Transport, Inc.; Royal Trucking/Maintenance; S&L Enterprises; S&L Trucking LLC; Tom Aiken General Engineering; Tri Valley Water Trucks, Inc; and Wide Area, Inc.; and authorize additional agreements for dump truck 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 above service providers 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.**

Addressing the Board was Eric Larsen, President, AFSCME Local 444 who commented the union objects to contracting out dump truck services and to the staff recommendation to increase the aggregate agreements by \$4.9 million. General Manager Clifford C. Chan explained overall dump truck service usage is lower than in previous years and is projected to decrease further once a local haul site is developed. He reported agreement cost drivers include a 25 percent increase in hourly driver rates. There was Board discussion and staff was asked to provide information on whether any of the service providers listed in the staff report belong to a union.

- Motion by Director Coleman, seconded by Director Mellon to approve the recommended actions for Items 6a-6b 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. 162-22** – Authorized amendments to the agreements previously authorized under Board Motion No. 150-21, with the following service providers to increase the aggregate amount of those agreements by \$4,900,000 to a total aggregate amount not to exceed \$19,150,000 and extend the terms of the agreements to August 23, 2023 for dump truck services: Allied Materials, Inc.; Channa Trucking; CIA Trucking; Curbside Trucking LLC; Darrah Trucking & Excavating, Inc.; E.M. Blair Trucking; Gloria Washington Trucking, Inc.; Hills Trucking; Ibarra Trucking; Inder Trucking; Jackson Transportation; JD Trucking Company; Just Because Trucking Inc.; Mae Trucking; Sky Rock, Inc.; S.M.G. Trucking; Sudden Sam's Trucking; Sunny Motors Transport, Inc.; Royal Trucking/Maintenance; S&L Enterprises; S&L Trucking LLC; Tom Aiken General Engineering; Tri Valley Water Trucks, Inc; and Wide Area, Inc.; and authorized additional agreements for dump truck 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 above service providers 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.

7. **Motion No. 159-22** – 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 \$150,000.

8. **Motion No. 160-22** – Approved the June and July 2022 Monthly Investment Transactions Reports.

### **DETERMINATION AND DISCUSSION**

9. **Appoint Chief Information Officer.**

General Manager Clifford C. Chan announced Orlando Leon as the candidate for appointment to the position of Chief Information Officer and highlighted Mr. Leon's education and experience.

- Motion by Director Young, 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 (Mellon); ABSENT (None).

**Resolution No. 35308-22** – Appointing Orlando Leon As Chief Information Officer (*effective August 29, 2022*).

The Board welcomed Mr. Leon to the District. Mr. Leon thanked the Board, shared additional information regarding his background and said he is excited to join the District.

10. **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.**

Director of Operations and Maintenance David A. Briggs reviewed COVID-19 positive cases in Alameda and Contra Costa counties and the number of employee positive COVID-19 cases (908) as of last week. He reported on updated safety protocols from the California Department of Public Health (CDPH) regarding quarantine requirements and advised the District lifted outdoor masking requirements on August 15 but is still requiring indoor masking. On-site testing for employees was suspended on July 5 and contact tracing is no longer being conducted for outdoor exposure (not considered "close contact"). All other District safety protocols remain in effect. As of this report, staff has reported some supply chain issues but no significant operational impacts. Staff will update District safety protocols to reflect the latest CDPH recommendations, Cal/OSHA requirements, and local health orders and will explore lifting indoor masking requirements for all staff when pandemic conditions improve. Contact tracing will continue as required. Mr. Briggs reviewed Section 54953(e) of the Ralph M. Brown Act and said the Board is being asked to consider adopting the resolution to continue providing flexibility for conducting Board meetings. The Board requested clarification on the type of mask employees are required to wear if they are returning to work after testing positive for COVID-19.

- Director Young left the room at 2:20 p.m. and returned at 2:21 p.m.

- Motion by Director Coleman, seconded by Director Patterson to approve the recommended actions for Item 10 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. 35309-22** – Authorizing The Utilization Of Teleconferencing For Meetings Of The East Bay Municipal Utility District Board Of Directors.

11. **Authorize an amendment to the Agreement for Employment of General Manager Clifford C. Chan, to provide for a merit pay increase of ten percent to the base salary and to extend the agreement for an additional three-year term, effective August 29, 2022.**

President Linney announced that pursuant to Section 54953(c)(3) of the Government Code, the Board of Directors is providing an oral report prior to taking action on Agenda Item 11 regarding the salary, salary schedule and compensation paid in the form of fringe benefits to the General Manager. In accordance with the employment agreement with the General Manager, the Board may authorize base salary increases to the General Manager based on annual performance evaluations conducted by the Board. As such, it is recommended that the General Manager receive a ten percent increase in his base salary and an extension of three years to his agreement term, effective August 29, 2022.

- Director Young left the room at 2:22 p.m. and returned at 2:23 p.m.
- Director Mellon left the room at 2:22 p.m. and returned at 2:25 p.m.
- Motion by Director Patterson, seconded by Director McIntosh to approve the recommended actions for Item 11 carried (5-0) by the following voice vote: AYES (Katz, McIntosh, Patterson, Young, and Linney); NOES (None); ABSTAIN (Coleman); ABSENT (Mellon).

**Resolution No. 35310-22** – Authorizing First Amendment To General Manager Employment Agreement.

12. **Take action pursuant to Assembly Bill 408 (AB 408), codified as Municipal Utility District (MUD) Act section 11852.5, to either: 1) appoint the sole candidates running for election in Ward Nos. 2 and 4; or 2) proceed with the election in each of those wards.**

President Linney announced AB 408 codified as MUD Act section 11852.5 allows the Board to appoint a sole unopposed candidate or to proceed with an election. Appointing unopposed candidates saves the District and its ratepayer the cost of holding elections. The District received confirmation from elections officials in Alameda and Contra Costa counties that John A. Coleman, Director in Ward No. 2, and Andy Katz, Director in Ward No. 4, were the sole candidates to submit qualified nomination papers for their respective wards during the election nomination period. Accordingly, the Board is being asked to consider either appointing Directors Coleman and Katz for four-year terms beginning January 1, 2023 through December 31, 2026 or holding elections in Ward No. 2 and Ward No. 4.

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

**Resolution No. 35311-22** – Appointing John A. Coleman To The Board of Directors Of The East Bay Municipal Utility District.

**Resolution No. 35312-22** – Appointing Andy Katz To The Board of Directors Of The East Bay Municipal Utility District.

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

None.

**REPORTS AND DIRECTOR COMMENTS**

**14. Committee Reports.**

- Filed with the Board were the Minutes for the August 9, 2022 Planning and Legislative/Human Resources Committees.
- Upper Mokelumne River Watershed Authority (UMRWA) representative John A. Coleman reported the Board met on July 22, 2022 and discussed the Second Quarter FY 2022 Treasurer's Report; possible action regarding Pardee Reservoir Water Quality Monitoring; consulting agreements for UMRWA Support Personnel; and possible action regarding the status of the Integrated Regional Water Management Grant Applications. Director Coleman also reported he is also participating on an UMRWA Ad Hoc Committee that is reviewing the UMRWA Joint Powers Agreement.
- Los Vaqueros Joint Powers Authority representative Lesa R. McIntosh reported the Board met on August 10, 2022 and voted to continue conducting meetings in accordance with Section 54953(e) of the Ralph M. Brown Act and interviewed a candidate for Executive Director.
- Finance/Administration Committee Chair William B. Patterson reported the Committee met earlier in the day and received updates on the Monthly Investment Transactions Reports for June and July 2022; Quarterly Financial Reports; Foreign-Owned Business Policy; Annual Internal Audit Report; and Applicant Project Process Improvements.

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

None.

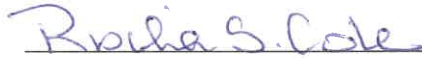
**16. Director Comments.**

- Director Coleman reported on plans to attend the following: speaking at Lafayette Rotary Club meeting in Lafayette on August 25; Los Vaqueros Reservoir JPA Board meeting on September 14 (remote); East Bay Leadership Council Board meeting on September 16 (remote); UMRWA Ad Hoc Committee meeting on September 19 (remote); meeting with Diablo Country Club in Diablo on September 20; DERWA Board meeting on September 26 (remote); and speaking at Alamo Rotary and Alamo Improvement Association meetings in Alamo on September 28.
- Director Mellon left the meeting at 2:31 p.m.
- Directors Katz, McIntosh, Mellon, Patterson, Young, and President Linney had no reports.

**ADJOURNMENT**

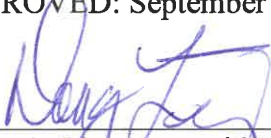
President Linney adjourned the meeting at 2:32 p.m.

SUBMITTED BY:



\_\_\_\_\_  
Rischa S. Cole, Secretary of the District

APPROVED: September 13, 2022



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Doug A. Linney, President of the Board

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