

## **MINUTES**

**Tuesday, May 9, 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 11:09 a.m. in the Administration Building Training Resource Center.

### **ROLL CALL**

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

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

### **PUBLIC COMMENT**

- Addressing the Board was the following: 1) Ivette Rivera commented on comments written on the bulletin boards for the District's 100<sup>th</sup> Anniversary time capsule and documents she would provide to the Board at the Regular Business meeting.

### **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 1:20 pm. in the Administration Building Training Resource Center.

### **ROLL CALL**

Directors John A. Coleman, Doug A. Linney, Lesa R. McIntosh, William B. Patterson, Marguerite Young, and President Andy Katz were present at roll call. Director April Chan 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 was the following: 1) Ivette Rivera commented on documents provided to the Board pertaining to the Pierce/Bland case and filing a Writ of Mandate for employment applications for District employees.

General Counsel Derek T. McDonald asked Ms. Rivera to clarify whether she would be submitting a new Public Records Request for the employment applications.

## **CONSENT CALENDAR**

- Motion by Director McIntosh, seconded by Director Patterson, to approve the recommended actions for Items 1-10 on the Consent Calendar carried (6-0) by the following voice vote: (Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (Chan).
1. **Motion No. 078-23** – Approved the Special Meeting Minutes and the Regular Meeting Minutes of April 25, 2023.
  2. The following correspondence was filed with the Board: 1) Presentation entitled “Amendment to EBMUD Employees’ Retirement System Ordinance (Ordinance No. 40) Section 21 Second Reading,” dated May 9, 2023; 2) Presentation entitled “GM’s Report on Water and Wastewater Schedule of Rates and Charges, Capacity Charges and Other Fees and Setting Public Hearing Date,” dated May 9, 2023; 3) Presentation entitled “Reporting Year 2022 Equal Employment Opportunity Program Report,” dated May 9, 2023; 4) Speakers’ Bureau and Outreach Record CY23 dated May 9, 2023; 5) Document entitled, “United States District Court Northern District of California, San Francisco Division Saji Pierce and Ayriel Bland, Plaintiffs v. East Bay Municipal District, a government agency, Craig Spencer individually and Laura Acosta, individually, Defendants. Joint Exhibit List 267 pages/1271 listed exhibits; 6) Document entitled “May 8<sup>th</sup> Board meeting @ AMC EBMUD erected a “SIGN THE TIME CAPSULE SCROLL”; and 7) Documents for Shaunte Scott versus East Bay Municipal Utility District; Mirsad Hajro versus East Bay Municipal Utility District; Raul Gutierrez, Plaintiff versus East Bay Municipal Utility District; and a letter dated October 2, 2017 to Sophia D. Skoda, EBMUD Director of Finance from Ivette Rivera regarding Ivette Rivera v EBMUD: Reply to EBMUD’s 9/7/17 Determination Letter and Scope of Investigation.
  3. **Motion No. 079-23** – Awarded a contract to the lowest responsive/responsible bidder, ABASCO LLC, for supplying turbidity curtains for the Pardee Reservoir, beginning on or after May 9, 2023, for a total cost, after the addition of taxes, not to exceed \$145,682 under Request for Quotation No. 2310.
  4. **Motion No. 080-23** – Awarded a contract to the lowest responsive/responsible bidder, Garney Pacific, Inc., in an amount not to exceed \$7,898,951 for the construction of the Main Wastewater Treatment Plant Secondary Clarifiers Rehabilitation Phase 3 project under SD-446.
  5. **Motion No. 081-23** – Authorized a direct award contract to General Datatech LP for delivery, installation, and support and maintenance of the Quantum tape backup hardware for five years, beginning on or after May 9, 2023 for a total cost, after the addition of taxes, not to exceed \$157,013.

6. **Motion No. 082-23** – Authorized an agreement beginning on or after May 9, 2023 with Carl Warren & Company, LLC for \$600,182.16 for three years with two options to renew for additional two-year periods for a total amount, including option years, not to exceed \$1,561,331.88 for serving as the District's third-party administrator for claims administration in support of the District's liability and subrogation programs.
7. **Motion No. 083-23** – Authorized an agreement beginning on or after May 9, 2023, with Intake Screens, Inc. in an amount not to exceed \$100,000 for the design of three surface water diversion screens on the lower Mokelumne River.
8. **Motion No. 084-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 159-20 with Equifax Workforce Solutions to increase the agreement amount by \$110,000 to a total amount not to exceed \$320,000 and extend the agreement terms to May 1, 2026 for Protection and Affordable Care Act (ACA) compliance tracking, ACA tax form preparation and fulfillment, unemployment administration, and Work Number services (employment verifications).
- 9a.- **Motion No. 085-23** – Authorized amendments to the agreements previously authorized under Board Motion No. 121-22 with ALB, Inc.; American Asphalt Repair & Resurfacing Co., Inc.; Carone & Company, Inc.; Forticon, Inc.; J. V. Lucas Paving, Inc.; MCK Services, Inc.; and Public Agencies to increase the aggregate amount of those agreements by \$5,000,000 to a total aggregate amount not to exceed \$10,000,000 and extend the agreement terms to May 9, 2024 for paving and other related services; and authorized additional agreements for paving and other related services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on May 9, 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.
- 9b. Board Motion No. 121-22 with ALB, Inc.; American Asphalt Repair & Resurfacing Co., Inc.; Carone & Company, Inc.; Forticon, Inc.; J. V. Lucas Paving, Inc.; MCK Services, Inc.; and Public Agencies to increase the aggregate amount of those agreements by \$5,000,000 to a total aggregate amount not to exceed \$10,000,000 and extend the agreement terms to May 9, 2024 for paving and other related services; and authorized additional agreements for paving and other related services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on May 9, 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.
10. **Motion No. 086-23** – Approved an addendum to the recordkeeping and administration services agreement previously authorized under Board Motion No. 199-19 with Fidelity Workplace Services, LLC to add investment advisory services through Fidelity Personal and Workplace Advisors LLC and Strategic Advisers LLC for retirees and other termed participants who maintain balances in the District's 401(a), 401(k) and 457 deferred compensation plans and authorize mutual indemnity provisions for the performance of such services through December 31, 2025. The costs for the investment advisory services will be paid by the participants.

## **DETERMINATION AND DISCUSSION**

### **11. Legislative Update.**

General Manager Clifford C. Chan announced the Legislative/Human Resources Committee met earlier in the day and voted to support the staff recommendations for the bills in Legislative Report No. 04-23. Manager of Legislative Affairs Kathy Viatella reviewed the report. AB 735 (Berman) Workforce Development Utility Careers as introduced on February 13, 2023, would establish the High Road Utility Careers program, to be administered by the California Workforce Development Board, to connect existing resources with individuals interested in careers in the utility sector and ensure a continued reliable workforce for California utilities. She reviewed key aspects of the bill and said staff is recommending District support for AB 735. AB 1423 (Schiavo) Product Safety: Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS): Artificial Turf or Synthetic Surfaces as

amended on April 13, 2023, is intended to reduce the use of PFAS. The bill would primarily do three things: 1) prohibit, beginning January 1, 2024, a public entity including cities and counties, a public or private K-12 school, and a public or private institution of higher learning, as specified in the bill, from purchasing or installing artificial turf that contains regulated PFAS; 2) require manufacturers or installers of artificial turf, beginning January 1, 2024, to notify the party the artificial turf is sold to or installed for that the artificial turf contains regulated PFAS; and 3) prohibit, beginning January 1, 2025, the manufacture or sale of artificial turf in the state that contains regulated PFAS. She reviewed key requirements in the bill and said staff is recommending District support for AB 1423. Next, Ms. Viatella provided an update on water rights modernization legislation and the latest amendments to 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. Staff remains concerned by the broad scope of AB 460 and AB 1337 and the lack of due process protections which are important before the State Water Resources Control Board takes steps to modify or restrict the exercise of water rights. Staff will continue to work with the authors' offices to address EBMUD concerns with the legislation in the context of EBMUD's water rights, access to supplies, and its role in protecting the Mokelumne River fishery and will report to the Board in June. She concluded with an overview of state and federal legislative activities. Ms. Viatella responded to Board questions regarding positive aspects and potential benefits of the water rights modernization bills; the District's approach to considering a position on the water rights modernization bills; asking the author of AB 1423 to include language to address PFAS in residential turf and the bill's potential negative impacts on water conservation efforts; and tracking potential impacts to the District from discussions on the U.S. debt ceiling.

- Motion by Director Coleman, seconded by Director Young, to approve the recommended actions for AB 735 under Item 11 carried (6-0) by the following voice vote: (Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (Chan).
- Motion by Director Linney, seconded by Director McIntosh, to approve the recommended actions for AB 1423 under Item 11 carried (6-0) by the following voice vote: (Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (Chan).

**Motion No. 087-23** – Received Legislative Report No. 04-23 and approved positions on the following bills: 1) SUPPORT AB 735 (Berman) Workforce Development: Utility Careers; 2) SUPPORT AB 1423 (Schiavo) Product Safety: Perfluoroalkyl and Polyfluoroalkyl Substances: Artificial Turf or Synthetic Surfaces; and received information on Water Rights Modernization Legislation.

12. **Second reading and vote 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 announced this is the second reading of the ordinance to amend Section 21 of Ordinance No. 40 which provides for an optional modification of a member's retirement allowance. The first reading of the ordinance occurred during the Regular meeting on April 25, 2023. 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. If approved, the amendment to Ordinance No. 40 to update the actuarially assumed ROR should be finalized by July 1, 2023. Ms. Sorani highlighted actions to be completed by staff if the Board adopts the amendments, which includes publishing the ordinance amendments in a newspaper of general circulation in the District for two successive weeks.

- Motion by Director Patterson, seconded by Director Linney, to approve the recommended actions for Item 12 carried (6-0) by the following voice vote: (Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (Chan).

**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. *(Second Reading and Vote)*

**13.1- File a Report and set a Public Hearing for the Water and Wastewater System Schedule of**  
**13.2 Rates and Charges, Capacity Charges, Other Fees, and Regulations.**

Director of Finance Sophia D. Skoda District's presented the proposed Fiscal Years 2024 and 2025 (FY 2024/FY 2025) budget as well as the water and wastewater system rates, charges and fees, and regulations. Budget workshops were held on January 24 and March 28 to review the proposed operating and capital budgets as well as rates, charges, fees, and regulations. The proposed FY 2024 and FY 2025 rates, charges, and fees incorporate the results and methodologies of the Cost of Service (COS) studies performed for the Water System in 2015, the Wastewater System in 2019, and the System Capacity Charge Study completed in 2021, and are set at the level necessary to provide the revenue required for proposed FY 2024 and FY 2025 expenditures.

For the Water System, staff recommends increasing water charges (service, flow, elevation, and private fire service) 8.5 percent overall for FY 2024 and an additional 8.5 percent overall for FY 2025. These increases are necessary to provide sufficient revenue for the proposed FY 2024 and FY 2025 operating and capital expenses for the Water System. The proposed increases are higher than projections made in FY 2021 when the FY 2022 and FY 2023 biennial budget was adopted. Due to the significant increase in cost inflation, higher spending on capital projects to make necessary improvements to water infrastructure, and the reduction in water consumption in response to the recent drought, the proposed charges are higher than originally projected. Staff also recommends maintaining the staged system of Drought Surcharges developed in the District's COS study as a contingency plan in the event of a water shortage. The Board would have the option to impose the Drought Surcharge percentage on the potable water flow charge when the Board declares a drought Stage 2, 3, or 4, to the extent necessary to address the projected fiscal impacts of the drought, not to exceed maximum percentages for each stage.

For the Wastewater System, staff recommends increasing the wastewater treatment charges (service, flow, and strength) and the Wet Weather Facilities Charge (WWFC) by 8.5 percent for FY 2024 and an additional 8.5 percent for FY 2025. These increases are necessary to provide

sufficient revenue for the District's proposed FY 2024 and FY 2025 operating and capital expenditures for the Wastewater System. Staff also recommends retaining the existing San Francisco Bay Pollution Prevention Fee of \$0.20 and \$5.48 per month for residential and non-residential customers, respectively, without increase.

Ms. Skoda reviewed the monthly impacts to the average single family residential bills from the proposed water and wastewater rate increases noting actual charges to a customer's bill will depend on the amount of water used in each billing period and that wastewater treatment charges collected on the water bill do not include the WWFC which is collected on the property tax bill. Typical homeowners who pay the wastewater treatment charges and the WWFC will see an increase in their annual charges of 8.5 percent in FY 2024 and 8.5 percent in FY 2025. She provided an overview of non-residential wastewater treatment rates; proposed impacts from increases to the WWFC; the District's annual charges for single-family residential water bills calculated for 8 CCF per month and wastewater bills calculated for 6 CCF of discharge per month effective July 1, 2024 compared to other agencies; all proposed changes to rates and charges subject to Proposition 218; other rates, fees, and charges not subject to Proposition 218; and changes to Section 1 of the Regulations Governing Water Service. A public hearing on the recommendations and adoption of the budget, rates and charges is scheduled for the June 13, 2023 Board meeting. For the rates subject to Proposition 218, a notice was mailed to the record owners of parcels upon which the proposed charges will be imposed and tenants directly responsible for the payment of the proposed charges informing them of the proposed increases, the public hearing and Proposition 218 protest provisions. The Board requested staff evaluate the need to include rates projections for the years following a budget cycle in future presentations.

- Motion by Director Linney, seconded by Director Patterson, to approve the recommended actions for Items 13.1-13.2 carried (6-0) by the following voice vote: (Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (Chan).

**Motion No. 088-23** – Filed the General Manager's Report and Recommendation for revisions to the Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, Other Fees, and Regulations; and set a Public Hearing for Tuesday, June 13, 2023, during the Board's regular meeting, to consider the report and recommendation and to comply with Proposition 218 requirements.

14. **Adopt the Reporting Year 2022 (RY 2022) Equal Employment Opportunity Program (EEOP).**

Manager of Diversity and Inclusion Jennella M. Sambour-Wallace and Senior Human Resources Analyst Katherine S. Tate presented the FY 2022 report and RY 2023 actions items and action-oriented programs. Ms. Sambour-Wallace noted the report is considered a complementary resource and one of many elements of the District's Diversity, Equity, and Inclusion Strategic Plan (DEISP). The report was compiled in collaboration with Heather Sakamoto with the Biddle Consulting Group. This item was scheduled for the Legislative/Human Resources Committee meeting earlier in the day but was not presented due to time constraints. As a federal contractor, the District is mandated by federal regulations to annually update and adopt a written EEOP that complies with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act, and Section 503 of the Rehabilitation Act. Ms. Tate provided an overview of the following for RY 2022: goals for females, minorities, individuals with disabilities, and protected veterans; utilization analysis for District job groups; metrics and data, including census data from Alameda and Contra

Costa counties used to determine workforce availability; workforce progress for minorities and females; placement rates for individuals with disabilities and protected veterans; and the District's workforce by gender and race/ethnicity. She noted gender data is reported in accordance with Office of Federal Contract Compliance Program requirements. She discussed the following for RY 2023: minority and female placement goals for seven job groups (Electrical/Structural Maintenance, Heavy Equipment/Truck Operators, Mechanical Maintenance, Rangers, Service Maintenance, Supervising Engineering, and Water Distribution Plumbing and Maintenance) and disaggregated minority placement goals. Ms. Sambour-Wallace reviewed workforce strategies for the seven job groups. There was considerable Board discussion regarding the information presented. Staff, Ms. Sakamoto and General Manager Clifford C. Chan responded to questions regarding the staff participating in District affinity groups and the Diversity Committee; how census data informs workforce availability; using data in addition to census data to develop placement goals; methods for collecting disability and veteran status data from staff and applicants; the RY 2023 disaggregated minority placement goals; partnering with the Urban Strategies Council to achieve placement goals; the terminology and methodology used in the report; how the District addresses workforce availability for jobs that require physical work and are traditionally held by males; format and information in EEOP reports from other agencies; and providing more time for the Board to review the report in advance of meetings as well as adequate time during meetings for staff to present the report.

- Addressing the Board were the following: 1) Ivette Rivera thanked Board members for their comments on the report and commented on the Board visiting job sites to observe the makeup of the workers; the report prepared by The Winters Group; and data on staff that did not pass probation; 2) Rolando Gonzalez, EBMUD Community Affairs Representative commented on questions and feedback received at the Cinco de Mayo event in Richmond on the District's online employment information being provided in additional languages; and 3) Joey D. Smith, President, AFSCME Local 2019 commented on her experience in the trades at the District, women in trades at the District, educating school age children about District careers, and the EEOP report.

There was additional Board discussion on the report, whether the Board was legally required to take action on the report today, and the comments received. Staff confirmed the Board is not required to take action on the report today. The Board asked staff to present the EEOP report in layperson terms; provide additional information from the last five years on employees that have separated from the District and on retention rates; explain the data used in slides 9 and 16 and the data sets used to disaggregate the information shown on slide 16; information displaying the correlation between the DEISP and the EEOP report; an analysis of applicant data by race and gender for the last 5 years; and evaluate options for providing translated employment information and materials on ebmud.com. General Manager Clifford C. Chan said staff will present the report and respond to Board questions at the June 13, 2023 meeting. The Board did not take action on the report.

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

### Monthly Report – April 2023

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

## **REPORTS AND DIRECTOR COMMENTS**

### **16. Committee Reports.**

- Filed with the Board were the Minutes for the April 25, 2023 Finance/Administration Committee meeting.
- Planning Committee Chair Doug A. Linney reported the Committee met earlier in the day and received updates on the Los Vaqueros Reservoir Expansion Project and Paving and Other Related Services. Due to time constraints, staff did not present the update on Project Labor Agreements; however, the Committee received public comment. Staff will incorporate some of the feedback from public comment and provide a presentation at a future meeting.
- Legislative/Human Resources Committee Chair Lesa R. McIntosh reported the Committee met earlier in the day and received updates on Legislative Report No. 04-23 and the Diversity, Equity, and Inclusion Strategic Plan. Due to time constraints, staff did not present the Reporting Year 2022 Equal Employment Opportunity Program.

### **17. Other Items for Future Consideration.**

None.

### **18. Director Comments.**

- Director Coleman reported participating in the UMRWA Board meeting at McLean Hall in Pardee on April 28; presenting at the Alamo Municipal Advisory Committee in Alamo and attending a town hall meeting for Congressman DeSaulnier in Lafayette on May 2; and presenting on the Lafayette Reservoir Tower Design at the Lafayette City Council meeting in Lafayette on May 8. He reported on plans to attend the East Bay Leadership Council Board meeting on May 19.
- Directors Chan, Linney, McIntosh, Patterson and Young and President Katz had no reports.




**ADJOURNMENT**

President Katz adjourned the meeting at 3:33 p.m.

SUBMITTED BY:

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

APPROVED: May 23, 2023

  
\_\_\_\_\_  
Andy Katz, President of the Board

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