

MINUTES

**Tuesday, March 14, 2023
East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California**

Regular Closed Session Meeting

President Andy Katz called to order the Regular Closed Session Meeting of the Board of Directors at 11:07 a.m. in the Administration Building Training Resource Center.

ROLL CALL

Directors April Chan, John A. Coleman, Doug A. Linney, William B. Patterson, Marguerite Young, and President Andy Katz were present at roll call. Director Lesa R. McIntosh was absent (excused). Secretary of the District Risha S. Cole announced the Closed Session Meeting agenda was not posted as a separate item on the District's website; however, the agenda was included in the Regular Meeting agenda materials posted on the District's website and was properly posted in the kiosk on the 1st floor of the Administration Building in accordance with the Brown Act.

Staff participants included General Manager Clifford C. Chan and General Counsel Derek T. McDonald.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Eric Larsen, President, AFSCME Local 444 commented on a proposal the union submitted to management regarding COVID exclusion policies and asked the Board to consider calendaring this item for a future closed session meeting; 2) Joey D. Smith, President, AFSCME Local 2019 acknowledged today is Pi Day and Women's Equal Pay Day; and commented on training for District supervisors and managers on hiring staff and the hiring and promotion data in the Diversity, Equity, and Inclusion Strategic Plan (DEISP) presentation to the Legislative/Human Resources Committee earlier in the day; 3) George Cleveland, Chief Steward, AFSCME Local 2019 commented on a fact finding investigation for a Local 2019 member; and 4) Ivette Rivera commented on time limits during public comment at the February 28 Legislative/Human Resources Committee meeting, viewpoint discrimination, the District's DEISP, study guide materials for Gardener and Grounds Maintenance Specialist recruitments, and a City of Los Angeles document regarding the city's criteria for promoting external candidates.

The Board requested a confidential information memo regarding the investigation referenced by George Cleveland.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

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

Regular Business Meeting

President Andy Katz called to order the Regular Business Meeting of the Board of Directors at 1:19 pm. in the Administration Building Training Resource Center.

ROLL CALL

Directors April Chan, John A. Coleman, Doug A. Linney William B. Patterson, Marguerite Young, and President Andy Katz were present at roll call. Director Lesa R. McIntosh was absent (excused).

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 Katz 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) Susan Schwartz, President, Friends of Five Creeks commented on the State Groundwater Management Act plan for the East Bay Plain sub-basin and asked the Board to consider revising the plan prior to the close of the public comment period on April 1, 2023; and 2) Ivette Rivera commented on data presented in the Diversity, Equity, and Inclusion Strategic Plan (DEISP) presentation to the Legislative/Human Resources Committee earlier in the day; public comment during the last Board meeting regarding Board compensation; viewpoint discrimination; and read an excerpt from the State Constitution.

The Board requested an information memo regarding the comments provided by Susan Schwartz.

CONSENT CALENDAR

- Motion by Director Linney, seconded by Director Patterson to approve the recommended actions for Items 1-4 on the Consent Calendar carried (6-0) by the following voice vote: AYES (Chan, Coleman, Linney, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (McIntosh).
1. **Motion No. 044-23** – Approved the Special Meeting Minutes of January 24, and February 14, 2023, and the Regular Meeting Minutes of February 28, 2023.
 2. The following correspondence was filed with the Board: 1) Presentation entitled, “Water Supply Update,” dated March 14, 2023; 2) Presentation entitled, “Trench Soils Management,” dated March 14, 2023; 3) Speakers’ Bureau and Outreach Record CY23 dated March 13, 2023; 4) Revised Board Action Agenda Item 4 regarding 2023 Local Hazard Mitigation Plan; 5) Document entitled, “Save Lake Chabot, Street Scenes on the Truck Route” (undated); 6) Letter dated March 12, 2023 to members of the Board East Bay Municipal Utility District from Susan Schwartz, President, Friends of

Five Creeks regarding the State Groundwater Management Act plan for the East Bay Plain sub-basin; 7) Email dated March 12, 2023 to Office of the Secretary from William and Rosemary Morrison regarding Quarry Site Restoration Project – March 14th Board Meeting; 8) Email dated March 13, 2023 to Office of the Secretary from David Samson regarding EBMUD quarry project; 9) Email dated February 23, 2023 to Albert Lopez from Chien Wang regarding EBMUD Quarry Site Restoration Project CUP application withdrawal; 10) Document dated March 14, 2023 from Gary Zimmerman, President, Fairmont/Lake Chabot Ridgeland Committee regarding Terminate the Proposed EBMUD North Fairmont Ridge Dumpsite; 11) Document entitled Comments for the EBMUD Board of Directors, March 14, 2023 from Gary Sloane; 12) Document entitled EBMUD Organizational Display, Exhibit 1 as of June 30, 2014; 13) Document entitled Proposed Motion; and 14) Transcript of recording of March 8 webinar on the SGMA-required plan for the East Bay Plain.

- Addressing the Board was Ivette Rivera who commented on previous Board meeting minutes reflecting what is said under public comment.

3. **Motion No. 045-23** – Authorized a lease with the California State Lands Commission for a 20-year period with an effective date of March 1, 2023, to allow for the continued use of two District facilities in Lockeford, San Joaquin County, used to monitor and communicate stream flow data.
4. **Resolution No. 35339-23** – Approve the 2023 East Bay Municipal Utility District Local Hazard Mitigation Plan.

DETERMINATION AND DISCUSSION

5. Legislative Update.

Manager of Legislative Affairs Kathy Viatella discussed Legislative report No. 02-23. Director Coleman announced the Legislative/Human Resources Committee members present in the meeting earlier in the day voted to support SB 878, SB 879, and SB 880 (Committee on Governance and Finance) Validations. Next, Ms. Viatella provided an overview of Initiative 21-0042A1 The Taxpayer Protection and Government Accountability Act (Initiative Constitutional Amendment) which would amend the State Constitution to change the rules for how the state and local governments can impose taxes, fees, and other charges. This item has qualified as a voter initiative and will be on the November 2024 general election ballot. She discussed potential impacts to the District and its ratepayers if the initiative passes; reviewed the lists of entities that support or oppose the measure; and responded to questions from the Board regarding the measure's official title; the status of the measure in other states; impacts to other special districts; and whether the District will have to pay to place fees on the ballot if the measure passes. Staff is recommending the Board vote to oppose this measure. If the Board votes to oppose this item, staff will present a resolution for the Board to consider formally expressing opposition at its Regular meeting on March 28. The Board asked staff to include the actual ballot initiative title from the Attorney General's office in the draft resolution presented to the Board on March 28. In conclusion, Ms. Viatella provided information and staff's analysis on the following bills pertaining to water rights modernization legislation that have been introduced in the legislature in 2023 to implement recommendations from the February 2022 Planning and Conservation League (PCL) report titled "Updating California Water Laws to Address Drought and Climate Change" – AB 460 (Bauer-Kahan): State Water Resources Control Board: interim relief; AB 1337 (Wicks): State Water Resources Control Board: water shortage enforcement; and SB 389 (Allen): State Water Resources Control Board: determination of water right. Ms. Viatella responded to Board questions regarding the potential to rectify staff's procedural concerns about the

measures' potential impacts to the District and its water rights; potential impacts from the proposed California Environmental Quality Act exemptions; and whether the bill authors consulted with staff. The Board asked staff to continue working with the authors of the bills pertaining to water rights modernization legislation; provide a copy of the PCL report; and provide information on the District's riparian rights.

- Motion by Director Coleman, seconded by Director Chan to SUPPORT SB 878, SB 879, SB 880 (Committee on Governance and Finance) Validations carried (6-0) by the following voice vote: AYES (Chan, Coleman, Linney, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (McIntosh).
- Motion by Director Coleman, seconded by Director Patterson to OPPOSE Initiative 21-0042A1, known as the Taxpayer Protection and Government Accountability Act carried (6-0) by the following voice vote: AYES (Chan, Coleman, Linney, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (McIntosh).

Motion No. 046-23 – Received Legislative Report No. 02-23 and approved positions on the following bills: SUPPORT SB 878, SB 879, SB 880 (Committee on Governance and Finance) Validations; OPPOSED Initiative 21-0042A1 The Taxpayer Protection and Government Accountability Act (Initiative Constitutional Amendment); and received information on water rights modernization legislation.

- Director Chan left the meeting at 1:49 p.m. and returned at 1:50 p.m.

- 6a- **Receive a staff presentation on the District's trench soils management program, including**
6b. **an update on the proposed Quarry Site Restoration Project on Lake Chabot Road in Alameda County; and provide direction on the quarry site as a future District site for trench soils disposal.**

General Manager Clifford C. Chan introduced the item. The construction and maintenance of the District's water distribution pipelines produce approximately 50,000 cubic yards of trench soils per year. The trench soils are stockpiled temporarily at three District sites and are periodically off hauled from the stockpile sites to a final reuse or disposal location. The District conducted pilot projects to reduce the volume of soil requiring stockpiling and subsequent removal from the temporary stockpile sites; however, those pilots did not yield results that were scalable to day-to-day operations. The quarry site, a 60-acre former quarry currently owned by the San Leandro Rock Company (SLRC) at 13575 Lake Chabot Road in unincorporated Alameda County was identified as an alternative final reuse location for the trench soils. In September 2019, the District entered a three-year option agreement with the SLRC to allow the District time to assess the viability of purchasing the quarry site. The assessment also includes completing an analysis of any potential impacts under the California Environmental Quality Act (CEQA) and obtaining the necessary permits, including a conditional use permit (CUP) from Alameda County prior to committing to the purchase. Recently, the District hosted a meeting with several members of the Save Lake Chabot Road coalition and City of San Leandro Mayor Juan Gonzalez to discuss District trench soils management. Meeting attendees shared concerns and presented proposed options for trench soils management. The District informed the attendees that the project is being placed on hold to allow staff time to further investigate other options for trench soils management, and this information was later confirmed in a letter to the Bay-O-Vista Improvement Association. SLRC was notified that the District would not be renewing the option agreement to purchase the property when it expires later this year, and the

associated CUP application to Alameda County was withdrawn. Director of Engineering and Construction Olujimi O. Yolo provided a presentation on the District's current trench soils management process which requires double handling of trench soils (loading trucks twice). He reviewed capacity at the District's three temporary stockpile sites; round trips per day to the two most frequently used sites (Briones (near Orinda) and Miller Road (Castro Valley)); the frequency of soil removal operations as the District increases its pipeline replacement goals; soils removal projects, including an upcoming removal project at the Miller Road site; slurry waste management; trench soils management options; and discussed the proposed Quarry Site Restoration Project. The project would provide space for approximately 3.4 million cubic yards of trench soils over 40 to 80 years; establish natural landscape using local native vegetation similar to adjacent East Bay Regional Park District lands; and create a safe recreational trail available to the public. Mr. Yolo highlighted off-haul life cycle costs based on exclusive use and non-exclusive use scenarios; outreach to stakeholders, elected officials, neighbors, and other entities; and the plan for staff to evaluate additional alternatives while the project is on hold. Staff is seeking input and direction from the Board regarding the trench soils management program and on considering the quarry site as a future District site for trench soils disposal. There was considerable Board discussion and staff responded to questions regarding the types of trucks that would be used to haul to the quarry site; why trench soils are not delivered to the landfill; the frequency of soil removal projects at the District's temporary stockpile sites; projected savings from beneficial reuse; cost analysis for trenchless technology; outreach to agencies with potential beneficial reuse locations; clarification on the information regarding off-haul life cycle costs in the presentation; the number of roundtrip truck trips to the Briones site on a normal day; and developing principles for trench soils management.

President Katz announced the process and adjusted time limits for the Board to receive public comment.

Addressing the Board were the following: 1) Kat Wellman, President of the Bay-O-Vista Improvement Association and Chair of the Save Lake Chabot Road Coalition commented on the project's location and safety, and asked the Board to terminate the project; 2) Brian Libow, Save Lake Chabot Road Coalition provided a presentation to the Board on behalf of the coalition, and language for a proposed motion for the Board to terminate the project and to not include the quarry site for trench soils or for any other District purpose. He asked the Board to terminate the project; 3) Juan Gonzalez, Mayor of San Leandro commented on the current status of Lake Chabot Road, the city council opposition to the project, and urged the Board to terminate the project; 4) Randal Dutra asked the Board to terminate the project; 5) Mark Thomas provided pictures of the proposed truck route for the project and asked the Board to terminate the project; 6) Tonde Smith commented the quarry site is the wrong location for the project; 7) Ian Bailey commented on beneficial reuse, bike use on Lake Chabot Road, and asked the Board to terminate the project; 8) Paul Merrick commented on a plan prepared for the Fairmont Ridge quarry by the U.S. Fish and Wildlife Service, opposition to the project, and asked the Board to terminate the project; 9) Gary Zimmerman, President, Fairmont/Lake Chabot Ridgeland Committee commented on the economics of the project, rare animals and plants on the site, and asked the Board to terminate the proposal; 10) Christine Scobee commented on endangered species and plants at the quarry site and asked the Board to permanently remove the site as an option for the District's trench soils; 11) Susan Von Bergen commented on Measure D's stipulations for how the site can be used and the potential for lawsuits; 12) Leah Tysse asked the Board to formally terminate the project; 13) Peter Lemcke commented on traffic safety and the Highway 580 truck ban and asked the Board to terminate

the project; 14) Robert Puchwa commented on energy and urged the Board to terminate the project; 15) Geoff Luce commented on unsafe conditions on Lake Chabot Road; 16) Gary Sloane commented on the condition of Lake Chabot Road, trucks using the road, and asked the Board to terminate the project; 17) Milos Zivny commented on alternative options for trench soils use and impacts from trucks using Lake Chabot Road; 18) Hannah Westmoreland commented on the project size, the condition of Lake Chabot Road, impacts to roads leading to the quarry site, and terminating the project; 19) Laurie Pfohl commented on experience with trucks traveling Redwood Road in Castro Valley; 20) Teri Schlesinger commented on the planned truck route's impact to Lake Chabot Road and surrounding areas and asked the Board to permanently terminate the project; 21) Steven Gee, MD commented on dirt from the project site polluting the air in San Leandro; 22) Robert Manente commented on challenges with trucks using Lake Chabot Road; 23) Garry Offenberg urged the Board to terminate the project and pursue alternative options; 24) Karen Chen commented on traffic impacts on Lake Chabot Road and urged Board members to drive the proposed truck route; 25) Melina Meissner commented on properties that could be impacted by the project, beneficial reuse options, and urged the Board members to visit the quarry site; 26) Celina Reynes, San Leandro City Council member commented on the council's opposition to the project, project impacts, and urged the Board to listen to constituents and terminate the project; 27) Stephen Cassidy, former Mayor of San Leandro commented on public trust, requested the Board terminate the project today, and asked Board members representing areas around the quarry site to advocate to terminate the project; 28) Dorothea Beringer commented on truck safety, cyclist safety, challenges navigating Lake Chabot Road and terminating the project; 29) Mimi Dean urged the Board to abandon the project, find alternative solutions, and to present future projects to Municipal Advisory Councils if the projects will impact communities; 30) David Topete commented on noise impacts from the project and impacts to property values and asked the Board to terminate the project and find alternative solutions; 31) Tim Ballas commented on impacts to the people living in direct proximity to the project, environmental justice, CEQA compliance and the appropriateness of the site for the proposed use; 32) Logan Price commented on safety issues from trucks using Lake Chabot Road, the safety and sustainability of the project and said the project should be terminated; 33) Ed Hernandez commented on project impacts to the community, alternative solutions, and said the project should be terminated; and 34) Corina Lopez commented the project is unfair to the community and urged the Board to listen to the community.

- Director Young left the meeting at 4:02 p.m. and returned at 4:04 p.m.
- Director Chan left the meeting at 4:07 p.m. and returned at 4:09 p.m.
- Director Patterson Young left the meeting at 4:10 p.m. and returned at 4:16 p.m.

President Katz thanked the speakers and announced the Board would move to Item 6b to provide direction to staff on the quarry site as a future District site for trench soils disposal.

- The Board recessed at 4:35 p.m. and reconvened at 4:45 p.m. All Directors, except for Director McIntosh were present.

President Katz requested General Manager Clifford C. Chan and Director of Engineering and Construction Olujimi O. Yoloye provide responses or additional information in response to the comments and information received. Mr. Chan thanked the speakers and clarified an Initial Study has been prepared but the Draft Environmental Impact Report (EIR) for the project has not been released. Staff will explore alternatives but recommends keeping the quarry site as an option. There was

considerable Board discussion regarding the concerns raised about the project; potential legal ramifications; the petition to save Lake Chabot Road; whether the Alameda County Board of Supervisors and Castro Valley Municipal Advisory Council will approve the project; providing staff additional time to explore the project and alternative solutions listed in the staff presentation; the District's normal process for considering projects and the Board's authority to terminate a project that has not been considered under the normal process; the need to look for solutions to manage the District's trench soils; project costs; environmental impacts of current trench soils management processes; and benefits of continuing with the CEQA process for the project. Director April Chan announced she will propose a motion to terminate the project.

Motion by Director Chan, seconded by Director Coleman for the Board of Directors to order that the Quarry Site Restoration Project proposed to be located on Lake Chabot Road is formally terminated and shall not be included in any list prepared by District staff as a potential site for storage of trench soils or for any other purpose.

There was additional discussion by the Board about the time needed to evaluate the project and explore alternative solutions, and clarification regarding the District's normal process for reviewing projects. Attorney Karen Donovan provided clarification on the CEQA process for the project and Mr. Yoloye reviewed all actions taken to date e.g., entering the option agreement with SLRC, hiring a consultant to prepare the Draft EIR, and the CUP application to Alameda County. There was additional Board comment on actions taken in the past regarding Buckhorn Dam and re-evaluating use of the quarry site as part of a more comprehensive trench soils management project. President Katz requested a roll call vote for the motion put forth by Director Chan.

- Motion by Director Chan, seconded by Director Coleman to order that the Quarry Site Restoration Project proposed to be located on Lake Chabot Road is formally terminated and shall not be included in any list prepared by District staff as a potential site for storage of trench soils or for any other purpose resulted in a tie (3-3) by the following roll call vote: AYES (Chan, Coleman, and Patterson); NOES (Linney, Young, and Katz); ABSTAIN (None); ABSENT (McIntosh).

There was additional Board discussion on providing clear direction to staff and keeping the option to re-evaluate use of the site as part of a more comprehensive trench soils management project.

Motion by Director Linney, seconded by Director Young to consider the proposal to use the quarry site in the broader context of trench soils management and that staff will not move ahead with a project until they receive authorization from the Board.

Director Young offered a friendly amendment to the motion made by Director Linney to consider the proposal to use the quarry site in the broader context of trench soils management and that staff will not move ahead with a project *unless* they receive authorization from the Board. Director Linney accepted the amendment.

There was additional discussion by the Board about keeping the project as an option while staff analyzes it and alternative solutions; the motion on the floor; and clarification from staff on the term "not move ahead" in the motion put forth by Director Linney. President Katz asked Secretary Cole to restate the motion put forth by Director Linney.

- Motion by Director Linney, seconded by Director Young to consider the proposal to use the quarry site in the broader context of trench soils management and that staff will not move ahead with a project unless they receive authorization from the Board resulted in a tie (3-3) by the following roll call vote: AYES (Linney, Young, and Katz); NOES (Chan, Coleman, and Patterson); ABSTAIN (None); ABSENT (McIntosh).

There was additional Board discussion regarding the project moving forward, next steps, and calendaring the discussion regarding the project when Director McIntosh is in attendance. General Manager Chan thanked the Board, confirmed the project is on pause, and outlined next steps. Staff will provide an update on the District's Trench Soils Master Plan including summary and timing of the evaluation of options, potential beneficial reuse locations (e.g., Port of Oakland, sites from Werner Chabot), suitability of trench soils for other uses (e.g., levees), cost analysis, and principles for site evaluation (e.g., to include environmental justice considerations) to the Planning Committee.

7. General Manager's Report.

Water Supply Update – Water Year 2022 review, and briefing on supplemental, current and California water supply, and water supply projections.

Director of Operations and Maintenance David A. Briggs discussed the current flow on the Mokelumne River, flood control space, planned releases from local reservoirs that are full, and snow levels at Caples Lake. General Manager Chan said the District is currently spilling at the following reservoirs: Briones, San Pablo Upper San Leandro, and Chabot.

Monthly Report – February 2023

General Manager Clifford C. Chan announced he is available to respond to questions regarding the report.

REPORTS AND DIRECTOR COMMENTS

8. Committee Reports.

Filed with the Board were the Minutes for the February 28, 2023 Finance/Administration Committee.

- Planning Committee chair Doug A. Linney reported the Committee met earlier in the day and received the Water Quality Program Annual Update – 2022; Wastewater Pretreatment and Pollution Prevention Programs update; and the Trail Use Permit Pilot Programs update.
- Legislative/Human Resources Committee member John A. Coleman reported the Committee met earlier in the day and received an update on the Diversity, Equity, and Inclusion Strategic Plan and Legislative Report No. 02-23.

9. Other Items for Future Consideration.

None.

10. **Director Comments.**

Director Chan reported attending the ACWA Conference in Washington D.C. February 28-March 2; California Association of Public Retirement Systems annual General Assembly March 4-7 in Monterey; meeting with Steve Harder at the Redwood Canyon Golf Course; and meeting with representatives from San Ramon and Danville who expressed interest in touring the District's Walnut Creek Water Treatment Plant.

Director Coleman reported attending lunch with Director April Chan in San Ramon and presenting on EBMUD to the Dougherty San Ramon Rotary in San Ramon on March 1; Presenting on EBMUD to San Ramon Real Estate Marketing representatives in Danville on March 2; meeting with representatives from Diablo Country Club regarding recycled water in Danville on March 5; call with student pursuing Boy Scout merit badge regarding water conservation (remote) on March 6; meeting with representatives from Diablo Country Club regarding recycled water in Danville on March 7; Presenting to San Ramon Valley Exchange Club in Danville on March 8; Meetings with Assembly Member Rebecca Bauer-Kahn, Assembly Member Wicks, Senator Glazer, and staff from Senator Skinner's office in Sacramento and presenting on Lafayette Reservoir Tower to Lafayette Rotary Club on March 9; and plans to present on Lafayette Reservoir Tower to Lafayette Chamber of Commerce on March 13.

- Director Patterson reported attending the NAACP general membership meeting in Oakland on March 11.
- Directors Linney, McIntosh, and Young and President Katz had no reports.


ADJOURNMENT

President Katz adjourned the meeting at 6:17 p.m.

SUBMITTED BY:


Rischa S. Cole, Secretary of the District

APPROVED: March 28, 2023


Andy Katz, President of the Board