

MINUTES

**Tuesday, September 26, 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 11:05 a.m. in the Administration Building Boardroom.

ROLL CALL

Directors April Chan, John A. Coleman, Doug A. Linney, Lesa R. McIntosh, Marguerite Young and President Andy Katz were present at roll call. Director William B. Patterson 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) Eric Larsen, President, AFSCME Local 444 commented on Oakland businesses striking because of public safety concerns, concerns from Local 444 members regarding their safety while working, increased security for job sites and service yards, and long-term solutions for worker and public safety; and 2) Ivette Rivera commented on documents she provided to the Board including Transparent California data on overtime for EBMUD employees, the Pierce/Bland case, and the jury award to a Black family wrongfully detained by Alameda County sheriffs in 2019.

Staff was asked to provide a presentation on efforts to address EBMUD employee safety and information on the District's whistleblower policy at a future Legislative/Human Resources Committee. Information was also requested on overtime distribution by departments at the District. General Manager Clifford C. Chan said staff will provide an update on employee safety as requested but will need time as he is currently in discussions with other service area stakeholders regarding this issue as well as overall safety beyond EBMUD. He noted the unions will be included in these discussions as well. The presentation on employee safety will be provided to the entire Board.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Katz announced the closed session agenda and the Board convened to 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 1:16 p.m. in the Administration Building Boardroom.

ROLL CALL

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

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President Katz led the Pledge of Allegiance.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) George Cleveland commented on the data from Transparent California referenced by Ivette Rivera and his upcoming retirement; 2) Ivette Rivera commented on the data from Transparent California, and on documents she provided to the Board; 3) Lonna Coleman asked that the September 12, 2023 Regular Meeting minutes be revised to remove reference to her commenting about her court appeal and commented why she is making the request; and 4) Kelly A. commented on the Los Vaqueros Reservoir Project Cost update presented to the Finance/Administration Committee earlier in the day and a project to expand Calaveras Reservoir.

Staff was asked to provide a presentation to the Board on the EBMUD Retirement system and reciprocity.

CONSENT CALENDAR

- Items 1 and 10 were pulled from the Consent Calendar for separate discussion.
 - Motion by Director Young, seconded by Director Linney, to approve the recommended actions for Items 2-9 on the Consent Calendar carried (6-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Patterson)
1. **Approve the Regular Meeting Minutes of September 12, 2023.**

President Katz announced this item would be tabled to allow the Secretary time to review the meeting transcript in response to Lonna Coleman's request to revise the minutes. Prior to the Board receiving the General Manager's report, they had considerable discussion regarding Lonna Coleman's request. President Katz read an excerpt of Lonna Coleman's written comments from September 12 that referenced her court appeal. Secretary of the District Rischa S. Cole commented Lonna Coleman's request to remove the reference to her comments on her court appeal will be included in today's meeting minutes and asked the Board to consider approving the September 12 minutes as written. There was additional Board discussion. General Counsel Derek T. McDonald cautioned Director Coleman to recuse himself from voting on the minutes because the core issue discussed by the Board is whether a comment was made that implicates a financial interest for him.

- Motion by Director Linney, seconded by Director McIntosh, to approve the recommended actions for Item 1 carried (5-0) by the following voice vote: (Chan, Linney, McIntosh, Young and Katz); NOES (None); ABSTAIN (Coleman); ABSENT (Patterson).

Motion No. 160-23 – Approved the Regular Meeting Minutes of September 12, 2023.

2. The following correspondence was filed with the Board: **1)** Presentation entitled, “Fiscal Year 2024 Financing Plan,” dated September 26, 2023; **2)** Speakers’ Bureau and Outreach Record CY23 dated September 26, 2023; **3)** Article titled Jury awards 8 million to Black family detained while grabbing coffee, dated March 7, 2023; **4)** Ivette Rivera claim against EBMUD dated December 13, 2022; **5)** Ivette Rivera Claim against EBMUD dated July 26, 2023; **6)** Document (untitled) with Transparent California table listing overtime pay of EBMUD employees; **7)** Document titled, “Plaintiffs’ Opposition to Defendants’ Motion for Judgment as a Matter of Law, New Trial and/or Remittitur” Case 3:21-cv-04325-AGT filed September 5, 2023; **8)** Document titled, “Petition for Order Allowing Filing of Pleading Containing Cause of Action Against Attorneys Based on Civil Conspiracy with Client” Case 4:15-cv-00380-DMR filed January 27, 2015; **9)** Document titled, “Appeal from the United States District Court for the Northern District of California, Sandra B. Armstrong, District Judge, Presiding, Argued and Submitted December 6, 2019” Case 17-16891 filed January 22, 2020; **10)** Document titled, “Verified Petition for Writ of Mandamus, Declaratory Relief, and Violations of the California Constitution” Case No. RG16813608 filed April 28, 2016; **11)** Policy 6.04R: Ethics of the EBMUD Board of Directors (revised); and **12)** Policy 7.11R: Use of District Bay Area Facilities (revised).
3. **Motion No. 152-23** – Awarded a contract beginning on or after September 26, 2023 to the lowest responsive/responsible bidder, Brinkmann Instruments, Inc., dba Metrohm USA Inc., for supplying one Ion Chromatography Tandem Mass Spectrometry instrument for the District’s SD-1 Laboratory for a total cost, after the addition of taxes, not to exceed \$385,289.71 under Request for Quotation No. 2316.
4. **Motion No. 153-23** – Awarded contracts to Pape D.W., Inc. dba Ditch Witch West; Oregon Tool Inc.; Pape Machinery, Inc.; Peterson Tractor Co.; Sonsray Machinery, Inc.; and Volvo Construction Equipment and Services for supplying construction equipment for the District Fleet, beginning on or after September 26, 2023 for three years, with two options to renew for additional one-year periods in an aggregate amount, after the addition of taxes, not to exceed \$13,805,728 under Request for Quotation Nos. 2314 and No. 2317.
5. **Motion No. 154-23** – Authorized an agreement beginning on or after September 26, 2023 with Stillwater Sciences in an amount not to exceed \$2,139,771 for the Briones Reservoir Water Quality Study and Mokelumne Watershed Wildfire Response Plan.
6. **Motion No. 155-23** – Authorized the purchase of asphalt from Antioch Building Materials; Argent Materials; County Quarry Products LLC; The Dutra Group; Gallagher & Burk, Inc.; Granite Construction Company; and Calmart Co. dba Vulcan Materials Co. on the open market in the estimated annual amount, after the addition of taxes, not to exceed \$5,000,000 per year for a five-year period beginning September 27, 2023 and ending September 26, 2028 for a total cost of \$25,000,000.
7. **Motion No. 156-23** – Authorized the purchase of security vulnerability scanning software, support, and training beginning on or after September 26, 2023 from NuSpective, Inc. for three years, for a total amount not to exceed \$213,706. These purchases will be made under State of California contracts available for use by local governments.

8. **Motion No. 157-23** – Approved the assignment of the agreement previously authorized under Board Motion No. 027-23, from 4th of July Backflow Testing to 4th of July Backflow LLC for inspecting and testing residential backflow devices.
9. **Motion No. 158-23** – Approved the August 2023 Monthly Investment Transactions Report.
10. **Approve revisions to the following District policies: Policy 4.06 - Intellectual Property; Policy 6.04 - Ethics Of The EBMUD Board Of Directors; Policy 6.10 - Prevailing Wage Provisions In Contract Agreements; Policy 7.07 - Energy; Policy 7.11 - Use of District Bay Area Facilities; Policy 7.15 - Climate Action; and Policy 9.01 - Fire Control And Fuels Management On Watershed Lands.**

General Manager Clifford C. Chan reported the policies were reviewed with the Finance/Administration Committee earlier in the day and the Committee made additional revisions to Policy 6.04 and Policy 7.11. Copies of the revisions were provided at Board places. President Katz commented the Board and the District should be proud of Policy 7.07 – Energy, as EBMUD is one of the first utilities to set a zero-emission target for its Water and Wastewater systems. With this policy, the District is on track to be a carbon neutral agency by 2030. President Katz thanked the staff that contributed to these efforts.

- Motion by Director Coleman, seconded by Director Chan, to approve the recommended actions for Item 10 carried (6-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Patterson).

Resolution No. 35364-23 – Adopting Revised Policy 4.06, Intellectual Property; Revised Policy 6.04, Ethics Of The EBMUD Board Of Directors; Revised Policy 6.10, Prevailing Wage Provisions In Contract Agreements; Revised Policy 7.07, Energy; Revised Policy 7.11, Use of District Bay Area Facilities; Revised Policy 7.15, Climate Action; And Revised Policy 9.01, Fire Control And Fuels Management On Watershed Lands.

DETERMINATION AND DISCUSSION

11. **Appointment of Manager of Maintenance and Construction/Water Operations.**

General Manager Clifford C. Chan announced Crystal J. Yezman as the candidate for appointment to the position of Manager of Maintenance and Construction/Water Operations and highlighted Ms. Yezman's education and experience.

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

Resolution No. 35365-23 – Appointing Crystal J. Yezman As Manager of Maintenance And Construction/Water Operations (*effective October 23, 2023*).

Ms. Yezman provided additional details regarding her experience and background and thanked the Board for approving the appointment.

12. Adopt the proposed Financing Plan for Fiscal Year 2024.

Acting Controller Robert L. Hannay presented the plan. He reviewed the debt outstanding for the Water and Wastewater systems as of June 30, 2023 and financing activities in FY 2023. While no new money bonds were issued in FY 2023, the District paid down \$14.3 million of the principal amount of callable 2012B Water System bonds, the final \$8 million in Wastewater System Extendable Commercial Paper (fully retiring the program), and \$14 million in Water System Commercial Paper. In FY 2024, the District will issue \$275 million in new money bonds to fund capital improvement projects for the Water System and \$25 million for the Wastewater System. The new money bonds will be labeled Green Bonds, and their proceeds will be used to fund qualified projects in accordance with the Guidance for Issuing Green Bonds adopted by the Board in March 2022. The underwriters selected for the FY 2024 bond issuance are JP Morgan, Citi and Seibert Williams Shank. Concurrently, the District anticipates issuing refunding bonds to refinance up to \$213 million in outstanding, callable Series 2014ABC Water System bonds; paying down \$10 million in Commercial Paper; and renewing liquidity agreements supporting the Commercial Paper program prior to expiration of the current agreements. Mr. Hannay provided information in response to a question raised during the Finance/Administration Committee meeting regarding the average interest rate the District will pay for bonds issued in 2024 and responded to questions about other municipalities that deal with water or wastewater green bonds and the green bond market. Director Coleman commented the Finance/Administration Committee met earlier in the day and the members present voted to support the staff recommendation. Staff was asked to have Ceres, a non-profit sustainability advocacy organization provide information on current trends with green bonds at a future Finance/Administration Committee meeting.

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

Motion No. 159-23 – Adopted the proposed Financing Plan for Fiscal Year 2024.

13. Adopt a resolution to declare October 4, 2023 to be “Clean Air Day” at the District and to encourage all employees to participate in California Clean Air Day.

General Manager Clifford C. Chan announced that for the third year in a row, staff is recommending the Board adopt a resolution in support of California Clean Air Day, a non-profit, statewide program built on the idea that shared experiences unite people to action to improve community health. Individuals are encouraged to commit to specific actions to reduce air pollution. Mr. Chan commented on the importance of air quality and how particulate air pollution of the kind associated with wildfire smoke can cause illnesses. EBMUD has adopted aggressive greenhouse gas reduction goals, purchased more efficient and cleaner vehicles, and expanded its renewable energy production. The resolution would declare October 4, 2023, to be “Clean Air Day” at the District and would encourage employees to participate in the program. EBMUD’s employee-led Sustainability Committee is promoting Clean Air Day at the District. Staff was asked to provide information on how smoke from wildfires can impact water quality and on actions and precautions taken to protect the health of employees during poor air quality events.

- Addressing the Board was Gus Cicala, AFSCME Local 2019 member, who commented on the resolution and on supervisors being encouraged to allow employees the option to telecommute on October 4 and on spare the air days.

- Motion by Director Linney, seconded by Director McIntosh, to approve the recommended actions for Item 13 carried (6-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (Patterson).

Resolution No. 35366-23 – Resolution Supporting Declaration Of California Clean Air Day.

14. General Manager's Report.

General Manager Clifford C. Chan announced the Speakers' Bureau and Outreach Record CY23 had been provided at Board places.

REPORTS AND DIRECTOR COMMENTS

15. Committee Reports.

- Filed with the Board were the Minutes for the September 12, 2023 Special Finance/Administration Committee, Planning Committee, and Legislative/Human Resources Committee meetings.
- Finance/Administration Committee member John A. Coleman reported the Committee met earlier in the day and received updates on the Monthly Investment Transactions Report for August 2023; Fiscal Year 2023 Annual Power Sales Report; Revisions to District Policies; Customer Assistance Program Initiatives; Los Vaqueros Reservoir Expansion Project Costs; Proposed Fiscal Year 2024 Financing Plan; and the Annual Internal Audit Report.
- DERWA representative John A. Coleman reported the DERWA Board met on September 25 and approved the meeting minutes, Treasurer's reports, and Investment reports; authorized the purchase and replacement of Sand Filter Cascade Rings; approved the appointment of the DERWA Treasurer; approved the Proclamation for Richard Lou's service to DERWA as Treasurer; approved a Resolution regarding Authority Manager functions and expenditures; and received a presentation on the Recycled Water Supply and Operation Plan.

16. Other Items for Future Consideration.

None.

17. Director Comments.

- Director Coleman reported participating in the District's 100th Anniversary celebration for upcountry employees in Sacramento on September 23; Lafayette Art and Wine Festival in Lafayette on September 24; meeting with EBMUD General Manager and Director of Human Resources in Oakland and DERWA Board meeting in Dublin on September 25 and plans to participate in the following: ACWA Council of Past Presidents on October 2 (remote); presenting on water at the Lafayette-Orinda Presbyterian Church in Lafayette on October 5; UMRWA Board meeting and Pardee BBQ at Pardee Reservoir on October 6; UMRWA Tour with Blue Forest in Pioneer, CA on October 13; EBMUD Ward 2 briefing in Lafayette on October 17; Walnut Creek Water Treatment Plant public meeting in Walnut Creek on October 19; and the East Bay Leadership Council Board meeting on October 20.
- Directors Chan, Linney, McIntosh, Patterson, Young, and President Katz had no reports.

ADJOURNMENT

President Katz adjourned the meeting at 2:09 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: October 10, 2023



Andy Katz, President of the Board

