

MINUTES
Revised
Tuesday, August 8, 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 11:06 a.m. in the Administration Building Boardroom.

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 and General Counsel Derek T. McDonald.

PUBLIC COMMENT

- Addressing the Board were the following: 1) George Cleveland, President, Raining Pride Affinity Group, commented on the District's participation in the Oakland Pride event on September 10; 2) Larry McKenney, General Manager, Amador Water Agency (AWA), commented on Closed Session Agenda Item 2 regarding potential conserved water transfers for AWA; 3) Susan Peters Board Member, AWA, commented on AWA working with EBMUD to transfer conserved water for AWA; 4) Lonna Coleman commented on violations of the Board's ethics policy and requested an investigation; 5) John A. Coleman speaking as a member of the public, commented on Lonna Coleman's comments and requested an investigation by an independent third party into the issues raised by Lonna Coleman; 6) Eric Larsen, President, AFSCME Local 444 commented on 2021 contract negotiations and the reassignment process in the Local 444 memorandum of understanding; and 7) Ivette Rivera commented on documents that she would provide to the Board regarding the Pierce/Bland case, torts she has filed with the District, and the status of an investigation into her complaint regarding retaliation.

President Katz thanked Lonna Coleman for her comments and said he would be communicating with her in writing at the appropriate time. Staff was asked to provide information on the topic raised by Eric Larsen.

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

At 1:04 p.m., General Manager Clifford C. Chan informed Secretary of the District Rischa S. Cole that due to an extended Closed Session Meeting, the Regular Business Meeting would start at 1:30 p.m. President Andy Katz called to order the Regular Business Meeting of the Board of Directors at 1:49 p.m. in the Administration Building Boardroom.

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, 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

President Katz announced the Board met in closed session this morning pursuant to Government Code section 54957(b)(1) to consider the public employee evaluations of the General Manager and General Counsel with respect to the allegations made by Director John A. Coleman's spouse, Lonna Coleman. Director John A. Coleman was recused from participating in this closed session. At the conclusion of the closed session, in response to a request by Director Coleman, Lonna Coleman and the General Counsel, the Board members present voted to proceed with coordinating a formal investigation related to Lonna Coleman's allegations. There were no other announcements required from closed session.

PUBLIC COMMENT

Addressing the Board were the following: 1) Lonna Coleman commented on her experience as a beneficiary of EBMUD retirement benefits and establishing a policy to ensure the District will honor promises to employees; 2) John Coleman speaking as a member of the public commented on retirement issues and thanked the Board for voting to proceed with an investigation by a third party investigator; and 3) Ivette Rivera commented on documents she provided to the Board.

CONSENT CALENDAR

- Agenda Items 5a-5b, 6a-6b, and 14 were pulled from the Consent Calendar for separate discussion.
- Motion by Director Patterson, seconded by Director Young, to approve the recommended actions for Items 1-4 and 7-13 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. 124-23** – Approved the Regular Meeting Minutes of July 11, 2023.

2. The following correspondence was filed with the Board: 1) Presentation entitled, "Title VI Program," dated August 8, 2023; 2) Presentation entitled, "Employee/Retiree Centennial Picnic," dated August 8, 2023; 3) Speakers' Bureau and Outreach Record CY23, dated August 8, 2023; 4) Written comments from Lonna Coleman dated August 8, 2023 (Prior to Board Closed Session at 11:00 AM); 5) Letter to Clifford Chan from Lonna Coleman dated September 29, 2021; 6) Article entitled, "Planning Commission Chair Raises Sexual Harassment Questions About Former Commissioner," dated May 21, 2018; 7) Written Comments from Lonna Coleman with attachments dated August 8, 2023 (Prior to Board Regular Meeting at 1:!(sic)5 PM); 8) Documents labeled Exhibit 1, Pierce & Bland v EBMUD & Craig Spencer Updates, Trial Exhibits & Judgement Entered in favor of, Bernard Alexander closing argument, Derek McDonald testimony and Donna Jan Duffy testimony; 9) Documents labeled Exhibit 1, Current Status of DIO Investigations of My Retaliation Complaints; and 10) Documents labeled Exhibit A, Renato Zafra Civil Rights Lawsuit Against EBMUD.
3. **Motion No. 125-23** – Awarded a contract to the lowest responsive/responsible bidder, Anvil Builders Inc., in an amount not to exceed \$14,290,000 for construction of the Westside Pumping Plant Relocation, Encinal Regulator Installation, and Encinal Reservoir and Pumping Plant Demolition Project, under Specification 2168.
4. **Motion No. 126-23** – Authorized an agreement beginning on or after August 8, 2023, with Ancon Services Inc. for three years, with two options to renew for additional one-year periods for a total amount, including option years, not to exceed \$4,000,000 for hazardous and non-hazardous waste management services.
- 5a.- **Authorize agreements beginning on or after August 8, 2023 with Allied Materials, Inc.;**
- 5b. **Channa Trucking; CIA Trucking; Curbside Trucking LLC; Darrah Trucking & Excavating, Inc.; EM Blair Trucking; East Bay Trans, Inc.; Edwards-Enterprise LLC; Galray Trucking Inc.; Gloria Washington Trucking, Inc.; Hills Trucking; Robert Ibarra, Inc. dba Ibarra Trucking; Inder Trucking, Inc.; Jackson Transportation; Mae Trucking; Northbay Logistics Group, Inc.; Royal Trucking/Maintenance; S & L Transport, LLC; Sky Rock, Inc.; SMG Trucking; Sudden Sam's Trucking; TGI Freight, LLC; Tri Valley Water Trucks, Inc.; and Wide Area, Inc. for one year in an aggregate amount not to exceed \$5,900,000 for dump truck services; and authorize additional agreements for dump truck services on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on August 8, 2023, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the above service providers 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.**
 - Addressing the Board was Eric Larsen, President, AFSCME Local 444 who commented on the union's negotiated agreement with management to add five additional heavy transport operators over the next year to reduce the use of dump truck services and the escalated costs for these services. Mr. Larsen said the union does not oppose the agreements.

- Motion by Director Coleman, seconded by Director Chan, to approve the recommended actions for Items 5a-5b carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 134-23 – Authorized agreements beginning on or after August 8, 2023 with Allied Materials, Inc.; Channa Trucking; CIA Trucking; Curbside Trucking LLC; Darrah Trucking & Excavating, Inc.; EM Blair Trucking; East Bay Trans, Inc.; Edwards-Enterprise LLC; Galray Trucking Inc.; Gloria Washington Trucking, Inc.; Hills Trucking; Robert Ibarra, Inc. dba Ibarra Trucking; Inder Trucking, Inc.; Jackson Transportation; Mae Trucking; Northbay Logistics Group, Inc.; Royal Trucking/Maintenance; S & L Transport, LLC; Sky Rock, Inc.; SMG Trucking; Sudden Sam's Trucking; TGI Freight, LLC; Tri Valley Water Trucks, Inc.; and Wide Area, Inc. for one year in an aggregate amount not to exceed \$5,900,000 for dump truck services; and authorized additional agreements for dump truck services on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on August 8, 2023, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the above service providers 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.

- 6a - **Authorize agreements beginning on or after August 8, 2023 with Capra Environmental Services, Corp. and Goats R Us for three years, with two options to renew for additional one-year periods, in an aggregate amount, including option years, not to exceed \$2,783,254 for grazing vegetation management services; and authorize additional agreements for grazing vegetation management services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on August 8, 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.**
- 6b.

- Director Coleman commented on the proposed cost for the goats to service 277 acres of District land. Manager of Facilities Maintenance and Construction Tony J. Montano reviewed cost factors including increased demand for this service and prevailing wage requirements for goat herders.

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended action for Items 6a-6b carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 135-23 – Authorized amendments to the agreements previously authorized under Board Motion No. 139-22 with Bay Line Cutting & Coring, Inc.; Concrete Demo Works, Inc.; Concrete Wall Sawing Co., Inc.; Fine Line Sawing and Drilling, Inc.; and Penhall Company, to increase the aggregate amount of those agreements by \$650,000 to a total aggregate amount not to exceed \$2,265,000 and extend the term of the agreements to July 11, 2024 for asphaltic cement and concrete saw cutting services; and authorized additional agreements for asphaltic cement and concrete saw cutting services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on July 11, 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.

7. **Motion No. 127-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 032-21, with the City of Oakland, to increase the agreement amount by \$250,000 to a total amount not to exceed \$600,000 for the Leimert Bridge Pipeline – Contract Services for Pipeline Improvements.
8. **Motion No. 128-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 186-19 with FAAZ Consulting to increase the agreement amount by \$5,335,000 to a total amount not to exceed \$9,983,400 and extend the agreement term to September 12, 2028 for providing on-site consulting services for PeopleSoft Human Resources Information System support.
9. **Motion No. 129-23** – Authorized an amendment to the cost-sharing agreement previously authorized under Board Motion No. 228-22 with seven other water agencies to increase the agreement amount by \$1,239,000 to a total amount not to exceed \$4,597,910 for East Bay Municipal Utility District, and extend the agreement term to June 30, 2024 to continue to provide preconstruction services prior to executing the Los Vaqueros Reservoir Expansion Project agreements in spring 2024.
10. **Motion No. 130-23** – Authorized amendments to the agreements previously authorized under Board Motion No. 116-20 with GSI Environmental Inc. and Terraphase Engineering Inc., to increase the aggregate amount of those agreements by \$2,000,000 to a total aggregate amount not to exceed \$5,000,000 for general environmental services through June 30, 2025.
11. **Motion No. 131-23** – Authorized amendments to the agreements previously authorized under Board Motion No. 218-22, with Bay Area Traffic Solutions, Inc.; Cal-Safety, Inc.; CMC Traffic Control Specialists Inc.; TPR Traffic Solutions; Traffic Control Pros; Traffic Management Inc.; and Yolanda's Construction Administration & Traffic Control Inc. to increase the aggregate amount of those agreements by \$950,000 to a total aggregate amount not to exceed \$2,850,000 for flagging services through November 22, 2023; and authorized additional agreements for flagging services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on November 22, 2022, 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.
12. **Motion No. 132-23** – Approved the assignment of the agreement previously authorized under Board Motion No. 199-20, from Lone Tree Trucking, Inc. to Kleen Solution Environmental for hauling and disposal of wastewater treatment residuals from the Main Wastewater Treatment Plant.
13. **Motion No. 133-23** – Authorized the Office of General Counsel to continue the employment of the law firm of Ellison, Schneider, Harris & Donlan, LLP, for specialized legal services related to water and energy law and litigation matters in an additional amount not to exceed \$80,000.

14. **Adopt a resolution to appoint Katharine G. Wellman as Standby Officer No. 1 in Ward No. 7 for the East Bay Municipal Utility District Board of Directors as outlined in the Director's Emergency Succession Plan.**

Director Chan thanked Katharine Wellman and highlighted aspects of Ms. Wellman's qualifications to serve as a Board Standby Officer. Ms. Wellman provided a brief overview of her professional background working in the public sector and said she is honored to be considered to serve in this capacity.

- Motion by Director Chan, seconded by Director Coleman, to approve the recommended action for Item 14 carried (7-0) by the following voice vote: (Chan, Coleman, Linney, McIntosh, Patterson, Young and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35360-23 Appoint Standby Officer For The Board Of Directors As Outlined In The Directors' Emergency Succession Plan.

DETERMINATION AND DISCUSSION

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

Service Award Recipients – April through June 2023

Senior Human Resource Analyst Laura Salangsang provided a presentation that highlighted District employees that received service awards for 5 to 35 years of service. She announced the following employees were in the Board room: Senior Software Engineer Dianne W. Mao, 25 years; Information Services Supervisor Leo M. Cinco, 25 years; Administrative Clerk Leslie F. Richardson, 25 years; Construction/Maintenance Scheduler Paula A. Valle, 20 years; and Associate Civil Engineer J. Alejandro Joaquin. The Board congratulated and thanked staff for their years of service.

EBMUD Title VI Program

Special Assistant to the General Manager Derry L. Moten provided the presentation. As a federal contractor, the District is required to comply with Title VI of the Civil Rights Act of 1964 (Title VI). The District recently entered a funding agreement with the U.S. Environmental Protection Agency (EPA), which requires the District to expand its existing Title VI program to meet EPA guidelines. The Title VI program is a comprehensive approach to non-discrimination and proactive plans and methods to ensure opportunities for historically marginalized communities to freely participate in the District's programs, activities, and services. Cross-functional employee working groups evaluated existing program resources and drafted updated plans for public participation, language assistance, and disability access. Mr. Moten reviewed the draft plans and discussed plans for developing and implementing a formal Title VI complaint process. The District's Title VI implementation will be completed in three phases. During phase 1, staff will update plans in the District's current Title VI Program to ensure alignment with EPA guidelines. The updated plans must be submitted to the EPA by its September 5, 2023 deadline. Phase two (years 2-3), will include annual evaluations of the program, with the initiation of best practices in environmental justice, public participation, language assistance, and disability access. During phase three, staff will seek to exceed best practices and have the District's program become a model of public engagement and nondiscrimination for the water and wastewater industry. After phase three, the program will be evaluated every three years. The Board will consider adopting the Title VI Program at its August 22, 2023 meeting and staff will submit the updated program plans

to the EPA by September 5. Staff will then begin implementing and evaluating the program plans and developing training for staff on how to use the program resources. There was Board discussion regarding the program and plan updates. Mr. Moten responded to questions from the Board on providing translated information and materials for customers; a translation widget on the District's website; how the Office of Diversity, Equity, and Culture will manage complaints; the District Affinity Group members working on the Title VI Program plans; inviting the public to a future Board Committee meeting to provide feedback about environmental justice issues; reviewing lessons learned from peer agencies that have implemented Title VI Programs; consulting with Native American tribes regarding the environmental justice aspects of the District's program; and whether the District is required to circulate the program plans for public review. General Manager Clifford C. Chan confirmed staff is working on adding a translation widget to the District's website and Mr. Moten advised the District is required to include information on its website regarding the program plans and nondiscrimination statements. The Board requested a list of the employees that support the Title VI Program and asked staff to discuss Title IV Program implementation with peer agencies and incorporate their lessons learned into the District's program.

- Director Patterson left the meeting at 2:23 p.m. and returned at 2:26 p.m.

Centennial Employee/Retiree Picnic

Special Assistant to the General Manager Kelly A. Zito provided the presentation and highlighted the activities at the Centennial Employee/Retiree Picnic which was held at Lafayette Reservoir on July 29. She thanked the Utility District Employee Association, planning committee members, and volunteers for their work to make this a successful, enjoyable event.

General Manager's Monthly Report – July 2023

General Manager Clifford C. Chan announced he is available to respond to questions regarding the monthly report and that the Speakers' Bureau and Outreach Record CY23 had been provided at Board places. In response to a question from the Board on whether the District will consider using the Threads app, Mr. Chan said staff will continue to evaluate social media platforms to determine which ones will provide the best options for reaching District customers.

REPORTS AND DIRECTOR COMMENTS

16. Committee Reports.

- Filed with the Board were the Minutes for the July 11, 2023 Sustainability Committee and Finance/Administration Committee.
- Planning Committee Chair Doug A. Linney reported the Committee met earlier this morning and received updates on the Fiscal Year 2023 Annual Readiness Report; Regulatory Compliance Semi-Annual Report – January 1, 2023 through June 30, 2023; and Project Labor Agreements Review.

17. Other Items for Future Consideration.

None.

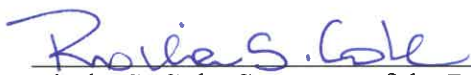
18. Director Comments.

- Director Chan commented on a letter she received from a constituent regarding the recent rate increase and the District's Internal Auditor's review of concerns in the letter regarding \$290 million that was transferred between projects in 2023 without Board authorization. Director Chan also commented on potential training for the Board on fiscal management and capital projects.
- Director Coleman reported participating in a meeting with the City of Lafayette regarding the Lafayette Reservoir Tower in Lafayette on July 26 and the UMRWA Board meeting in Pardee on July 28. He reported on plans to provide a presentation on water at the Lafayette-Orinda Presbyterian Church in Lafayette on October 6, 2023. Director Coleman also reported he will not be in person for the August 22, 2023 Board meetings due to surgery and may participate remotely.
- Director Patterson reported participating in Operation Rebuild, as part of the Project Advisory Committee meeting on August 1 about rebuilding McClymonds High School.
- Director Young reported she will not be in the August 22, 2023 meetings and unable to participate remotely as she will be traveling in India.
- Directors Linney, McIntosh and President Katz had no reports.

ADJOURNMENT


Director Patterson requested that today's meeting be adjourned in honor of Laura Marie Scotlan, daughter of long-time civic leader George P. Scotlan. Ms. Scotlan passed away on July 13, 2023. Director Patterson highlighted Ms. Scotlan's family background, contributions to the community, and her work to raise funds and awareness for multiple sclerosis. President Katz adjourned the meeting in honor of Laura Marie Scotlan at 2:56 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: September 12, 2023



Andy Katz, President of the Board