

MINUTES

**Tuesday, August 22, 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 Boardroom.

BOARD OF DIRECTORS

President Katz announced that in accordance with Government Code section 54953 et seq., Director John A. Coleman notified the Board President, the General Manager, and the Secretary of the District via email of the need to participate in the Regular Closed Session meeting from a remote location for just cause. In accordance with Government Code section 54953 et seq., Director Coleman announced he was recovering from knee replacement and was unable to drive or walk. Director Coleman asked the Board to approve his request to participate in the Regular Closed Session meeting from a remote location for just cause.

Motion by Director McIntosh, seconded by Director Patterson, to approve Director John A. Coleman's request to participate in the Regular Closed Session meeting from a remote location for just cause in accordance with Government Code section 54953 et seq. carried (5-0) by the following roll call vote: (Coleman, Linney, McIntosh, Patterson, and Katz); NOES (None); ABSTAIN (None); ABSENT (Chan and Young).

Motion No. 136-23 – Approved Director John A. Coleman's request to participate in the Regular Closed Session meeting from a remote location for just cause in accordance with Government Code section 54953 et seq.

President Katz announced that in accordance with Government Code section 54953(f)(2)(C), Director Coleman would need to keep his audio open and camera on at all times while appearing remotely. Additionally, in accordance with Government Code section 54953(f)(2)(B), Director Coleman would need to disclose whether any individual over the age of 18 is present in the room at any time during the remote meeting and describe the general nature of the relationship with the individual. Director Coleman confirmed there was no one in the room over the age of 18.

ROLL CALL

Directors John A. Coleman (remote), Doug A. Linney, Lesa R. McIntosh, William B. Patterson and President Andy Katz were present at roll call. Director April Chan arrived at 11:12 a.m. Director Marguerite Young was absent (excused).

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

PUBLIC COMMENT

- Addressing the Board were the following: 1) Justin Young, Associate Electrical Engineer commented on the increase of capital improvement projects at water treatment plants, consultants completing design work for current capital improvement projects, and a third party audit of the costs to plan, design, construct and support consultants on the Ozone Replacement Project at the Sobrante and Upper San Leandro water treatment plants; and 2) Ivette Rivera commented on the Pierce/Bland judgement, the closing arguments of Bernard Alexander in the Pierce/Bland trial, and documents she will email to the Board.

Director Chan asked Justin Young for a copy of his comments.

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

BOARD OF DIRECTORS

President Katz announced that in accordance with Government Code section 54953 et seq., Director John A. Coleman notified the Board President, the General Manager, and the Secretary of the District via email of the need to participate in the Regular Business meeting from a remote location for just cause. In accordance with Government Code section 54953 et seq., Director Coleman announced he was recovering from knee replacement and was unable to drive or walk. Director Coleman asked the Board to approve his request to participate in the Regular Business meeting from a remote location for just cause.

- Motion by Director Chan, seconded by Director McIntosh, to approve Director John A. Coleman's request to participate in the Regular Business meeting from a remote location for just cause in accordance with Government Code section 54953 et seq. carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Patterson, and Katz); NOES (None); ABSTAIN (None); ABSENT (Young).

Motion No. 137-23 – Approved Director John A. Coleman's request to participate in the Closed Session from a remote location for just cause in accordance with Government Code section 54953 et seq.

President Katz announced that in accordance with Government Code section 54953(f)(2)(C), Director Coleman would need to keep his audio open and camera on at all times while appearing remotely. Additionally, in accordance with Government Code section 54953(f)(2)(B), Director Coleman would need to disclose whether any individual over the age of 18 is present in the room at any time during the remote meeting and describe the general nature of the relationship with the individual. Director Coleman confirmed there was no one in the room over the age of 18.

ROLL CALL

Directors April Chan, John A. Coleman (remote), Doug A. Linney, Lesa R. McIntosh, William B. Patterson and President Andy Katz were present at roll call. Director Young 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 Ivette Rivera who commented on documents she provided to the Board and read excerpts from Bernard Alexander's closing arguments in the Pierce/Bland trial.

Director Coleman asked that the items presented by Ivette Rivera be mailed to him.

CONSENT CALENDAR

- Agenda Items 1, 4, 8, and 9 were pulled from the Consent Calendar for separate discussion.
- Motion by Director Linney, seconded by Director McIntosh, to approve the recommended actions for Items 2-3, 5, 6a-6b, and 7a-7b on the Consent Calendar carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Patterson, and Katz); NOES (None); ABSTAIN (None); ABSENT (Young).

1. Approve the Regular Meeting Minutes of August 8, 2023.

Director Chan requested revisions to the comments she made under the Director Comments section of the minutes to include the dollar amount (\$279 million) she stated was transferred between projects. President Katz stated if Secretary of the District Rischa S. Cole could review the meeting transcript today, the Board could consider approving the minutes as revised. Secretary Cole asked the Board to defer taking action on the minutes to the September 12, 2023 Regular meeting to allow her and Director Chan to review the meeting transcript. The Board did not take action on this item.

- #### **2. The following correspondence was filed with the Board: 1) Presentation entitled, "East Bay Municipal Utility District Service Area Survey Results Presentation," dated August 2023; 2) Speakers' Bureau and Outreach Record CY 23 dated August 21, 2023; 3) Written comments from Lonna Coleman dated August 22, 2023; 4) Document entitled, "Pierce/Bland v EBMUD closing argumente (sic) portion, Bernard Vincent reference..."; 5) Copy of email dated August 19, 2023 from Ivette Rivera to Board of Directors regarding How EBMUD's BOD allows a racist and misogynist history thrive under its nose...; 6) Document entitled, "East Bay Municipal Utility District Request for Statement of Qualifications EEO Investigations, Related Services, and Mediations Consultant Roster"; and 7) Article entitled, "California Supreme Court Clarifies Evidentiary Standard For Whistleblower Retaliation Claims," dated January 28, 2022.**

3. **Motion No. 138-23** – Awarded a contract beginning on or after September 1, 2023 to the lowest responsive/responsible bidder, Badger Meter, Inc., for supplying various sized water meters for one year with four options to renew for additional one-year periods for a total cost, after the addition of taxes, including option years, not to exceed \$26,384,139 under Request for Quotation No. 2306.
4. **Authorized an agreement beginning on or after August 22, 2023 with Pacific States Environmental Contractors, Inc. for five years in an amount not to exceed \$57,977,000 for trench soils management and removal.**

In response to questions regarding the proposed agreement, General Manager Clifford C. Chan pointed out previous updates to the Board and the Planning Committee on trench soils management; options being investigated that do not include use of the San Leandro Quarry site; and how this agreement will support current District operations and provide funding for a direct haul pilot project. There was considerable Board discussion and Mr. Chan responded to questions regarding beneficial reuse sites for trench soils. Director of Operations and Maintenance David A. Briggs and Senior Civil Engineer Casey J. Le Blanc responded to questions regarding the status of the Conditional Use Permit application with Alameda County for Miller Road operations in Castro Valley as well as potential locations for trench soils reuse. Director April Chan asked to be kept updated on the status of the Conditional Use Permit application and activities relating to trench soils in Castro Valley. Staff was asked to provide a list of potential beneficial reuse sites for trench soils and the recipient or approval agencies for these sites.

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended actions for Item 4 carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Patterson, and Katz); NOES (None); ABSTAIN (None); ABSENT (Young).

Motion No. 142-23 – Authorized an agreement beginning on or after August 22, 2023 with Pacific States Environmental Contractors, Inc. for five years in an amount not to exceed \$57,977,000 for trench soils management and removal.

5. **Motion No. 139-23** – Authorized an agreement beginning on or after August 22, 2023 with TK Elevator Corporation for three years, with two options to renew for additional one-year periods for a total amount, including option years, not to exceed \$771,603 for elevator maintenance.
- 6a. – **Motion No. 140-23** – Authorized agreements beginning on or after August 22, 2023 with
- 6b. Columbia Electric, Inc.; Tennyson Electric, Inc.; and St. Francis Electric, LLC for three years with two options to renew for additional one-year periods, in an aggregate amount, including option years, not to exceed \$1,000,000 for traffic loop installation services; and authorized additional agreements for traffic loop installation services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on August 22, 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.

- 7a. – **Motion No. 141-23** – Authorized agreements beginning on or after August 22, 2023 with Doc
7b. Bailey Construction Equipment, Inc.; Garig Equipment; Hazardous Materials Institute; ICE Safety Solutions; Life Support Services; Parra Environmental Training; Sierra Rescue Incorporated; Trade Tech Pro LLC; and Watson Fire Training and Fuels Management in an aggregate amount of \$350,000 annually for three years, with the two options to renew for additional one-year periods for the total amount, including option years, not to exceed \$1,750,000, for environmental, health, and safety training and related services; and authorized additional agreements for environmental, health, and safety training and related services, on an as-needed basis, and subject to the total aggregate amount authorized by the Board for such services on August 22, 2023, with consultants that meet District standards and offer pricing at or below the range in the proposed agreements with the consultants above to increase flexibility and ensure consultant availability. The Board of Directors will be notified of additional qualified consultants by means of the General Manager's monthly report.

8. Approve the June and July 2023 Monthly Investment Transactions Reports.

Director Chan asked if the Board could approve the reports if they were not previously reviewed with a full quorum of the Finance/Administration Committee. General Manager Clifford C. Chan clarified the reports were presented at the Finance/Administration Committee meeting earlier in the day with Committee Chair Patterson. Committee members Chan and Coleman were absent (excused). Mr. Chan said staff was available to review the reports with the Board if needed. Staff did not review the reports with the Board.

- Motion by Director Patterson, seconded by Director Linney, to approve the recommended actions for Item 8 carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Patterson, and Katz); NOES (None); ABSTAIN (None); ABSENT (Young).

Motion No. 143-23 – Approved the June and July 2023 Monthly Investment Transactions Reports.

- Director McIntosh left the meeting at 1:37 p.m. and returned at 1:38 p.m.

9. Approve revisions to the following District policies: Policy 3.01 – Annexations, Policy 3.02 – California Environmental Quality Act Implementation, Policy 3.03 – Community Fire Flow Improvement Program, Policy 3.04 – Coordination of District Construction and Maintenance Work With Other Agencies, Policy 3.05 – Considerations for Extension of Water Service Beyond the Ultimate Service Boundary, and Policy 3.08 – Advisory Election for Annexations Outside the Contra Costa County Urban Limit Line.

General Manager Clifford C. Chan said this item was reviewed at the Finance/Administration Committee meeting earlier in the day with Committee Chair Patterson. Committee members Chan and Coleman were absent (excused). Mr. Chan also clarified the Annual Internal Audit Report referenced by Director Chan was not presented to the Finance/Administration Committee because District Policy 4.24 – Internal Audit states the annual internal audit work plan is to be submitted to the Board of Directors, via the Finance/Administration Committee for approval. Mr. Chan said staff was available to review the proposed revisions to the policies with the Board. Internal Audit Supervisor Barry N. Gardin reviewed the proposed revisions. There was considerable Board discussion regarding language in Policy 3.08 – Advisory Election for Annexations Outside the Contra Costa County Urban Limit Line; whether Alameda County has an Urban Limit Line;

whether Alameda County should be included in Policy 3.08 or if staff should develop a separate policy regarding annexations outside the Alameda County Urban Limit Line; and advisory elections for annexations and potential election costs. Mr. Gardin explained the proposed revisions to Policy 3.08 were minor technical changes to eliminate cross references to two other District policies. There were no revisions to the policy language. Director Coleman requested separate votes for each policy. He said he would need more information on Policy 3.08 and would be voting “no” on the proposed revisions for that policy. There was additional Board discussion on whether the revisions to Policy 3.08 were time sensitive and if the Board could defer taking action until after staff reviewed the questions and concerns raised by the Board. Staff was asked to provide information on the history of Policy 3.08; why there isn’t a similar policy for Alameda County; and the need for an advisory election for annexations outside the Contra Costa County Urban Limit Line. Mr. Chan said staff would review Policy 3.08 at a future Finance/Administration Committee meeting. The Board deferred taking action on Policy 3.08.

- Motion by Director McIntosh, seconded by Director Linney, to approve the recommended actions for Item 9 (excluding Policy 3.08) carried (6-0) by the following roll call vote: (Chan, Coleman, Linney, McIntosh, Patterson, and Katz); NOES (None); ABSTAIN (None); ABSENT (Young).

Resolution No. 35361-23 – Adopting Revised Policy 3.01, Annexations; Revised Policy 3.02, California Environmental Quality Act Implementation; Revised Policy 3.03, Community Fire Flow Improvement Program; Revised Policy 3.04, Coordination Of District Construction And Maintenance Work With Other Agencies; And Revised Policy 3.05, Considerations For Extension Of Water Service Beyond The Ultimate Service Boundary.

DETERMINATION AND DISCUSSION

10. Appoint three Board members to serve on an ad hoc committee to coordinate the investigation of claims asserted by Lonna Coleman.

President Katz announced this item is to consider appointing three Board members to serve on the ad hoc committee.

- Addressing the Board was Lonna Coleman who commented on information that should be included in the scope of the investigation.

Director Linney asked Lonna Coleman about information she had previously provided to the Board on reciprocity for Director Coleman’s service at the District as an elected official and the amount of the reciprocal retirement benefit. Board members commented on the importance of transparency, Lonna Coleman’s concerns regarding the scope of the investigation, the overall purpose of the investigation, and how the Board’s decision to conduct an investigation did not include a discussion regarding scope.

- Addressing the Board were the following: 1) John Coleman speaking as a private citizen commented on the concerns raised by Lonna Coleman and his concern that the staff report states he requested the investigation in his capacity as a Director. He requested that the record reflect he requested the investigation in his capacity as a private citizen; and 2) Ivette Rivera commented on the Board’s discussion being a potential violation of the Brown Act and on Director Linney’s questions and comments to Lonna Coleman.

There was Board discussion regarding Director Coleman's concerns with the language in the staff report. General Counsel Derek T. McDonald commented the Board discussion regarding this item is not a Brown Act issue and noted the August 8, 2023 Regular meeting minutes reflect that Director Coleman requested the investigation in his personal capacity. Mr. McDonald also clarified Director Coleman is participating in the discussion on Item 10 as a private citizen and will recuse himself from voting on the matter.

- Motion by Director McIntosh, seconded by Director Chan, to appoint Director April Chan, Director Doug A. Linney, and President Andy Katz to an ad hoc committee to coordinate the investigation of claims asserted by Lonna Coleman carried (5-0) by the following roll call vote: (Chan, Linney, McIntosh, Patterson, and Katz); NOES (None); ABSTAIN (None); ABSENT (Young).

Director Coleman recused himself from voting on Item 10.

Motion No. 144-23 – Appointed Director April Chan, Director Doug A. Linney, and President Andy Katz to serve on an ad hoc committee to coordinate the investigation of claims asserted by Lonna Coleman.

11. **General Manager's Report.**

2023 Customer Opinion Survey

Special Assistant to the General Manager Kelly A. Zito introduced Adam Probolsky, President of Probolsky Research, LLC who presented the results from the District's 2023 Customer Opinion Survey. The last Customer Opinion Survey was conducted in 2019. In April and June 2023, Probolsky Research, LLC completed 1,200 interviews by phone (33%) and online (67%) of both District account and non-account holders. Respondents to both the phone and online survey chose their preferred language: English (94%), Spanish (5%), or Chinese (1%). One significant change to the 2023 survey is that it did not rely solely on the District's customer database and was instead proportioned to match the geography as well as the census demographics of our service area, including gender, age group, ethnicity, household income, education level, and length of residence in the East Bay. Mr. Probolsky reviewed the survey methodology; respondent demographics; changes from the 2019 survey methodology; and provided detail regarding key survey results, findings, and recommendations. The Board discussed the information presented and Ms. Zito and Mr. Probolsky responded to Board questions regarding cross-tab results from various aspects of the survey; data on non-customers; and emergency preparedness data for account and non-account holders.

- Director Chan left the meeting at 2:41 p.m. and returned at 2:43 p.m.
- Addressing the Board was Ivette Rivera who asked about the cost to conduct the survey and commented the Board should review the survey results on customer service.

Ms. Zito reported the survey cost \$60,000. General Manager Clifford C. Chan said the Board will receive the complete survey report by email. Staff was asked to provide survey results on customer emergency preparedness; on how bill- and non-bill payers perceive the cost of the EBMUD water bill; and survey results on customers' satisfaction with their interaction with the call center.

Mr. Chan announced the Speakers' Bureau and Outreach Record CY23 had been provided at Board places.

REPORTS AND DIRECTOR COMMENTS

12. Committee Reports.

- Filed with the Board were the Minutes for the August 8, 2023 Planning Committee.

13. Other Items for Future Consideration.

None.

14. Director Comments.

- Director Chan commented on the remarks she made under Director Comments at the August 8, 2023 Regular meeting regarding funds being transferred between projects without Board authorization. She noted that part of the funds she referenced are federal appropriations and requested a discussion on conducting a forensic audit of the Upper San Leandro Water Treatment Plant project funding be calendared for a future Finance/Administration Committee meeting. General Manager Clifford C. Chan briefly explained the Board authorization that allows staff to manage and transfer funds between capital projects and said staff planned to provide additional information on this topic to the Board during Fiscal Year [FY] 2026/FY 2027 budget discussions.
- Director Coleman reported on plans to provide a presentation on water at the Lafayette-Orinda Presbyterian Church in Lafayette on October 5; and attending the UMRWA Board meeting and Pardee BBQ on October 6 at Pardee, the FRWA Board meeting on October 12 in Oakland, and the DERWA Board meeting in Dublin on October 25.
- Director Patterson commented on his experience and lessons learned as the first African American foreman of the Alameda County Grand Jury.
- Directors Linney, McIntosh, Young, and President Katz had no reports.

ADJOURNMENT

President Katz adjourned the meeting at 3:08 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: September 12, 2023



Andy Katz, President of the Board

