

MINUTES

**Tuesday, December 12, 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 11:11 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 (remote) were present at roll call.

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

Retirement Board President Tim McGowan called to order the Special Closed Session Meeting of the Retirement Board at 11:12 a.m. He announced the Retirement Board would participate in a joint closed session with the EBMUD Board regarding existing litigation pursuant to Government Code section 54956.9(a) in the matter of *Lonna Coleman v. East Bay Municipal Utility District, et al.*

ROLL CALL

Retirement Board members April Chan, Clifford C. Chan, Timothy R. McGowan, Jae Y. Park, and Marguerite Young were present at roll call. Retirement Board member Elizabeth Grassetti was absent.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Ivette Rivera commented on a resignation letter from an employee, data on employees resigning from the District, a former employee's public comments during a previous Board meeting and providing a copy of videos of the former employee's public comments; and 2) Lonna Coleman commented on the information provided to her by staff that she used to calculate retirement benefits and the financial decisions she made based on this information.

Director Coleman requested data on the number of employees (including their ethnicity), that have resigned from the District since July 1, 2023.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Katz announced the closed session agenda; the Board and Retirement Board members 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, William B. Patterson, and President Andy Katz (remote) 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.

President Katz turned the meeting over to Vice-President Lesa R. McIntosh to chair the remainder of the meeting.

BOARD OF DIRECTORS

Vice-President McIntosh 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) Lonna Coleman commented on the staff discussions during the Legislative/Human Resources meeting earlier in the day and her request to staff for a document to be displayed during the Board meeting; and 2) Ivette Rivera commented on documents she provided to the Board, comments she made during the Closed Session public comment period, a former employee's public comments during a previous Board meeting, and a resignation letter from an employee.

CONSENT CALENDAR

- Items 6, 8, 10, 12 and 13 were pulled from the Consent Calendar for separate discussion.
 - Motion by Director Linney, seconded by Director Young to approve the recommended actions for Items 1-5, 7, 9, 11.1, and 11.2 on the Consent Calendar carried (7-0) by the following roll call vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 195-23** – Approved the Regular Meeting Minutes of November 28, 2023.
 2. The following correspondence was filed with the Board: **1)** Presentation entitled, "Employee Feedback Program," dated December 12, 2023; **2)** Presentation entitled, "Water and Wastewater Cost of Service Study," dated December 12, 2023; **3)** Presentation entitled, "Centennial Campaign Update," dated December 12, 2023; **4)** Presentation entitled, "EBMUD Creek Restoration Partnerships in the East Bay," dated December 12, 2023; **5)** Speakers' Bureau and Outreach Record CY23 dated December 11, 2023; **6)** Document (undated) from Lonna Coleman regarding EBMUD retirement benefits scenarios; and **7)** Document titled Ivette Rivera 2022-2023 Performance Appraisal Comments.

3. **Motion No. 196-23** – Authorized a direct award contract beginning on or after December 12, 2023 to Lotek Wireless, for supplying acoustic telemetry equipment for Mokelumne River fisheries monitoring for two years, with one option to renew for an additional two-year period for a total cost, after the addition of taxes, not to exceed \$712,000.
4. **Motion No. 197-23** – Awarded a contract to the lowest responsive/responsible bidder, Pacific Infrastructure, in an amount not to exceed \$1,946,000 for the construction of the Oakport Wet Weather Facility Sodium Hypochlorite Tanks Replacement Project, under SD-442.
5. **Motion No. 198-23** – Authorized an agreement beginning on or after December 12, 2023 with GeoMorph Design Group in an amount not to exceed \$140,990 for a second phase of hydrologic data collection along Moraga Creek.
6. **Authorize an agreement beginning on or after December 12, 2023 with Info-Tech Research Group, Inc. dba McLean & Company for three years in an amount not to exceed \$143,512.41 for online human resource and diversity and inclusion advisory services.**

Director Coleman commented he meant to pull Item 8 instead of Item 6 from the Consent Calendar.

- Motion by Director Coleman, seconded by Director Linney, to approve the recommended actions for Item 6 carried (7-0) by the following roll call vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 203-23 – Authorize an agreement beginning on or after December 12, 2023 with Info-Tech Research Group, Inc. dba McLean & Company for three years in an amount not to exceed \$143,512.41 for online human resource and diversity and inclusion advisory services.

7. **Motion No. 199-23** – Authorized an agreement beginning on or after December 12, 2023 with Pyro-Comm Systems Inc. for three years, with two options to renew for additional one-year periods for a total amount, including option years, not to exceed \$199,880 for fire alarm system inspection and testing at the District's Administration Building and Adeline Maintenance Center complex.
8. **Authorize an agreement beginning on or after December 12, 2023 with WinSource Group for \$225,000 for three years, with one option to renew for an additional one-year period for a total amount, including the option year, not to exceed \$295,000 for an Employee Feedback Program.**

Senior Human Resources Analyst Laura V. Salangsang provided the presentation which was held over from the Legislative/Human Resources meeting earlier in the day due to time constraints. She highlighted the three core drivers of all organizations (strategy, design, and culture) and how the culture of an agency is based on values, leadership, human resources systems, and employee experience. She discussed the importance of obtaining employee feedback; previous employee feedback programs conducted in 2014 by The Schnur Consulting Group and in 2021 by The Winters Group, Inc. Ms. Salangsang discussed existing feedback programs; the objectives of the proposed feedback program; and the methodology that would be used to collect feedback from employees at various points in the employee lifecycle. If the Board approves the agreement, staff will begin working with the consultant in early January 2024. Ms. Salangsang responded to

questions from the Board and commented on questions that would be included in a biennial survey. She clarified that while biennial and pulse surveys could be completed anonymously, employees have the option of providing their names when completing exit surveys.

- Addressing the Board was Ivette Rivera who commented on the reports prepared by The Schnur Consulting Group and The Winters Group, Inc. and inviting the consultants to meet with the Board.

There was Board discussion regarding the reports prepared by The Schnur Consulting Group and The Winters Group, Inc.; inviting the consultants to respond to questions from the Board during a Legislative/Human Resources Committee meeting or a Regular Board meeting; and if Board authorization of the agreement is time sensitive. General Manager Clifford C. Chan confirmed authorization of the agreement is time sensitive and advised staff would provide the Board with copies of the reports from The Schnur Consulting Group and The Winters Group, Inc.

- Motion by Director Young, seconded by Director Linney, to approve the recommended actions for Item 8 carried (7-0) by the following roll call vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 204-23 – Authorized an agreement beginning on or after December 12, 2023 with WinSource Group for \$225,000 for three years, with one option to renew for an additional one-year period for a total amount, including the option year, not to exceed \$295,000 for an Employee Feedback Program.

9. **Motion No. 200-23** – Authorized an amendment to the sole source contract previously awarded under Board Motion No. 197-20 with Environmental Systems Research Institute to increase the contract amount by \$2,080,000 to a total amount not to exceed \$3,646,000, and extend the contract term to November 30, 2026, for supplying enterprise Geographic Information System software.
10. **Authorize an amendment to the agreement previously authorized under Board Motion No. 042-21, with Keller Canyon Landfill Company to increase the agreement amount by \$1,500,000 to a total amount not to exceed \$3,000,000 for non-hazardous trench soils disposal without change to the March 18, 2026 expiration date.**

Director Coleman asked if the District has been in discussions with SFEI, the Army Corp of Engineers or BCDC about using District trench soils in watersheds for climate change enhancements and wetland production in the San Francisco Bay. General Manager Clifford C. Chan clarified that if approved, the amended agreement would allow the District to continue hauling non-hazardous trench soils, containing contaminants below hazardous waste thresholds, to Keller Canyon Landfill Company. He noted staff provided an update to the Planning Committee earlier this year on pilot projects being developed to address disposal of the District's trench soils and highlighted the upcoming direct-haul pilot project. Staff will provide another update on the pilot projects and trench soils disposal to the Planning Committee in mid-2024.

- Motion by Director Coleman, seconded by Director Linney, to approve the recommended actions for Item 10 carried (7-0) by the following roll call vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 205-23 – Authorized an amendment to the agreement previously authorized under Board Motion No. 042-21, with Keller Canyon Landfill Company to increase the agreement amount by \$1,500,000 to a total amount not to exceed \$3,000,000 for non-hazardous trench soils disposal without change to the March 18, 2026 expiration date.

- 11.1. **Motion No. 201-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 177-17 with Brown and Caldwell to increase the agreement amount by \$1,900,000 to a total amount not to exceed \$7,165,000 for design and construction support services for the Digester Upgrade Phase 3 Project.
- 11.2. **Motion No. 202-23** – Authorized an amendment to the agreement previously authorized under Board Motion No. 118-22 with Wiss, Janney, Elstner Associates, Inc. to increase the agreement amount by \$300,000 to a total amount not to exceed \$530,000 for structural design services during construction for the Digester Upgrade Phase 3 Project.
12. **Authorize the Office of General Counsel to continue the employment of the law firm of Meyers Nave for specialized legal services related to labor and employment matters in an additional amount not to exceed \$100,000.**

Director Chan expressed her concern with the District's increasing liability connected to Meyers Nave and said she would be voting "no" on this item.

- Addressing the Board was Ivette Rivera who commented on Meyers Nave representing the District on PERB complaints she has filed in the past and on Director Chan's remarks.
- Motion by Director Linney, seconded by Director Patterson, to approve the recommended actions for Item 12 carried (5-2) by the following roll call vote: (Katz, Linney, Patterson, Young, and McIntosh); NOES (Chan and Coleman); ABSTAIN (None); ABSENT (None).

Motion No. 206-23 – Authorized the Office of General Counsel to continue the employment of the law firm of Meyers Nave for specialized legal services related to labor and employment matters in an additional amount not to exceed \$100,000.

13. **Authorize the amendments in the Restated District 401(a), 401(k), and 457(b) tax deferred savings plan documents.**

Manager of Employee Services Lisa A. Sorani answered questions from the Board on who conducted the final review of the plan documents. She described the review process, parties that reviewed the documents, and the changes in Internal Revenue Service regulations that required the documents to be updated. In response to a question on whether the District could guarantee there are no mistakes in the plan documents, General Counsel Derek T. McDonald commented the plans are reviewed by the District's outside expert legal counsel with an eye towards not making mistakes and avoiding liability.

- Motion by Director Coleman, seconded by Director Chan, to approve the recommended actions for Item 13 carried (7-0) by the following roll call vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35375-23 – Amending And Restating The East Bay Municipal Utility District 401(a) Plan.

Resolution No. 35376-23 – Amending And Restating The East Bay Municipal Utility District 401(k) Tax Deferred Savings Plan.

Resolution No. 35377-23 – Amending And Restating The East Bay Municipal Utility District 457 Deferred Compensation Plan And Trust.

DETERMINATION AND DISCUSSION

14. **Authorize an agreement beginning on or after December 12, 2023 with Stantec Consulting Services, Inc. in an amount not to exceed \$336,636 to conduct a Water and Wastewater Cost of Service Study plus \$13,364 in optional services to review System Capacity Charges and Wastewater Capacity Fees for a total amount not to exceed \$350,000.**

Principal Management Analyst Phoebe A. Grow provided the presentation. The District's most recent Cost of Service (COS) studies were completed in 2019 for the Wastewater System and in 2015 for the Water System. Since the most recent Water COS Study was completed in 2015, the District must begin development of a new study to complete it within the 10-year timeframe outlined in California Government Code section 54999.7, and in time for the Board to consider adoption of rates for Fiscal Year (FY) 2026/2027 in June 2025. The District has elected to conduct a new Wastewater COS Study concurrently with the Water COS Study to update the District's water and wastewater rate structures and to ensure changes to the water rate structures align with wastewater charges. Ms. Grow reviewed the definition of a COS Study and the proposed scope of the upcoming study; COS studies completed between 2015 and 2021; and the timeline for the Board to provide input on the study, the final rate structure, and proposed FY 2026/2027 rates. Staff recommends Stantec Consulting Services, Inc., an industry leader, to conduct the study. Stantec successfully completed the District's System Capacity Charges Study in 2021. Ms. Grow responded to Board questions regarding the timeline for review and completion of the study. Staff was asked to provide preparation materials and information about innovative rate designs to the Board several weeks in advance of the COS workshop scheduled for spring 2024.

- Director Chan left the meeting at 2:20 p.m. and returned at 2:21 p.m.
- Director Chan left the meeting at 2:21 p.m. and returned at 2:25 p.m.
- Motion by Director Coleman, seconded by Director Linney, to approve the recommended actions for Item 14 carried (7-0) by the following roll call vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 207-23 – Authorized an agreement beginning on or after December 12, 2023 with Stantec Consulting Services, Inc. in an amount not to exceed \$336,636 to conduct a Water and Wastewater Cost of Service Study plus \$13,364 in optional services to review System Capacity Charges and Wastewater Capacity Fees for a total amount not to exceed \$350,000.

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

Centennial Campaign Update

Public Information Representative III Tracie D. Morales provided the presentation. She reviewed the vision and goals of the campaign; the updated Centennial logo and branding; and partnerships with Drake's Brewing Company to produce a lager with the District, named Water Wings and with local retailer Oaklandish to develop a commemorative t-shirt design. These collaborations raised

\$16,640 for the District's Water Lifeline Program. The Centennial's advertisement campaign included Clear Channel and Oakport billboards, social media campaigns, and multi-lingual advertising in the community through digital displays and social media networks. On May 21, the District hosted a Community Fair celebration for over 3,000 community members, local businesses, non-profits, and other public agencies at East Bay Regional Park District's Lake Temescal in Oakland. On May 22, the anniversary date of the District's formation, a time capsule event was held at the original EBMUD headquarters in West Oakland and featured a ceremonial flag-raising, speeches, and a time capsule burial. Over 250 people participated in eleven "Water Walks" and three bioblitz events which were hosted in conjunction with Wholly H2O. The District released "A Water Lifeline for 100 Years," a 20-minute film that captures the voices and perspectives of over twenty EBMUD staff, retirees, a Board Director, and a water leader who reflect on EBMUD's community impact over a century of service. The Centennial Employee Picnic was held on July 29 at Lafayette Reservoir and the Upcountry Centennial Celebration for employees was held on September 23 in West Sacramento. Ms. Morales discussed the impact analysis of the various Centennial projects and highlighted plans to install exhibits and update displays and the WaterSmart Center in the downtown Oakland Administration Building first floor lobby by spring 2024. Ms. Morales thanked the Board for their support and confirmed the exhibits planned for the lobby will be child and ADA accessible and that the project budget is approximately \$258,000. Vice-President McIntosh and Director Patterson acknowledged Ms. Morales for her presentation of the District's Centennial Campaign at the Association of California Water Agencies' (ACWA) Fall Conference in November. The campaign was a contender for ACWA's 2023 Huell Howser Excellence in Communication Award.

East Bay Creek Restoration Partnerships in the East Bay

Supervising Fisheries and Wildlife Biologist Bert W. Mulchaey provided the presentation. The District's partnerships with local agencies and non-governmental organizations (NGOs) on East Bay creek restoration projects have resulted in significant progress toward creek restoration and fish passage. Staff has implemented a variety of restoration projects on the watershed to meet the goals of the East Bay Watershed Master Plan and the District's East Bay Low Effect Habitat Conservation Plan. Mr. Mulchaey reviewed the various partnerships and projects the District has supported over the years including: the Pinole Creek Highway I-80 culvert fish passage project in 2016; replacement of Contra Costa County's failed six-foot culvert on Alhambra Valley Road, in the middle of the Pinole Creek watershed, with a bridge to support fish passage in 2017; and in 2023, a bridge and bridge abutments for the Two Dog Fish Passage project on Kaiser Creek, a tributary on the east side of Upper San Leandro Reservoir. The District is pursuing grant funding for future habitat restoration, including the planning phase of the proposed Tomato Stand Fish Passage project which would replace a culvert with a bridge to improve the last fish passage impediment on Pinole Creek in the District's East Bay Watershed. The Board commended staff for their work on these projects and Mr. Mulchaey answered questions from the Board about the potential for similar projects in other locations in the District's watershed, issues with beavers and fish flows, invasive goldfish in the waterways, partnerships with organizations for San Leandro Creek, and reaching out to Native American tribes that may have inhabited areas where the fish passage projects are located.

General Manager's Monthly Report – November 2023

General Manager Clifford C. Chan announced the monthly report had been provided in the agenda meeting materials and the Speakers' Bureau and Outreach Record CY23 had been provided at Board places.

REPORTS AND DIRECTOR COMMENTS

16. Committee Reports.

- Filed with the Board were the Minutes for the November 28, 2023 Finance/Administration Committee meeting.
- Planning Committee Chair Doug A. Linney reported the Committee met earlier in the day and received reports on the Recycled Water Feasibility Evaluation with Central Contra Costa Sanitary District and the Employee Housing Feasibility Study.
- Legislative/Human Resources Committee Chair Lesa R. McIntosh reported the Committee met earlier in the day and received an update on the Diversity, Equity, and Inclusion Strategic Plan. Due to time constraints, the Employee Feedback Program update was held over to the Regular Board meeting.

17. Other Items for Future Consideration.

None.

18. Director Comments.

- Board members wished everyone happy holidays.
- Director Coleman reported attending the ACWA fall conference in Indian Wells November 28–November 30; meeting with an EBMUD contractor over issues in Lafayette on December 7; DERWA Board of Directors meeting in Dublin on December 11; and plans to attend the Lafayette Presbyterian Church water talk in Lafayette on February 1, 2024.
- Directors Chan, Linney, McIntosh, Patterson, Young, and President Katz had no reports.

ADJOURNMENT

Vice-President McIntosh adjourned the meeting at 2:59 p.m.

SUBMITTED BY:


Rischa S. Cole, Secretary of the District

APPROVED: January 9, 2024


Lesa R. McIntosh, Vice-President of the Board