

## **MINUTES**

**Tuesday, September 13, 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 11:00 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, Attorney Felicity L. Grisham (Items 1 and 2); Director of Water and Natural Resources Michael T. Tognolini (Items 1 and 2); Manager of Risk Management Vladimir Bessarabov (Items 1 and 2); Assistant General Counsel Lourdes M. Matthew (Item 3); Director of Operations and Maintenance David A. Briggs (Item 3); and Director of Human Resources Cindy R. Charan (Item 3).

### **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Kelly A. commented on lawsuits filed against EBMUD and a Brown Act violation regarding public comment during the Planning Committee meeting earlier in the day; and 2) Ivette Rivera commented on the August 18, 2022 information memo from General Counsel Derek McDonald to the Board of Directors regarding disclosure of employee records and complaints under the California Public Records Act and on "The Right to Know: A Guide to Public Access and Media Law" publication.

General Counsel Derek T. McDonald clarified Kelly A. had been afforded the opportunity to comment on Agenda Item 1 during the Planning Committee in response to Kelly A's comment regarding a Brown Act violation.

### **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) Ivette Rivera commented on the August 18, 2022 information memo from General Counsel Derek McDonald to the Board of Directors regarding disclosure of employee records and complaints under the California Public Records Act (CPRA); the District's decision to release records requested under the CPRA; and "The Right to Know: A Guide to Public Access and Media Law" publication.

## **CONSENT CALENDAR**

- Motion by Director Patterson, seconded by Director Mellon to approve the recommended actions for Items 1-9 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. 163-22** – Approved the Regular Meeting minutes of August 23, 2022.
  2. The following correspondence was filed with the Board: **1)** Presentation entitled, "Resolution Continuing Virtual Meetings of the Board," dated September 13, 2022; **2)** Presentation entitled, "Drought Update," dated September 13, 2022; **3)** Speakers' Bureau and CY 2023 Record dated September 2, 2022; and **4)** Screenshot of cover of the publication "The Right to Know: A Guide to Public Access and Media Law."
  3. **Motion No. 164-22** – Awarded a contract to the lowest responsive/responsible bidder, Trace3, LLC, for supplying computer data storage equipment, installation, and maintenance support for the Administration Building's Data Center for three years, beginning on or after September 13, 2022, for a total cost, after the addition of taxes, not to exceed \$257,830.
  4. **Motion No. 165-22** – Awarded a sole source contract to Hach Company, for supplying 100 turbidimeters for the District water treatment plants for one year, beginning on or after September 13, 2022 for a total cost, after the addition of taxes, not to exceed \$473,638.

5. **Motion No. 166-22** – Authorized an agreement beginning on or after September 13, 2022 with Guaranteed Plumbing in an amount not to exceed \$198,500 for installation of 55 pressure reducing valves to rezone customers on Castle Crest Road and Sydney Drive in Alamo and installation of private houselines for 201 Sydney Drive and 264 and 272 Castle Crest Road.
6. **Motion No. 167-22** – Authorized an amendment to the interconnection facilities agreement previously authorized under Board Motion No. 155-20 with Pacific Gas and Electric Company (PG&E) to increase the agreement amount by \$100,000 to a total not to exceed \$500,000 for the interconnection facilities and the electrical upgrades needed to connect the Duffel Photovoltaic Project to PG&E's electrical grid.
7. **Motion No. 168-22** – Authorized a second amendment to the agreement previously authorized under Board Motion No. 174-21 with The Tharpe Company, Inc., dba Engage2Excel increase the agreement amount by \$83,600 to a total amount not to exceed \$253,350 and extend the agreement term to October 1, 2023, for the provision of employee service and retirement awards and an online peer recognition platform for the District's Employee Recognition and Service Awards Program.
8. **Motion No. 169-22** – Authorized the execution of an eight-month ground lease, beginning on or after September 13, 2022, between the District and Oakland MacArthur Pacific Association, LLP, for approximately five acres of land located within the District's Oakport facility for \$439,433.
9. **Motion No. 170-22** – Authorized the Office of General Counsel to continue the employment of Law Offices of Curtis T. White, Esq. for specialized legal services in Federal Communications Commission licensing related matters in an additional amount not to exceed \$40,000.

#### **DETERMINATION AND DISCUSSION**

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 (942) as of this report. All District safety protocols remain in effect and at this time, indoor masking is still required. In response to an inquiry during the August 23, 2022 Board meeting, he discussed the types of masks suitable for employees returning to work after testing positive for COVID-19. Staff continues monitoring and will update District safety protocols to reflect the latest CDPH recommendations, Cal/OSHA requirements, and local health orders and will continue contact tracing 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. Staff responded to questions from the Board on options for Board members to participate in meetings if they are ill and the process for testing the District's wastewater for polio. There was discussion regarding the testing process for polio and the Board asked for an update on District, State, Federal, Bay Area Clean Water Agencies, and other efforts related to wastewater epidemiology including efforts to explore sub-regional identification of areas of concern.

- 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. 35313-22** – Authorizing Continued Utilization Of Teleconferencing For Meetings Of The East Bay Municipal Utility District Board Of Directors.

- Director Young left the meeting at 1:35 p.m. and returned at 1:37 p.m.
- Director Young left the meeting at 1:40 p.m.

**11. General Manager's Report.**

Drought Update.

Director of Operations and Maintenance David A. Briggs reported total storage in Pardee and Camanche reservoirs is 84 percent of average and 65 percent of capacity, and total storage in the East Bay reservoirs is 100 percent of average and 81 percent of capacity. The projected 90 percent exceedance (dry) for the end of season storage (September 30, 2022) is 510 thousand acre-feet (TAF), including expected water purchases and adjusted for gainshare obligations. As of August 30, 7.6 TAF of transfer water purchased from the Placer County Water Agency has been diverted through the Freeport facilities. The remaining 12.4 TAF is planned to be diverted by the end of October 2022. The District is also working to divert approximately 2 TAF of Contra Costa Water District's Central Valley Project water pursuant to the settlement agreement with EBMUD. Senior Civil Engineer Hasan M. Abdullah provided an update on the proposed maintenance test of two existing emergency potable water interties between EBMUD and Dublin San Ramon Services District (DSRSD). The test would be conducted for up to one week at the end of October 2022 using 100 AF of water made available to Zone 7 through the Department of Water Resources from Yuba County Water Agency. He discussed the test benefits and approvals needed and said Zone 7 and DSRSD will pay all EBMUD costs, including variable costs (labor, power, chemicals) and USBR fees and costs. As part of the test, EBMUD will keep up to 35 AF of the diverted water to account for potential losses during re-diversion, conveyance, treatment, and intertie flushing and operations. Staff anticipates bringing an agreement for the intertie test to the Board for consideration at its October 11, 2022 meeting. Director of Customer and Community Services Andrew L. Lee provided an update on actions related to the District's Excessive Water Use Penalty Ordinance. As of August 31, 2022, a total of 2,121 warning letters were mailed to customers who have exceeded the excessive water use penalty threshold. If these customers are unable to take corrective actions during the following billing cycle, they would be subject to the excessive water use penalty and their name, address, and consumption information would be subject to the Public Records Act. Also during this time, three customers who had a second exceedance received billing statements with notices of violation and are subject to the penalty. Customers who receive a notice of violation on their billing statement have 15 days from the date of the notice to file an appeal. Senior Customer and Community Affairs Representative Mona L. Favorite-Hill provided an update on the District's drought advertising campaign which includes a mix of print, digital, and outdoor advertisements. The District hosted a media event on August 30 with Secretary of Natural Resources Wade Crowfoot and other regional water agency representatives as part of the State's Save our Water initiative. EBMUD and East Bay Regional Park District staff will also host an online Water Wednesday discussion on September 21 on reducing the threat of wildfires in open space. The Board asked questions regarding the transfer water process; potential uses for the water that would be flushed during the

intertie test; the process for obtaining approvals if EBMUD needs to use the intertie in an actual emergency; and the process for releasing customer information under the Excessive Water Use Penalty Ordinance. The Board asked staff to check with the City of San Ramon about potential uses for the water that would be flushed as part of the intertie test and to provide Board members with advance notice regarding future online Water Wednesday discussions.

- Addressing the Board was Kelly A. who commented on the proposed intertie test, excessive water use, and flow restrictors.

General Manager's Monthly Report.

General Manager Clifford C. Chan announced he was available to respond to questions regarding the August 2022 Monthly Report.

**REPORTS AND DIRECTOR COMMENTS**

**12. Committee Reports.**

- Filed with the Board were the Minutes for the August 23, 2022 Finance/Administration Committee.
- Planning Committee member Frank Mellon reported the Committee met earlier in the day and received information on the Water Quality Program Semi-Annual Update.

**13. Other Items for Future Consideration.**

None.

**14. Director Comments.**

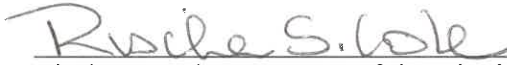
- Director Coleman reported speaking at a Lafayette Rotary Club meeting in Lafayette on August 25 and the Future of Water for Central Contra Costa meeting in Rossmoor on September 2. He reported on plans to attend: ACWA Federal Affairs Committee and Los Vaqueros Reservoir JPA Board meetings on September 14 (remote); Future of Water for Central Contra Costa meeting in Rossmoor on September 15; 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; Los Vaqueros JPA Finance Committee (remote) and DERWA Board meetings on September 26; and speaking at Alamo Rotary and Alamo Improvement Association meetings in Alamo on September 28. He thanked General Manager Clifford C. Chan for participating on a panel with other General Managers during the Bay Planning Coalition's virtual Energy and Water Nexus Event on September 9.
- Director Mellon reported attending the Castro Valley Fall Festival in Castro Valley on September 10 and the Castro Valley Sports Foundation Day of the Greens golf tournament on September 11 in Castro Valley.

- Director Patterson reported participating in an interview with the San Francisco Chronicle regarding the life of NBA Hall of Famer Bill Russell and a pre-game ceremony in honor of Mr. Russell at McClymonds High School on September 2.
- Directors Katz, McIntosh, Young, and President Linney had no reports.

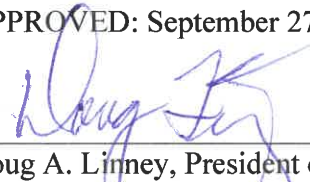
**ADJOURNMENT**

President Linney adjourned the meeting at 2:25 p.m.

SUBMITTED BY:

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

APPROVED: September 27, 2022

  
\_\_\_\_\_  
Doug A. Linney, President of the Board