

MINUTES

Tuesday, December 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 11:05 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, Attorney Felicity Grisham (Items 1a and 2, first matter), Manager of Risk Management Vladimir Bessarabov (Items 1b and 2, first matter), Director of Water and Natural Resources Michael T. Tognolini (Item 2, first matter), Attorney Ruby Acevedo (Item 2, second matter), Director of Operations and Maintenance David A. Briggs (Item 2, second matter), Director of Finance Sophia D. Skoda (Item 3), Chief Information Officer Orlando W. Leon (Item 3), Information Systems Division Manager William L. Johnson (Item 3), and Internal Auditor Supervisor Barry N. Gardin (Item 3).

General Counsel Derek T. McDonald was not present for Item 1a.

PUBLIC COMMENT

- Addressing the Board was Ivette Rivera who commented on her request to have a confidential discussion with the Legislative/Human Resources Committee regarding the qualifications of a staff member in the District's Office of Diversity and Inclusion; documents provided to the Legislative/Human Resources Committee; and read excerpts from a document entitled Exhibit 108, filed 11292022_Case 3.21-CV-04325-AGT.

General Counsel Derek T. McDonald provided clarification in response to an inquiry on whether a member of the public could provide a confidential document to the Office of General Counsel for transmittal to the Board of Directors or have a confidential discussion with the Legislative/Human Resources Committee.

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 1:17 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.

California State Assemblymember Rebecca Bauer-Kahan's recognition of Director Mellon's years of service

Shawn Kumagai, District Director for the Assemblymember presented Director Mellon with an Assembly Certificate of Recognition for his many years of distinctive service to the community as a Board member of the East Bay Municipal Utility District.

Presentation of EBMUD's ceremonial resolution recognizing Director Mellon's years of service

On behalf of the Board of Directors, President Linney presented Director Mellon with a commemorative plaque of the resolution adopted by the Board on November 8, 2022, which acknowledged Director Mellon's years of dedicated public service to the District.

Director Mellon thanked Shawn Kumagai and the Board for the recognition.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

EMERGENCY ITEM

General Counsel Derek T. McDonald announced staff is requesting to add an item to the Board meeting agenda under Determination and Discussion to ratify the General Manager's declaration of an emergency resulting from the discovery of significant deterioration of a portion of the District's North Interceptor in Berkeley on December 12, 2022. Mr. McDonald reviewed the Brown Act provisions that authorize the Board to discuss an item that has not been previously placed on the Board meeting agenda at a regular meeting when the Board determines that 1) there is a need for immediate action or discussion that cannot reasonably wait for the next regularly scheduled meeting; and 2) the need for immediate action or discussion has come to the attention of the District after the agenda for the regular meeting has been posted.

- Motion by Director Katz, seconded by Director Patterson to confirm that the Board of Directors determined the need for immediate action to add an item to the December 13, 2022 Board meeting agenda to provide direction to staff on the General Manager's declaration of an emergency resulting from the discovery of significant deterioration of a portion of the District's North Interceptor in Berkeley on December 12, 2022, which came to the attention of the District after the agenda for the December 13, 2022 Board meeting was posted, 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. 219-22 - Determined the need for immediate action to add an item to the December 13, 2022 Board meeting agenda to provide direction to staff on the General Manager's declaration of an emergency resulting from the discovery of significant deterioration of a portion of the District's North Interceptor in Berkeley on December 12, 2022, which came to the attention of the District after the agenda for the December 13, 2022 Board meeting was posted.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Kelly A. commented on the District's business analysis of its Advanced Metering Infrastructure system; and 2) Ivette Rivera commented on documents provided to the Legislative/Human Resources Committee earlier in the day which she also provided to the remaining Board members; a tort complaint she filed with the District; and the *Shaunte Scott v. East Bay Municipal Utility District* case.

CONSENT CALENDAR

- Items 10 and 12 were pulled from the Consent Calendar for separate discussion.
 - Motion by Director Coleman, seconded by Director Young to approve the recommended actions for Items 1-9 and 11 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. 220-22** – Approved the Regular Meeting minutes of November 22, 2022.
 2. The following correspondence was filed with the Board: 1) Presentation entitled, "Coronavirus Disease 2019 (COVID-19) Conclusion of District Emergency," dated December 13, 2022; 2) Presentation entitled, "EBMUD 100th Anniversary Update," dated December 13, 2022; 3) Speakers' Bureau and CY 2023 Record dated December 12, 2022; 4) Board Action entitled, "Response to Declaration of Emergency for the Repair of the North Interceptor," dated December 13, 2022; 5) Presentation entitled, "Emergency Declaration for the Repair of the North Interceptor," dated December 13, 2022; 6) Document entitled, "Exhibit 108" regarding Case 3:21-cv-04325-AGT Document 83-7 Filed 11/29/22; 7) Cover page and pages 13-17 from EBMUD Affirmative Action and Equal Employment Opportunity FY03 Program Report FY04 Affirmative Action Plan, October 2003; 8) EBMUD FY05 Strategic Plan; 9) Memo dated June 1, 2004 to All Employees from Dennis M. Diemer, General Manager regarding FY05 Strategic Plan; 10) Memo dated June 15, 2004 to WOM Department Staff from Richard G. Sykes, Manager of Water System regarding FY05 Strategic Plan; 11) Booklet entitled, "Building EBMUD's Future," dated January 2004; and 12) Performance Appraisal for Gardener Foreman Ivette Rivera dated October 19, 2022.

3. **Motion No. 221-22** – Awarded a contract to the lowest responsive/responsible bidder, Polydyne, Inc., for supplying thickening polymeric flocculants for the Main Wastewater Treatment Plant for two years, beginning on or after February 1, 2023, with three options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$1,703,875 under Request for Quotation No. 2202.
4. **Motion No. 222-22** – Awarded a contract to the lowest responsive/responsible bidder, Granite Financial Solutions, Inc., for supplying 375 Dell laptop computers, 175 docking stations, and 200 monitors, beginning on or after December 13, 2022, for a total cost, after the addition of taxes, not to exceed \$737,000 under Request for Quotation No. 2303.
5. **Motion No. 223-22** – Awarded a sole source contract to American Industrial Equipment LLC, for supplying four 1-million gallon per day trailer-mounted, diesel-powered, centrifugal pumps within acoustic enclosures for a total cost, after the addition of taxes and freight, not to exceed \$994,283.01.
6. **Motion No. 224-22** – Authorized an agreement beginning on or after December 18, 2022 with Hilmar Cheese Company (Hilmar) for five years under which Hilmar will pay the District and commit to deliver cheese products wastewater resulting from the dissolved air flotation process at a discount to the published rate of 0.25 cents per gallon for all loads received and an additional 0.50 cents per gallon for weekend deliveries if target weekend volumes are met.
7. **Motion No. 225-22** – Authorized an amendment to the agreement previously authorized under Board Motion No. 164-21 with ConvergeOne, Inc. to increase the agreement amount by \$550,000 to a total amount not to exceed \$2,297,000 and to extend the agreement term to March 11, 2025 and add language in the agreement regarding the agreed upon go-live date for providing Contact Center telephony services.
8. **Motion No. 226-22** – Authorized an amendment to the agreement previously authorized under Board Motion No. 170-19 with Safety Holdings, Inc. to increase the agreement amount by \$144,000 to a total amount not to exceed \$264,000 and to extend the agreement term for one year with two options to renew for additional one-year periods for an online driver record monitoring service.
9. **Motion No. 227-22** – Authorized an amendment to the agreement previously authorized under Board Motion No. 038-20, with WSP USA, Inc. to increase the agreement amount by \$1,127,161 to a total amount not to exceed \$4,551,461 for additional planning and design services for the Mokelumne Aqueducts Delta Tunnel, which is now referred to as the Mokelumne Aqueducts Resiliency Project.
10. **Authorize an amendment to the agreement previously authorized under Board Motion No. 160-21 with seven other water agencies to increase the agreement amount by \$1,094,000 to a total amount not to exceed \$3,358,910 and extend the agreement term to June 30, 2023 to fund planning and other pre-construction activities for the Los Vaqueros Reservoir Expansion Project.**

Director Young requested clarification on the District's obligations under the amended agreement; the total amount of funds the District has spent to date; staff's estimate of additional funding that may be requested in 2023; and the timing for the District's first opportunity to withdraw from the project. Director Young commented she would either abstain or vote no on this item. Director of Water and Natural Resources Michael T. Tognolini and General Manager Clifford C. Chan provided information on the scope of work to be performed under the amended agreement; the pre-planning

and pre-construction work required for the project; agreements that are still being developed; project planning issues that are scheduled to be studied; and the timing for the next funding request for the project. The Board asked staff to provide information on a work plan including scope of work and project issues that have been or still need to be resolved during the February 2023 Long-Term Water Supply Board Workshop.

- Motion by Director Coleman, seconded by Director Mellon to approve the recommended actions for Item 10 carried (6-1) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, and Linney); NOES (None); ABSTAIN (Young); ABSENT (None).

Motion No. 228-22 – Authorized an amendment to the agreement previously authorized under Board Motion No. 160-21 with seven other water agencies to increase the agreement amount by \$1,094,000 to a total amount not to exceed \$3,358,910 and extend the agreement term to June 30, 2023 to fund planning and other pre-construction activities for the Los Vaqueros Reservoir Expansion Project.

11. **Resolution No. 35328-22** – Authorizing And Approving East Bay Municipal Utility District's Application To Modify The Contractor's Service Area Described In Its Central Valley Project Repayment Contract With The United States Bureau Of Reclamation To Include The Annexation Of The 285 Lark Lane Parcel Approved By The Contra Costa County Local Agency Formation Commission.
12. **Adopt a resolution declaring the results of the election held on November 8, 2022 for the Directors in Wards 3 and 7 and reaffirming the appointment of Directors in Wards 2 and 4 of the East Bay Municipal Utility District.**

Director Mellon congratulated Directors Coleman and Katz on being reappointed for another term to represent Wards 2 and 4, respectively; Director Young for being re-elected for another term to represent Ward 3; and Director-elect April Chan for being elected to represent Ward 7. Director Mellon noted Director-elect Chan is the first Asian American woman to serve on the Board.

- Motion by Director Mellon, seconded by Director Patterson 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. 35329-22 – Declaring Results Of Election Held On November 8, 2022 For The Election Of Directors Of The East Bay Municipal Utility District.

- Addressing the Board was Kelly A. who commented on Agenda Item 10.

DETERMINATION AND DISCUSSION

Emergency Item

Ratify the General Manager's December 12, 2022 declaration of a District emergency in accordance with Policy 7.03 – Emergency Preparedness/Business Continuity because of a dangerous condition of a portion of the District's North Interceptor; and authorize expenditure of sums as needed in response to such emergency.

Senior Civil Engineer Matthew R. Hoeft outlined the need to declare a District emergency to address the dangerous portion of the District's North Interceptor. On December 12, 2022, a District construction inspector entered the North Interceptor at maintenance hole N20 to inspect the pipe and observed complete loss of concrete mortar in two locations in the pipe wall at the spring line of the pipe. The North Interceptor is 66 inches in diameter at this location. There was no indication of wastewater spilling out of the pipe, but groundwater was flowing into the pipe in the two locations. Mr. Hoeft reviewed the incident location, photos of the pipe's condition in various locations, and repair options. On December 12, 2022, to expedite repair of the damaged interceptor and prevent a sinkhole, the General Manager, in consultation with the Board President, declared a District emergency in accordance with Policy 7.03. Repair costs are estimated to be more than \$500,000 and immediate repairs will ensure no further deterioration of the pipe. District staff is engaging contractors with the expertise and resources to clean the debris (sediment, rags, and other material) out of the pipe and repair the segment of affected pipe. Mr. Hoeft and General Manager Clifford C. Chan responded to Board questions regarding total projected repair costs; the repair costs' potential impact to Wastewater System rates; the condition of other areas of the pipe; plans to inspect the rest of the pipe; process for monitoring the site and notifying neighboring entities regarding a potential sinkhole; and outreach to the City of Berkeley, neighbors and other potentially impacted local jurisdictions. The Board asked staff to reach out to the appropriate City of Berkeley staff regarding the work planned for the North Interceptor and potential impacts to neighboring assets.

- Motion by Director Mellon, seconded by Director McIntosh to approve the recommended actions for the Emergency Item 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. 35330-22 – Ratifying General Manager's Declaration Of The Existence Of A District Emergency And Authorizing Expenditure Of Sums As Needed In Response To Such Emergency.

13. **Declare an end to the District emergency initiated to respond to the pandemic created by the coronavirus (COVID-19) on March 17, 2020 and ratified on March 24, 2020 under Board Resolution No. 35171-20.**

Director of Operations and Maintenance David A. Briggs provided the presentation. The Board is being asked to consider rescinding the District emergency declaration initiated in response to the COVID-19 pandemic. He reviewed the District's timeline of events from early 2020 to date; the proposed COVID-19 transition plan; and conditions that would be considered for suspending the transition plan. He highlighted COVID-19 positive cases in Alameda and Contra Costa counties, the number of employee positive COVID-19 cases to date (1,115), and COVID-19 concentration levels in the District's and Central Contra Costa Sanitary District's wastewater. From March 2020 to present, the District has spent approximately \$32.5 million on COVID-19 related costs that include employee leave; administration and emergency operations; contact tracing and case management; employee testing; and personal protective equipment, sanitizer, and employee workspace modifications. If the Board rescinds the District emergency declaration, staff will no longer recommend the Board adopt resolutions to conduct upcoming meetings in accordance with Government Code section 54953(e) (Assembly Bill 361). Additionally, in January 2023, District facilities will begin re-opening to the public; qualifying staff will begin transitioning from emergency to long-term telework schedules; and the indoor masking requirement will be rescinded. Mr. Briggs responded to Board questions on triggers that could potentially cause the District to pause its transition plans and confirmed the District still plans to provide the public with virtual access to public Board meetings.

- Director Patterson left the meeting at 2:15 p.m. and returned at 2:19 p.m.

- Motion by Director Young, seconded by Director Patterson to approve the recommended actions for Item 13 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. 35331-22 – Resolution Terminating The Existence Of An East Bay Municipal Utility District Emergency.

14. **Adopt a resolution to support exoneration of the Port Chicago 50 and to recognize their importance to the U.S. Civil Rights Movement.**

Director William B. Patterson highlighted the history of the explosion at the Port Chicago Naval Magazine near Martinez, California in 1944, during which 320 African American men lost their lives. After the explosion, the U.S. military ordered the surviving sailors to resume their duties at the Mare Island Ammunition Depot in Vallejo without an explanation for what had happened at Port Chicago, additional training, or safety protocols. After being threatened with harsh disciplinary action, many sailors returned to duty; however, fifty African American sailors refused the order and were charged with mutiny. The U.S. military tried and convicted these sailors, known as the Port Chicago 50, and each received a 15-year prison sentence. These convictions still stand today, despite efforts to overturn them. The Navy eventually released the men, but damage was done to their reputations and livelihoods and they carried the stigma of mutiny for the rest of their lives. The Board is being asked to adopt a resolution calling for the public exoneration of the Port Chicago 50 and to recognize them as heroes of the Civil Rights movement.

- Motion by Director Patterson, seconded by Director McIntosh to approve the recommended actions for Item 14 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. 35332-22 – Resolution Recognizing The Port Chicago 50's Importance To The Civil Rights Movement.

15. **General Manager's Report.**

EBMUD's Centennial Planning Update.

Public Information Representative Tracie D. Morales presented the update. Over 100 employees from across the District have been working on planning activities including activities leading up to the District's 100th Anniversary in May 2023. Ms. Morales reviewed the foundational messages which center around dedication, protection, and investments in employees, infrastructure, and community; and discussed the logo and tagline developed to celebrate the centennial. The logo and tagline will be used on District gear, the website, social media, signage, and sustainable giveaways, as well as in publications and at events. A 100th anniversary microsite on ebmud.com will launch in December 2022 to highlight the District's history, events, partnerships, historical films, and new content. Centennial events include a community fair in May 2023; walks in the local watersheds, at infrastructure sites, and other locations between January-October 2023; and an employee/retiree gathering in July 2023. Centennial partnerships are planned with local entities that align with the District's mission to support the community and sustainability initiatives. Ten percent of the proceeds from these partnerships will be donated to the District's Water Lifeline program. Updated, lighted

panels have been installed on the 2nd floor of the Administration Building and new photos have been mounted in the Boardroom. Staff is working with a consultant to install displays on the 1st floor of the Administration Building that explore EBMUD's water and wastewater systems and highlight themes such as EBMUD's essential workforce, conservation, and environmental stewardship. The project is in the design phase and scheduled for completion in summer 2023. Staff will begin promoting internal and external events as dates and locations are confirmed and is seeking external event planning support to assist with the 100th anniversary community fair. Ms. Morales responded to Board questions regarding the planning and potential locations for the community fair; the centennial logo and how it will be used; additional partnership options; and the foundational messaging. The Board asked staff to consider updating the centennial logo to include people; pairing the centennial logo and the EBMUD logo in centennial materials; including the District's work on diversity, equity, and inclusion, climate change, water conservation, and natural resources protection in the foundational messaging; reviewing the San Francisco Public Utilities Commission's PBS video as part of the development of the District's centennial video; including upcountry groups in centennial activities; and ensure there is sufficient time to plan the 100th anniversary community fair.

General Manager's Monthly Report

General Manager Clifford C. Chan announced he was available to respond to questions regarding the November 2022 Monthly Report. Director Coleman asked for confirmation of the water storage data in the report. General Manager Chan said staff would review the data and respond.

REPORTS AND DIRECTOR COMMENTS

16. Committee Reports.

- Filed with the Board were the Minutes for the November 22, 2022 Finance/Administration Committee.
- Planning Committee chair Marguerite Young reported the Committee met earlier in the day and received updates on the Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Project; Upper San Leandro Water Treatment Plant Maintenance and Reliability and Upper San Leandro and Sobrante Water Treatment Plants Chemical Systems Safety Improvements Project; the Oursan Ridge Conservation Bank; and the Advanced Metering Infrastructure Business Case Evaluation.
- Legislative/Human Resources Committee chair Lesa R. McIntosh reported the Committee met earlier in the day and received an update on the Diversity, Equity, and Inclusion Strategic Plan.

17. Other Items for Future Consideration.

None.

18. Director Comments.

Director Coleman reported participating in the ACWA Fall Conference in Indian Wells November 29 through December 1; meeting with Contra Costa Water District staff in Indian Wells on December 1; District briefing on Lafayette Reservoir (remote) on December 2; and a meeting with Assemblymember Rebecca Bauer-Kahan (remote) on December 7. He reported on plans to participate in the Los Vaqueros Reservoir JPA Board meeting (remote) on December 14; EBMUD

Developer Forum (remote) on December 15; a meeting with representatives from Tassajara Valley in Oakland on December 19; the Los Vaqueros Reservoir JPA Finance Committee meeting (remote) on December 22; the FRWA Board meeting (remote) on January 12, 2023; the DERWA Board meeting in Dublin on January 23; and the Los Vaqueros Reservoir JPA Finance Committee meeting (remote) on January 26.

- Director Patterson reported on the life and career of Paul Silas, professional basketball player and head coach in the National Basketball Association. Mr. Silas passed away on December 10.
- President Linney acknowledged that this was the last Board meeting for Director Mellon and thanked Director Mellon again for his years of service.
- Directors Katz, McIntosh, Mellon, and Young had no reports.

ADJOURNMENT

President Linney adjourned the meeting at 3:13 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: January 10, 2023



Doug A. Linney, President of the Board