

## MINUTES

**Tuesday, April 25, 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 11:10 a.m. in the Administration Building Training Resource Center.

### ROLL CALL

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

Staff participants included General Manager Clifford C. Chan, Acting General Counsel Jon Salmon, Director of Water and Natural Resources Michael T. Tognolini (Item 1) and Engineering Manager Bradley M. Ledesma (Item 1).

### PUBLIC COMMENT

- Addressing the Board were the following: 1) Lonna Coleman commented on the Board of Director's ethics policy and EBMUD staff's understanding of the Retirement Ordinance; and 2) Ivette Rivera commented on the First Amendment Coalition's "California Public Records Act Primer"; Ayriel Bland's employment application; her 2015 civil rights lawsuit with Monell-related claims; and the Pierce/Bland court case.
- Director Coleman left the meeting at 11:11 a.m. and returned at 11:15 a.m.

### ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Katz announced the closed session agenda and the Board convened to the Administration Building Conference Room 8 for discussion.

### Regular Business Meeting

President Andy Katz called to order the Regular Business Meeting of the Board of Directors at 1:17 pm. in the Administration Building Training Resource Center.

### ROLL CALL

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

Staff participants included General Manager Clifford C. Chan, Acting General Counsel Jon Salmon, and Secretary of the District Rischa S. Cole.

## **BOARD OF DIRECTORS**

President Katz led the Pledge of Allegiance.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

President Katz announced the Board met in closed session this morning to consider a request by the Office of General Counsel to authorize initiation of litigation in one matter. All Directors were present at the closed session. The Directors voted to authorize the Office of General Counsel to initiate litigation in the matter. The action, defendants, and other particulars will be disclosed, upon inquiry once the action is formally commenced. There were no other announcements required from closed session.

## **PUBLIC COMMENT**

- Addressing the Board were the following: 1) Lonna Coleman commented on the Board of Director's ethics policy and EBMUD staff's understanding of the Retirement Ordinance; and 2) Ivette Rivera commented on the documents provided to the Board during public comment for Closed Session and documents submitted to the Board during public comment for the Regular meeting.
- Director Coleman left the meeting at 1:18 p.m. and returned at 1:23 p.m.

## **CONSENT CALENDAR**

- Agenda Items 3 and 11 were pulled from the Consent Calendar for separate discussion.
  - General Manager Clifford C. Chan announced the Board received a revised copy of Item 7.2 which was updated to reflect the correct union notification date in the Social section of the document.
  - Motion by Director McIntosh, seconded by Director Linney, to approve the recommended actions for Items 1, 4-10, and 12-13 on the Consent Calendar carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 064-23** – Approved the Special Meeting Minutes of February 28, 2023 and the Regular Meeting Minutes of April 11, 2023.
  2. The following correspondence was filed with the Board: 1) Pages from First Amendment Coalition's "California Public Records Act Primer"; 2) Pages from Ayriel Bland's employment application for EBMUD Attorney II; 3) Pages from court documents pertaining to Ivette Rivera vs. East Bay Municipal Utility District et al. Case No. C15-00380-DMR; 4) Memo dated January 9, 2003 from Dennis M. Diemer, General Manager to Board of Directors regarding Director Patterson to Receive the Department of Justice Award of Excellence for Civil Rights Work on January 15, 2003; 5) Presentation entitled, "Amendment to EBMUD Employees' Retirement System Ordinance (Ordinance No. 40) Section 21 – First Reading," dated April 25, 2023; 6) Presentation entitled, "2023 Water Supply Availability & Deficiency Report," dated April 25, 2023; 7) Presentation entitled, "Rescind and Suspend Remaining Drought Response Actions," dated April 25, 2023; 8) Presentation entitled, "Service Award Recipients – January 2023 – March 2023," dated April 25, 2023; 9) Memo dated April 25, 2023 from Kelly A. Zito, Special Assistant to the General Manager to Board of Directors regarding List of Customers in Violation of Excessive Water Use Penalty Ordinance;

10) Speakers' Bureau and Outreach Record CY23 dated April 25, 2023 (sorted by event type);  
11) Speakers' Bureau and Outreach Record CY23 dated April 25, 2023 (sorted by date/time);  
12) Revised Board Action Agenda Item 7.2 regarding Amend Consultant Agreement For Main Wastewater Treatment Plant Operations Center Improvements Project; 13) Document entitled, "Saji Pierce, et al., Plaintiffs, v. East Bay Municipal Utility District, et al., Case No. 21-cv-04325-AGT United States District Court Northern District of California Subject to Stipulated Protective Order – Confidential"; 14) Performance Appraisal for Maintenance Specialist Richard Coelho dated January 25, 2022; 15) Performance Appraisal for Maintenance Specialist Joel Munoz dated June 29, 2022; 16) State of California Public Employment Relations Board Unfair Practice Charge from AFSCME Local 444 filed June 15, 2022; and 17) Flyer announcing EBMUD's 100<sup>th</sup> Birthday Party and Community Fair on May 21, 2023.

3. **Award a contract to the lowest responsive/responsible bidder, Cratus, Inc., in an amount not to exceed \$22,840,000 for construction of the Wildcat Pipeline Improvement, El Cerrito under Specification 2157.**

Director Coleman pulled the item to ask how trench soils from the project will be processed and staff communications with The San Francisco Bay Conservation and Development Commission regarding beneficial reuse of trench soils from District projects. Director of Engineering and Construction Olujimi O. Yoloye and Associate Civil Engineer Gus Cicala responded the contractor is responsible for processing the trench soils; discussed the potential for trench soils to be reused for the project and other beneficial reuse; and described the engineered backfill process. General Manager Clifford C. Chan said staff would provide information on the District's pilot on trench soils reuse and an update on discussions with The San Francisco Bay Conservation and Development Commission on future options for trench soils beneficial reuse.

- Motion by Director Coleman, seconded by Director Linney, to approve the recommended actions for Item 3 carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 075-23** – Awarded a contract to the lowest responsive/responsible bidder, Cratus, Inc., in an amount not to exceed \$22,840,000 for construction of the Wildcat Pipeline Improvement, El Cerrito under Specification 2157.

4. **Motion No. 065-23** – Awarded a contract to the lowest responsive/responsible bidder, Disney Construction, Inc., in an amount not to exceed \$12,323,000 for construction of the Palo Seco Pumping Plant and Madrone Regulator Replacement, Almond Pumping Plant Flowmeter Replacement, and Madrone Reservoir Demolition Project, under Specification 2145; and consent to the withdrawal of the low bid of Anvil Builders, Inc.
5. **Motion No. 066-23** – Authorized a direct award contract to Fluid Conservation Systems Inc., for supplying handheld leak detection equipment, beginning on or after April 25, 2023 for a total cost, after the addition of taxes, not to exceed \$127,986.
- 6.1. **Motion No. 067-23** – Awarded a contract to the lowest responsive/responsible bidder, Dell Inc., for supplying two Dell storage servers, one security server, and six Distributed Control Systems host servers for the upgrade of the Lafayette Water Treatment Plant (WTP) and Walnut Creek WTP distributed control systems, beginning on or after April 25, 2023, after the addition of taxes, in an amount not to exceed \$155,762.82.

- 6.2. **Motion No. 068-23** – Awarded a contract to the lowest responsive/responsible bidder, NTT America, Inc., for supplying two CISCO network hardware configurations for the upgrade of the Lafayette and Walnut Creek Water Treatment Plant distributed control systems, beginning on or after April 25, 2023, after the addition of taxes, in an amount not to exceed \$182,924.13.
- 7.1 **Motion No. 069-23** – Awarded a contract to the lowest responsive/responsible bidder, Buhler Commercial, in an amount not to exceed \$7,118,690 for construction of the Main Wastewater Treatment Plant Operations Center Improvements Project under Specification SD-424.
- 7.2. **Motion No. 070-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 187-20 with Aetypic, Inc. to increase the agreement amount by \$114,832 to a total amount not to exceed \$542,989 for additional design services and engineering services during construction for the Main Wastewater Treatment Plant Operations Center Improvements Project under SD-424.
8. **Motion No. 071-23** – Authorized an agreement beginning on or after April 25, 2023 with Alisto Engineering Group in an amount not to exceed \$1,070,320 for field identification and creation of an inventory of existing pipe materials on customer-service laterals formerly served by a District lead service lateral.
9. **Motion No. 072-23** – Authorized an agreement beginning on or after April 25, 2023 with the City of San Ramon in an amount not to exceed \$84,700 for gate valve pot upgrades.
- 10a.- **Motion No. 073-23** – Authorized amendments to the agreements previously authorized under
- 10b. Board Motion No. 013-21, with Ahern Rentals Inc., Coast Counties Peterbilt PacLease, Doc Bailey Construction Equipment Inc., Gloria Washington Trucking, Inc., Herc Rentals Inc., Ibarra Team Construction Services, Inder Trucking, JS Cole Company, Monticello Trucking LLC, Nor Cal Rental Group dba Cresco Equipment Rentals, Pape Machinery Inc., S&L Transport, LLC, Sky Rock Inc., Sunbelt Rentals, Inc., Sunstate Equipment Co., LLC, Tri-West Tractor Inc., and United Rentals (North America), Inc. to increase the aggregate amount of those agreements by \$13,000,000 to a total aggregate amount not to exceed \$25,000,000 for bare equipment rentals through January 11, 2026; and authorized additional agreements for bare equipment rentals, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on April 25, 2023, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above 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.
11. **Authorize an amendment to the agreement previously authorized under Board Motion No. 095-18 with Bloomberg Finance L.P. to increase the agreement amount by \$175,000 to a total amount not to exceed \$329,130 and extend the agreement term to June 30, 2028 for Bloomberg Terminal, a financial information, communication, and trading platform.**

Director Coleman pulled the item to inquire about the need to use the Bloomberg Terminal and if the proposed amendment to the agreement had been presented to the Finance/Administration Committee. Director of Finance Sophia D. Skoda explained the benefits of using the Bloomberg Terminal and confirmed the original agreement had been presented to the Finance/Administration

Committee. Staff was asked to present future amendments to the Bloomberg Terminal agreement to the Finance/Administration Committee.

- Motion by Director Coleman, seconded by Director Linney, to approve the recommended actions for Item 11 carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 076-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 095-18 with Bloomberg Finance L.P. to increase the agreement amount by \$175,000 to a total amount not to exceed \$329,130 and extend the agreement term to June 30, 2028 for Bloomberg Terminal, a financial information, communication, and trading platform.

12. **Motion No. 074-23** – Approved the March 2023 Monthly Investment Transactions Report.

13. **Resolution No. 35344-23** – Amending Resolution No. 35296-22 To Amend Fiscal Year 2023 Wastewater System Debt Service Budget To Accommodate Higher Debt Service.

#### **DETERMINATION AND DISCUSSION**

14. **Introduction and first reading on amending the EBMUD Employees' Retirement System Ordinance (Ordinance No. 40), Section 21 to update the actuarially assumed rate of return (ROR) from 7.00 percent to 6.75 percent.**

Manager of Employee Services Lisa A. Sorani provided an overview of the amendments to Section 21 of Ordinance No. 40. Section 21 of Ordinance No. 40 provides for an optional modification of a member's retirement allowance. Optional benefits are calculated using the actuarial equivalent of the member's retirement allowance, which is determined using the actuarially assumed ROR and mortality tables. The Segal Group, Inc., the District's Retirement Plan actuary, recommended a change to the actuarial ROR from 7 percent to 6.75 percent as part of the Economic Assumptions Review in preparation for their June 30, 2022 Actuarial Valuation Report. The Retirement Board adopted the new assumed ROR on January 19, 2023 and received the actuary's report at its March 9, 2023 meeting. The requirement to update Ordinance No. 40 is based on the 2010 Economic Growth and Tax Relief Reconciliation Act of 2001 rules which clarified that the actuarially assumed ROR used to determine optional forms of benefits be specified. Staff recommends the Board amend Ordinance No. 40 to reflect the change in the actuarially assumed ROR. The amendment to Ordinance No. 40 to update the actuarially assumed ROR should be finalized by July 1, 2023. The second reading and consideration for the Board to vote to adopt the amendment is scheduled for the Regular meeting on May 9, 2023. Ms. Sorani highlighted actions to be completed by staff if the Board adopts the amendments, which includes placing the Ordinance amendments in the newspaper for two successive weeks. Adoption of the Ordinance amendments will take effect 30 days after the vote to adopt, or on June 9, 2023.

**Ordinance No. 374-23** – An Ordinance Amending Section 21, "Optional Modification Of Retirement Allowance," To Ordinance No. 40, Which Is The Employees' Retirement System Ordinance. *(Introduction and 1st Reading Only)*

15. **File the 2023 Water Supply Availability and Deficiency Report in conformance with District Policy 9.03 – Water Supply Availability and Deficiency and declared the District’s water supply is sufficient for meeting customer demands in 2023.**

Engineering Manager Bradley M. Ledesma presented the Water Supply Availability and Deficiency Report which evaluates the adequacy of the current year’s (2023) water supply. Based on the current 2023 runoff projections, the District’s water supply is sufficient for meeting customer demands with sufficient end of year storage and after meeting flow obligations in the Lower Mokelumne River. Mr. Ledesma reviewed the status of the District’s average Calendar Year 2022 (CY) water demands compared to CY 2020 averages and reported as of April 19 East Bay precipitation was 36.12 inches or 144 percent of average; Mokelumne watershed precipitation was 69.81 inches or 160 percent of average; snow depth at Caples Lake was over 136 inches or 240 percent of average; snow water content in the Sierras was 63.72 inches or 246 percent of average; and the District’s total system storage was 600,000 acre-feet or 95 percent of average. He discussed the District’s end of September total system storage which is projected to be 630,000 acre-feet (TAF) and runoff which is projected at 1,335 TAF. The District’s Joint Settlement Agreement (JSA) year type is projected to be “normal and above.” He highlighted the District’s “normal and above” flow release obligations and said Woodbridge Irrigation District is scheduled to receive its base supply of 60 TAF; Jackson Valley Irrigation District is scheduled to receive 3.875 TAF; and North San Joaquin Water Conservation District is scheduled to receive 20 TAF. The District is projected to have surplus water to complete the Demonstration, Recharge, Extraction, and Aquifer Management Project pilot and for the Bayside Groundwater Project. Staff will notify the resource agencies regarding the surplus water in accordance with the JSA.

- Motion by Director Young, seconded by Director Patterson, to approve the recommended actions for Item 15 carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 077-23** – Filed the 2023 Water Supply Availability and Deficiency Report in conformance with District Policy 9.03 – Water Supply Availability and Deficiency and declared the District’s water supply is sufficient for meeting customer demands in 2023.

- 16.1- **Adopt a resolution rescinding and suspending District drought response actions to:**
- 16.3 **1) Rescind the February 14, 2023 declaration of a Stage 1 drought and declare a Stage 0 drought in accordance with the District’s Water Shortage Contingency Plan; 2) Rescind the voluntary District-wide 10 percent water use reduction goal; and 3) Suspend implementation of the District’s Water Shortage Emergency Action Plan approved by the Board on May 10, 2022.**

Engineering Manager Bradley M. Ledesma provided the presentation. In response to dry conditions, on April 27, 2021, the Board adopted a resolution declaring a Stage 1 drought and established a voluntary water use reduction goal of 10 percent. On April 26, 2022, the Board declared a water shortage emergency within the District’s service area, a Stage 2 drought, and a mandatory Districtwide customer water use reduction goal of 10 percent. At that time, the Board also adopted emergency water use restrictions, affirmed the implementation of the Excessive Water Use Penalty Ordinance, and directed staff to implement expanded drought response and conservation measures. On May 10, 2022, the Board authorized an 8 percent drought surcharge and approved a Water Shortage Emergency Action Plan. Following this winter’s extremely wet weather, on February 14, 2023, the Board filed a preliminary Water Supply Availability and Deficiency Report (WSADR) that indicated the District’s water supplies are sufficient to meet

customer demand and downstream flow obligations. In response, the Board ended the 8 percent drought surcharge effective March 1, 2023, and downgraded from a Stage 2 drought to a Stage 1 drought within 30 days of the state updating its emergency drought regulations to provide for the lawful implementation of Stage 1. After the governor signed Executive Order N-5-23 on March 24, District staff implemented the directives of the Board's February 14, 2023 resolution on March 29. Based on the facts and conclusions set forth in the Final WSADR, filed by the Board on April 25, 2023, staff now recommends ending the three drought response measures that remain in effect. General Manager Clifford C. Chan announced the final list of customers in violation of the Excessive Water Use Penalty Ordinance had been provided at Board places.

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended actions for Items 16.1-16.3 carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

**Resolution No. 35345-23 – Rescinding Declaration Of Stage 1 Drought, Rescinding District-Wide Voluntary Water Use Reduction Goal Of Ten Percent, Suspending Implementation Of Water Shortage Emergency Action Plan, Declaring A Stage 0 Drought, And Making Necessary Findings.**

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

##### Service Award Recipients – January through March 2023.

Senior Human Resources Analyst Chad R. Thigpen provided the presentation that highlighted employees who have received service awards for 5 up to 35 years of service between January and March 2023. He concluded by highlighting the current average age of service and current average years of service at the District. Special Assistant to the General Manager Derry L. Moten responded to questions regarding previous average years of service, the current staff turnover rate, and the District's exit interview process. Staff was asked to provide information on the number of employees that left the District with less than 5 years of service and the reasons for their departure.

General Manager Clifford C. Chan announced the Board received EBMUD water bottles, copies of the flyer announcing EBMUD's 100<sup>th</sup> Birthday Party and Community Fair on May 21, 2023, and two versions of the Speakers' Bureau and Outreach Record CY23. The Board asked that information in the flyer be clarified regarding registration, and the costs for food and drinks at the event. The Board also requested mobile-friendly and PDF versions of the flyer.

### **REPORTS AND DIRECTOR COMMENTS**

#### 18. **Committee Reports.**

- Filed with the Board were the Minutes for the April 11, 2023 Planning and Legislative/Human Resources Committee meetings.
- Finance/Administration Committee Chair William B. Patterson reported the Committee met earlier in the day and received the March 2023 Monthly Investment Transactions Report and the Quarterly Investment, Payroll, Disbursement and Real Estate Summary Reports for the Water and Wastewater Systems for Quarter Ended March 31, 2023.

19. **Other Items for Future Consideration.**

None.

20. **Director Comments.**

- Director Coleman reported participating in the FRWA Board meeting in Oakland on April 13 and the DERWA Board meeting in Dublin on April 24. He reported on plans to attend the UMRWA Board meeting at McLean Hall in Pardee on April 28; Lafayette City Council meeting to present on the Lafayette Reservoir Tower Design in Lafayette on May 8; and the East Bay Leadership Council Board meeting on May 19. He announced EBMUD Senior Civil Engineer Florence T. Wedington was appointed to the Central Contra Costa Sanitary District Board of Directors on April 20, 2023.
- Director Young reported participating in a tour of Skylines Garden with the Native Plant Society on April 8.
- Directors Chan, Linney, McIntosh, and Patterson and President Katz had no reports.

**ADJOURNMENT**

President Katz adjourned the meeting at 2:14 p.m.

SUBMITTED BY:

  
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Rischa S. Cole, Secretary of the District

APPROVED: May 9, 2023

  
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Andy Katz, President of the Board