

## **MINUTES**

**Tuesday, January 10, 2023  
East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California**

### **Regular Closed Session Meeting**

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:06 a.m. in the Administration Building Boardroom.

### **ROLL CALL**

Directors April Chan, John A. Coleman, Andy Katz, Lesa R. McIntosh, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. President Linney welcomed Director Chan to the Board.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Director of Wastewater Amit K. Mutsuddy (Item 1), Assistant General Counsel Lourdes M. Matthew (Item 2), Director of Finance Sophia D. Skoda (Item 2), Director of Human Resources Cindy R. Charan (Item 2), and Manager of Employee Services Lisa A. Sorani (Item 2).

### **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Eric Larsen, President, AFSCME Local 444 commented on COVID-19 testing requirements for employees and asked the District to provide a mechanism for reimbursement for test kits and a time code for employees testing company time; 2) Joey D. Smith, President, AFSCME Local 2019 wished the Board a Happy New Year, welcomed Director Chan, and asked the Board to consider closing today's meeting in honor of EBMUD employee Susan Rexin, who recently passed away; and 3) Ivette Rivera welcomed Director Chan and commented on lawsuits filed against the District over the past 30 years, documents from a current lawsuit, the McIntosh Erving v. EBMUD case, and the District's 2008 Pathways graduating class.

### **BROWN ACT BRIEFING**

General Counsel Derek T. McDonald presented the annual Brown Act briefing and ethics update. Mr. McDonald reviewed the Board's ethical duties under District Policy 6.04 – Ethics of the EBMUD Board of Directors; amendments to the Brown Act regarding remote meeting attendance (AB 361 and AB 2449); posting updated Board meeting materials (AB 2647); removal of disruptive individuals (SB 1100); and Attorney General Opinion 21-1102 regarding legislative support staff attendance at city council closed session meetings and whether two public agencies can meet jointly in closed session. Next, he highlighted the Political Reform Act, with an overview of conflicts of interest and their impacts on property interests; the increased gift limit; and revisions to the Levine Act under SB 1439 to include prohibitions for elected officials effective January 1, 2023. These prohibitions are more expansive than the District Campaign Finance Reform Ordinance. He discussed Government Code section 1090 and advice letters from the Fair Political Practices Commission (FPPC) in response to other public entities seeking clarification on potential conflicts of interest regarding financial interests in contracts. Mr. McDonald responded to Board questions regarding remote meeting attendance under AB 2449; whether the Board should consider adopting a formal

- Motion by Director McIntosh, seconded by Director Chan, to nominate John A. Coleman as President of the Board carried (5-2) by the following roll call vote: AYES (Chan, Coleman, Katz, McIntosh, and Linney); NOES (Patterson and Young); ABSTAIN (None); ABSENT (None).

**Motion No. 001-23** – Elected Director John A. Coleman as President of the Board of Directors for 2023.

President Coleman thanked the Board for the vote of confidence and expressed appreciation for the work Board members do to make the job of the President easier.

### **Election of Vice-President of the Board**

President Coleman opened the floor for nominations for Vice-President of the Board for 2023.

- Motion by Director McIntosh, seconded by Director Chan, to nominate Director Katz for Vice-President of the Board of Directors for 2023.

President Coleman called for additional nominations, and none came forward.

- Motion by Director McIntosh, seconded by Director Chan, to elect Director Katz as Vice-President of the Board for 2023, carried (6-1) by the following voice vote: AYES (Chan, Katz, Linney, McIntosh, Young, and Coleman); NOES (None); ABSTAINED (Patterson); ABSENT (None).

**Motion No. 002-23** – Elected Director Katz as Vice-President of the Board of Directors for 2023.

President Coleman and Vice-President Katz thanked the Board.

### **Committee Assignments**

President Coleman announced the Board received a memorandum at their places requesting 2023 Committee, Joint Powers Authorities, and Association assignment preferences and asked Board members to submit their preferences to the Secretary by January 13. Assignments will be presented for Board consideration at the January 24 meeting.

Secretary Cole asked President Coleman to request a motion to close the nomination periods for President and Vice-President of the Board for 2023.

- Motion by Director McIntosh, seconded by Director Linney, to close the nomination periods for President and Vice-President of the Board for 2023 carried (7-0) by the following voice vote: AYES (Chan, Katz, Linney, McIntosh, Patterson, Young, and Coleman); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 003-23** – Closed the nominations periods for President and Vice-President of the Board for 2023.

### **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

## **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Cynthia Adkisson, Utility District Credit Union (UDCU) Board President announced the retirement of UDCU Manager Hassan Elmi and introduced the new manager, Anthony Rappa; 2) Anthony Rappa commended Hassan Elmi for his years of service and commented on his prior experience and goals for the UDCU; and 3) Ivette Rivera commented on her comments made during the Legislative/Human Resources meeting earlier in the day; Board Officer elections; and the recent passing of two District employees.

## **CONSENT CALENDAR**

- Motion by Director McIntosh, seconded by Director Patterson, to approve the recommended actions for Items 1-6 on the Consent Calendar carried (7-0) by the following voice vote: AYES (Chan, Coleman, Katz, McIntosh, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 004-23** – Approved the Regular Meeting minutes of December 13, 2022.
  2. The following correspondence was filed with the Board: **1)** Presentation entitled, “Water Supply Update,” dated January 10, 2023; **2)** Presentation entitled, “Coronavirus Disease (COVID-19),” dated January 10, 2023; **3)** Presentation entitled, “Annual Brown Act and Ethics Update,” dated January 10, 2023; **4)** Presentation entitled, “Federal Legislative Update,” dated January 10, 2023; **5)** Speakers’ Bureau and Outreach Record CY23 dated January 9, 2023; **6)** Document entitled, “Exhibit 108” from Case 3:21-cv-04325-AGT Document 83-7, filed 11/29/22; **7)** Equal Employment Opportunity Commission Determination in the McIntosh and Erving v. EBMUD case, dated April 5, 1983; and **8)** Memo dated January 10, 2023 to Board of Directors from Doug A. Linney, President regarding 2023 Assignment Preferences for Committees, Joint Powers Authorities, and Associations.
  3. **Motion No. 005-23** – Authorized an agreement beginning on or after January 10, 2023 with AECOM Technical Services, Inc. in an amount not to exceed \$891,276 for engineering services to support the Camanche Dam and Pardee Dam Seismic Study.
  4. **Motion No. 006-23** – Authorized an agreement beginning on or after January 10, 2023 with AECOM Technical Services, Inc. in an amount not to exceed \$172,260 for the conceptual design of a solution to restore the eroded soil cover that protects Mokelumne Aqueducts No. 1 and No. 2 under the riverbed of Old River in the California Delta.
  5. **Motion No. 007-23** – Authorized an amendment to the contract previously awarded under Board Motion No. 182-16, with Western Area Power Administration to extend the contract termination date from December 31, 2024 to December 31, 2029 for electricity purchases at select District facilities.
  6. **Motion No. 008-23** – Authorized the amendment and approved the assignment of the Camanche Reservoir Recreation Contract with Urban Park Concessionaires to Vista Recreation.

## **DETERMINATION AND DISCUSSION**

### **7. Appoint Manager of Employee Relations.**

General Manager Clifford C. Chan announced Marc Adam Smyer as the recommended candidate for the position of Manager of Employee Relations and highlighted Mr. Smyer's education and background.

- Addressing the Board was Joey D. Smith, President, AFSCME Local 2019 who commented on previous managers of Employee Relations and looking forward to working with Mr. Smyer.
- Motion by Director Linney, seconded by Director McIntosh to approve the recommended actions for Item 7 carried (7-0) by the following voice vote: AYES (Chan, Coleman, Katz, McIntosh, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35333-23** – Appointing Marc Adam Smyer as Manager of Employee Relations (*effective January 16, 2023*).

Mr. Smyer thanked the Board and Ms. Smith and said he looks forward to the new opportunity.

### **8. State Legislative Initiatives for 2023 Legislative Year.**

Legislative/Human Resources Chair Lesa R. McIntosh reported the Committee met earlier and unanimously voted to support the recommended actions. Manager of Legislative Affairs Kathy Viatella announced the governor released a proposed budget of \$297 billion and reviewed five state legislative initiatives regarding climate change; customer assistance; diversity equity, and inclusion (DEI); water quality; and water supply reliability and resiliency. The Board discussed legislation to address systemic racism; identifying available federal funding for DEI initiatives; participating in budget and policy development regarding DEI; workforce development under climate change; sponsoring legislation; and working with state representatives. The Board asked staff to monitor legislation that supports the District's DEI efforts, workforce development, and addresses nutrients; consider partnerships and collaboration on District-related policy issues when appropriate; evaluate partnering and sponsoring legislation related to customer assistance; and consider coordinating meetings between Board members and the Governor's staff.

- Motion by Director, McIntosh, seconded by Director Linney, to approve the State Legislative Initiatives for the 2023 Legislative Year carried (7-0) by the following voice vote: AYES (Chan, Katz, Linney, McIntosh, Patterson, Young, and Coleman); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 009-23** – Approved the following State Legislative Initiatives for 2023 Legislative Year: 1) Climate Change – Advance EBMUD's interests related to climate change, including wildfire and forest resilience in the context of providing reliable water and wastewater service; 2) Customer Assistance – Seek constructive ways to advance EBMUD's interests as the administration and the legislature consider ways to provide assistance to water and wastewater customers; 3) Diversity, Equity, and Inclusion (DEI) – Advance EBMUD's DEI interests as the legislature and administration continue to consider DEI issues in the context of policy development; 4) Water Quality – Advance EBMUD's interests in legislative and policy discussions on water quality issues; and 5) Water Supply Reliability and Resiliency – Protect and advance EBMUD's interests in the context of water supply

reliability and resiliency, including the use of recycled water, water rights, and the Mokelumne River fishery.

### **Federal Initiatives for 2023.**

Manager of Legislative Affairs Kathy Viatella introduced Eric Sapirstein of ENS Resources, Inc. who commented the District's federal initiatives for 2023 align with the realities of what is being faced in Washington D.C. in the upcoming two-year cycle. He presented an overview of legislative accomplishments, election impacts, and the policy outlook in 2023 regarding drought relief; the FY 2024 budget; reconciliation/debt limit; PFAS superfund liability; build America, buy America technical corrections; and oversight. Mr. Sapirstein responded to Board questions regarding U.S. Environmental Protection Agency activity on rules regarding water; additional updates on Administration activities; earmarks received by the District in 2022; and Administration plans to address nutrients. The Board thanked Mr. Sapirstein for the presentation.

- Director Patterson left the Board room at 2:46 p.m. and returned at 2:51 p.m.

Next Ms. Viatella provided an overview of four federal legislative initiatives regarding climate change; infrastructure and other funding assistance; water quality; and water supply reliability and natural resources protection.

- Motion by Director McIntosh, seconded by Director Linney, to approve the Federal Initiatives for 2023 carried (7-0) by the following voice vote: AYES (Chan, Katz, Linney, McIntosh, Patterson, Young, and Coleman); NOES (None); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 010-23** – Approved the following Federal Legislative Initiatives for 2023: 1) Climate Change Resiliency – Actively assess and seek opportunities to engage in climate change policies and potential funding opportunities that promote EBMUD priorities to ensure safe, reliable, and resilient water and wastewater services; 2) Infrastructure and Other Funding Assistance – Advance EBMUD's funding needs through relevant programmatic funding opportunities and congressionally directed spending, as appropriate; 3) Water Quality – Monitor the development of relevant water quality-related legislation and policies at the federal level and work to ensure EBMUD's interests are effectively communicated, including through appropriate national associations; and 4) Water Supply Reliability and Natural Resources Protection – Advance EBMUD's interests in water supply reliability and supporting the Mokelumne River fishery.

## **9. General Manager's Report.**

### Coronavirus Update.

Director of Operations and Maintenance David A. Briggs presented an update on COVID-19 positive cases in Alameda County and the number of employee and contractor positive COVID-19 cases to date. Samples from the District and Central Contra Costa Sanitary District indicate the COVID-19 concentration in wastewater is trending down. The District continues implementing its transition plans and re-opened District facilities to the public on January 9. Qualifying staff will begin transitioning from emergency to permanent work from home schedules on January 16, and the indoor masking requirement will end on January 30. Mr. Briggs and Director of Wastewater Amit K. Mutsuddy responded to Board questions regarding COVID-19 concentrations in wastewater; how samples are collected and provided to those studying COVID-19 concentrations in wastewater; and

best practices for encouraging the use of face coverings. The Board asked staff to communicate COVID-19 testing procedures including the availability of test kits, testing centers, and proper time codes to District employees; review best practices for strongly encouraging the use of face coverings; and evaluate revising the hours when the Administration Building parking garage gate is open.

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 presented the update on Water Year 2022 which included an overview of Upper Mokelumne and East Bay precipitation; snowpack water content; total unimpaired runoff; and end of water year storage which was 520 thousand acre-feet (TAF). A total of 53,836 AF of transfer water was diverted between October 2021 and October 2022. He reviewed gross water production; total water conservation in calendar year 2020 compared to calendar year 2022 which was 9.3 percent; current precipitation in the Upper Mokelumne and the East Bay; snow depth at Caples Lake and total system storage as of January 8, 2023. The District experienced record-setting storms in December and January which impacted reservoir operations. He ended with an overview of changes in the state's snow water equivalents based on January 9, 2023 data and water supply projections for Rainfall Year 2023. Mr. Briggs and General Manager Clifford C. Chan responded to Board questions regarding potential impacts from controlled releases from Camanche Reservoir to downstream areas; impacts to electricity generation; and potential options for the District to transition from mandatory to voluntary conservation for its customers. The Board requested a wet weather update at an upcoming Board meeting.

Six-Month Forecast of Board Committee and Workshop Agenda Topics for 2023 and Summary of 2022 Committee and Workshop Topics; 2022 Interdepartmental Committees Annual Report; and Monthly Report – December 2022

General Manager Clifford C. Chan announced the Board received information on these items in their packets and responded to a question regarding potential impacts on operations at the Main Wastewater Treatment Plant because of the court order for the Wood Street encampment.

**REPORTS AND DIRECTOR COMMENTS**

**10. Committee Reports.**

- Filed with the Board were the Minutes for the December 13, 2022 Planning and Legislative/Human Resources Committees.
- Planning Committee Chair Marguerite Young reported the Committee met earlier in the day and received updates on Wildcat Pumping Plant Project and Availability of the Draft Mitigated Negative Declaration; and Quarry Site Restoration Project and Availability of the Draft Environmental Impact Report. Due to time constraints the Fiscal Year 2022 Annual Readiness Report was deferred to a future meeting.
- 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 (DEISP); State Legislative Initiatives for 2023; and Federal Initiatives for 2023.

- Addressing the Board was Ivette Rivera who commented on the Legislative/Human Resources Committee's direction to staff to provide future DEISP updates to the Committee every two months.

11. **Other Items for Future Consideration.**

None.

12. **Director Comments.**

Director Coleman reported participating in the Los Vaqueros Reservoir JPA Board meeting (remote) and meeting with EBMUD auditors regarding UMRWA (remote) on December 14; EBMUD Developer Forum (remote) on December 15; meeting with representatives from Tassajara Valley in Oakland on December 19; Los Vaqueros Reservoir JPA Finance Committee meeting (remote) on December 22; and plans to attend a Lafayette City Council meeting regarding the Lafayette Reservoir Tower (remote) on January 10; meeting with EBMUD General Manager to review Board meeting agenda (remote) on January 18; UMRWA Board meeting at Pardee on January 27; and Los Vaqueros Reservoir JPA Finance Committee meeting (remote) on February 23.

- 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. He reported on plans to participate in a ceremony honoring Bill Russell and Paul Silas at McClymonds High School in Oakland on January 13. He thanked staff and the Board for their continued support.
- Directors Chan, Katz, Linney, McIntosh, and Young had no reports.

**ADJOURNMENT**


President Coleman announced today's meeting would be adjourned in memory of Susan Rexin, EBMUD Buyer II and Bill Jennings. Ms. Rexin worked for the District for 24 years and is remembered for her determination, work ethic and deep love for the many dogs she rescued and care for. She passed away on December 26. Mr. Jennings, an advocate for the Sacramento-San Joaquin River Delta and California's fish populations, former DeltaKeeper and Executive Director of the California Sportfishing Protection Alliance passed away on December 27. Director Young recounted Mr. Jennings' accomplishments and role in the water community.

President Coleman adjourned the meeting at 4:02 p.m. in honor of Susan Rexin and Bill Jennings.

SUBMITTED BY:

  
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Rischa S. Cole, Secretary of the District

APPROVED: March 28, 2023

  
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John A. Coleman, President of the Board