MINUTES

Tuesday, January 9, 2024
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 11:07 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, EBMUD Retiree commented on information presented during the Employees' Retirement System Board Health Insurance Benefit Study update to the Legislative/Human Resources Committee earlier in the day; 2) Eric Larsen, President, AFSCME Local 444 commented on security concerns for staff that work solo and asked the District to evaluate solo worker assignments due to heightened security and safety risks; and 3) Ivette Rivera commented on a document she provided to the Board, data on the ethnic makeup of District employees, and comments on employee discipline by her and other public comment speakers.

BROWN ACT BRIEFING

General Counsel Derek T. McDonald presented the annual Brown Act briefing and ethics update. Mr. McDonald reviewed each section of District Policy 6.04 – Ethics of the EBMUD Board of Directors and specified which sections are being developed as separate policies to be considered by the Board at a later date; amendments to the Brown Act regarding remote appearances (AB 2449 in 2022 and AB 557 in 2023); the Political Reform Act and clarifications on how provisions of the Levine Act, which is more expansive than the District's Campaign Finance Reform Ordinance, apply to both appointed and elected officials; clarifications from the Fair Political Practices Commission on the Levine Act; and updates to Government Code section 1090 concerning contractor conflicts of interest. Mr. McDonald responded to questions from the Board on whether the Office of General Counsel provides oversight of other District departments; confirmation that Board approval is still required when a Board member requests to participate in meetings remotely under the provisions in AB 2449; whether provisions of the Levine Act apply to District employees wishing to contribute to a Board candidate's campaign; whether non-incumbent candidates for a Board seat can seek campaign related advice from the Office of General Counsel; and an ethics policy for employees.

- Director Young left the meeting at 11:53 a.m. and returned at 11:56 a.m.
- Addressing the Board were the following: 1) Ivette Rivera commented on the District's policy regarding employees receiving gifts from District contractors or vendors; and 2) Eric Larsen,
 President, AFSCME Local 444 commented on the General Manager's authority to intervene in

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disciplinary proceedings and asked the General Manager to intervene in the current investigation of a Local 444 member.

The Board asked staff to publish the District's policies and procedures on the District's website and to develop an intranet page with hyperlinks to District policies, procedures, and other guidelines regarding ethical behavior for employees.

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 1:18 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 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.

Election of President of the Board

President Katz opened the floor for nominations for President of the Board for 2024.

• Motion by Director Chan, seconded by Director Patterson, to nominate Director Lesa R. McIntosh for President of the Board of Directors for 2024.

President Katz called for additional nominations, and none came forward.

• Motion by Director Patterson, seconded by Director Chan, to elect Lesa R. McIntosh as President of the Board for 2024 carried (7-0) by the following voice vote: AYES (Chan, Coleman, Linney, McIntosh, Patterson, Young, and Katz); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 001-24 - Elected Director Lesa R. McIntosh as President of the Board of Directors for 2024.

Director Katz thanked the Board for their trust and support during his tenure in 2023 and said it was an honor to serve and lead the organization during the District's Centennial year. He also acknowledged the Board's previous discussion on each member serving as Board President for one year and the Board accomplished what was discussed with the election of President McIntosh.

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Election of Vice-President of the Board

President McIntosh opened the floor for nominations for Vice-President of the Board for 2024.

Motion by President McIntosh, seconded by Director Young, to nominate Director William B. Patterson for Vice-President of the Board of Directors for 2024.

President McIntosh called for additional nominations, and none came forward.

Motion by Director Katz, seconded by Director Linney, to elect Director William B. Patterson as Vice-President of the Board for 2024, carried (7-0) by the following voice vote: AYES (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAINED (None); ABSENT (None).

Motion No. 002-24 – Elected Director William B. Patterson Katz as Vice-President of the Board of Directors for 2024.

Vice-President Patterson thanked the Board and commented on critical issues facing the District and for the Board to work together in harmony to overcome obstacles that lie ahead.

 Motion by Director Katz, seconded by Director Linney, to close the nomination periods for President and Vice-President of the Board for 2024 carried (7-0) by the following voice vote: AYES (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 003-24 — Closed the nomination periods for President and Vice-President of the Board for 2024.

Committee Assignments

President McIntosh announced the Board received a memo at their places requesting 2024 Committee, Joint Powers Authorities, and Association assignment preferences and asked Board members to submit their preferences to the Secretary by January 12. Assignments will be presented for Board consideration at the January 23 meeting.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PRESENTATION

General Manager Clifford C. Chan announced the District was awarded Civicorps' Conservation Champion Award during Civicorps' 40th anniversary celebration on November 2, 2023. The award recognizes the District's dedication to corpsmember employment and Civicorps' conservation and community efforts. The District has partnered with Civicorps for 39 years to deliver fuel reduction and hazardous fuels removal services critical to the maintenance and resilience of the forestland in our East Bay community. Mr. Chan highlighted Civicorps' history and services and the District's partnership to provide opportunities for corpsmembers to gain employment at the District as well as at other partner agencies. In 2022, EBMUD developed a Community Trainee Program (CTP), a one-year employment program to provide training and work experience for trainees referred from community-based, job-training programs such as Civicorps. He acknowledged Judith Verdin, a Civicorp trainee who is currently working as a part time Ranger/Naturalist I with the District. He introduced Tessa Nicholas, Civicorps' Executive

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Director who thanked the Board and staff for their support and Monique Williams, Civicorps' Conservation Program Coordinator who recounted her experience in the District's Special Employment Program and expressed gratitude for the District's support. Director Katz accepted the award on behalf of the Board and thanked Civicorps for the honor, their contributions to the community, and their partnership with the District.

PUBLIC COMMENT

Addressing the Board were the following: 1) Justin Young, EBMUD Associate Electrical Engineer and 1st Vice-President, AFSCME Local 2019 commented on the District using consultants to complete design work for various capital improvement projects, examining how the District has used consultants on past projects, and having a third-party audit of costs for a capital improvement project; 2) Ivette Rivera commented on documents she provided to the Board, Eric Larsen's remarks during the closed session public comment period, her remarks during the Legislative/Human Resources Committee public comment period earlier in the day; and rescinding the service award for the previous General Counsel; and 3) Lonna Coleman commented on withdrawing the appeal of her court decision, the discussion during the Board's Brown Act briefing earlier in the day, and Contra Costa Water District's Retirement Handbook.

CONSENT CALENDAR

- Item 4 was pulled from the Consent Calendar for separate discussion.
- Motion by Director Linney, seconded by Director Patterson to approve the recommended actions for Items 1-3, 5, and 10.a-10.b, on the Consent Calendar carried (7-0) by the following voice vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
- 1. **Motion No. 004-24** Approved the Regular Meeting Minutes of December 12, 2023.
- 2. The following correspondence was filed with the Board: 1) Presentation entitled, "Federal Legislative Update Presented to Board of Directors of East Bay Municipal Utility District," dated January 9, 2024; 2) Presentation entitled, "Board Committees and Workshops (January 2024 June 2024)," dated January 9, 2024; 3) Presentation entitled, "Water Supply Update," dated January 9, 2024; 4) Presentation entitled, "Annual Ethics Policy Review and Brown Act Update," dated January 9, 2024; 5) Memo dated January 9, 2024 to Board of Directors from Andy Katz, President regarding 2024 Assignment Preferences for Committees, Joint Powers Authorities, and Associations; 6) Document titled Organizational Display, Exhibit 1 as of June 30, 2014; 7) Email dated January 8, 2024 from Ivette Rivera to multiple recipients titled Now that the retaliatory mediation directive has been finally rescinded, today on 1/8/24, please stop harassing and retaliating against me; and 8) Memo dated January 9, 2024 to Board of Directors from Derek McDonald, General Counsel regarding Reference Documents for the Annual Brown Act and Ethics Update Presentation.
- 3. **Motion No. 005-24** Authorized an agreement beginning on or after January 9, 2024, with Amazon Web Services, Inc. for four years for an amount not to exceed \$1,700,000 for cloud computing services.

- 4. Authorize an agreement beginning on or after January 9, 2024, with Fields EAM, Inc for two years for a total amount not to exceed \$935,573 for professional services to develop prototyped processes of a Computerized Maintenance Management System (CMMS) for the District's Computerized Maintenance Management Software project.
 - Director Coleman asked if there would be additional costs after the prototype is developed and tested. General Manager Clifford C. Chan confirmed that once testing concluded under this agreement, staff would present another contract for full implementation of a CMMS for Board consideration. Chief Information Officer Orlando Leon discussed the testing processes proposed under the agreement and said it would be two to three years before staff presents the contract for full implementation of a CMMS for Board consideration.
 - Motion by Director Coleman, seconded by Director Patterson to approve the recommended actions for Item 4 carried (7-0) by the following voice vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
 - Motion No. 012-24 Authorized an agreement beginning on or after January 9, 2024, with Fields EAM, Inc for two years for a total amount not to exceed \$935,573 for professional services to develop prototyped processes of a Computerized Maintenance Management System for the District's Computerized Maintenance Management Software project.
- 5. Motion No. 006-24 Authorized an agreement beginning on or after January 9, 2024 with Frontier Energy, Inc. in an amount not to exceed \$371,515 for a systemwide assessment and master plan for the District's zero-emission vehicle (ZEV) needs to procure ZEVs and install infrastructure to support the ZEV fueling requirements.
- 6. **Motion No. 007-24** Authorized an agreement beginning on or after January 9, 2024 with Integrated Power Services, LLC, in an amount not to exceed \$390,000 for equipment upgrades on uninterruptible power supplies for the wastewater system.
- 7. Motion No. 008-24 Authorized a direct award contract beginning on or after January 9, 2024 to PureAir Filtration, LLC, for supplying and maintaining two carbon adsorber air filtration units for Danville Reservoir for three years, with an option to renew for an additional two-year period for a total cost, after the addition of taxes, including option years, not to exceed \$420,000.
- 8. **Motion No. 009-24** Authorized an agreement beginning on or after January 9, 2024, with SLR International Corporation in an amount not to exceed \$118,122 for performing a proof of concept for acoustical inspections of sanitary sewers to identify sources of inflow and infiltration, as required by the Wet Weather Consent Decree.
- 9. **Motion No. 010-24** Authorized an agreement beginning on or after January 9, 2024 with Pacific Gas and Electric Company for five years in an amount not to exceed \$350,000 for the continuation of a cooperative weather modification program in the Mokelumne River watershed.
- 10a.- Motion No. 011-24 Authorized amendments to the agreements previously authorized under Board
 10b. Motion No. 118-23 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 by \$500,000 to a total amount not to exceed \$2,765,000 for asphaltic cement and concrete saw cutting services without change to the July 11, 2024 expiration date; and authorized

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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 January 9, 2024, 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.

DETERMINATION AND DISCUSSION

11. Legislative Update.

Legislative/Human Resources Committee Chair Lesa R. McIntosh announced that due to time constraints, the Committee did not receive an update on the federal priorities or the State legislative priorities and did not have a recommendation for the Board on these items. Manager of Intergovernmental Affairs Kathy Viatella provided an overview of the current federal climate and summarized the proposed federal priorities for 2024 which focus on climate change resiliency; infrastructure and other funding assistance; water quality; and water supply reliability and natural resources protection. Ms. Viatella introduced Eric Sapirstein of ENS Resources Inc. who reviewed the 2023 political climate, the Budget and Fiscal Responsibility Act, current congressional leadership, community project funding, and key legislative issues for the second session of congress including: appropriations and community project funding; the Water Resources Development Act 2024; western water legislation; low-income ratepayer assistance; and PFAS superfund liability. Mr. Sapirstein and Ms. Viatella responded to Board questions on using the Environmental Protection Agency's Superfund program to address PFAS; how continuing resolutions work for the federal budget; and providing information to congress about infrastructure needed to address nutrients. Staff was asked to present the District's federal priorities for 2024 at the January 26 Upper Mokelumne River Watershed Authority Board meeting. Next, Ms. Viatella reviewed the proposed State legislative priorities for the 2024 legislative year focused on climate change; customer assistance; diversity, equity, and inclusion; water quality; and water supply reliability and resiliency and an update on state legislative activities. Staff was asked to confirm which group in the State Department of Toxic Substances Control is leading PFAS mitigation.

- Director Chan left the meeting at 2:10 p.m.
- Motion by Director Coleman, seconded by Director Linney to approve the recommended actions for the federal priorities for 2024 carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Motion No. 013-24 – Approved the following federal priorities for 2024: 1) Climate Change Resiliency – Actively assess and seek opportunities to engage in climate change policies and potential funding opportunities that promote EBMUD priorities to ensure safe, reliable, and resilient water and wastewater services; 2) Infrastructure and Other Funding Assistance – Advance EBMUD's funding needs through relevant programmatic funding opportunities and congressionally directed spending, if available; 3) Water Quality – Monitor the development of relevant water quality and pollution prevention related legislation and policies at the federal level and work to ensure EBMUD's interests are effectively communicated, including through appropriate national associations; and 4) Water Supply Reliability and Natural Resources Protection – Advance EBMUD's interests in water supply reliability and supporting the Mokelumne River fishery.

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> Motion by Director Young, seconded by Director Katz to approve the recommended actions for the State legislative priorities for the 2024 legislative year carried (6-0) by the following voice vote: (Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Motion No. 014-24 – Approved the following State legislative priorities for the 2024 legislative year: 1) Climate Change – Advance EBMUD's interests related to climate change, including wildfire and forest resilience in the context of providing reliable water and wastewater service; 2) Customer Assistance – Seek constructive ways to advance EBMUD's interests as the administration and the legislature consider ways to provide assistance to water and wastewater customers to address customer affordability; 3) Diversity, Equity, and Inclusion – Advance EBMUD's DEI interests in workforce development and diversity as the legislature and administration continue to consider DEI issues in the context of policy development; 4) Water Quality – Advance EBMUD's interests in legislative and policy discussions on water quality issues; and 5) Water Supply Reliability and Resiliency – Protect and advance EBMUD's interests in the context of water supply reliability and resiliency, including water rights modernization, water management, and the Mokelumne River fishery.

12. Consider and approve an increase to the Board of Directors' salary by an amount not to exceed 5 percent effective February 1, 2024.

President McIntosh announced the Board would consider an increase to its salary by an amount not to exceed five percent. If approved, the increase would be effective February 1, 2024. General Manager Clifford C. Chan said in accordance with the Municipal Utility District (MUD) Act, the Board could consider an increase to its salary of up to 5 percent. The Board considered its salary increases based on staff's general salary increase; the last general salary increase for staff was 5.4 percent which is more than the 5 percent allowed by the MUD Act. Director Linney said he would support a five percent increase to the Board's salary because it is important to make the offices accessible to people who may not have the means to hold office and said he would move the item. Director Coleman explained why he would be voting "no" on this item.

 Motion by Director Linney, seconded by Director Patterson, to approve the recommended actions for Item 12 carried (5-1) by the following voice vote: (Katz, Linney, Patterson, Young, and McIntosh); NOES (Coleman); ABSTAIN (None); ABSENT (Chan).

Motion No. 015-24 – Approved a five percent increase to the Board of Directors' salary to be effective February 1, 2024.

13. Authorize an amendment to the Agreement for Employment of General Manager Clifford C. Chan, to provide for a merit pay increase of five percent to the base salary, effective January 15, 2024.

President McIntosh announced that pursuant to Government Code Section 54953(c)(3), the Board of Directors is providing an oral report prior to taking action on the salary, salary schedule, and compensation paid in the form of fringe benefits to the General Manager. In accordance with the employment agreement with the General Manager, the Board may authorize base salary increases for the General Manager based on annual performance evaluations conducted by the Board. As such, it is recommended that the General Manager receive a five percent increase in his base salary effective January 15, 2024. There are no other changes recommended to the employment agreement at this time. The July 22, 2026 agreement end date will remain unchanged.

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- Addressing the Board was Ivette Rivera who expressed opposition to the General Manager receiving a raise and a contract extension.
- Motion by Director Katz, seconded by Director Linney, to approve the recommended actions for Item 13 carried (5-1) by the following voice vote: (Katz, Linney, Patterson, Young, and McIntosh); NOES (Coleman); ABSTAIN (None); ABSENT (Chan).

Resolution No. 35378-24 – Authorizing Second Amendment To General Manager Employment Agreement (effective January 15, 2024).

14. Authorize an amendment to the Agreement for Employment of General Counsel Derek T. McDonald to provide for a merit pay increase of eight percent to the base salary effective January 15, 2024 and to extend the agreement for an additional one-year term through July 4, 2025.

President McIntosh announced that pursuant to Government Code Section 54953(c)(3), the Board of Directors is providing an oral report prior to taking action on the salary, salary schedule and compensation paid in the form of fringe benefits to the General Counsel. In accordance with the employment agreement with the General Counsel, the Board may authorize base salary increases for the General Counsel based on annual performance evaluations conducted by the Board. As such, it is recommended that the General Counsel receive a merit pay increase of eight percent to his base salary effective January 15, 2024 and an extension of his employment agreement for an additional one-year term through July 4, 2025.

- Addressing the Board were the following: 1) Ivette Rivera expressed opposition to the General
 Counsel receiving a raise and a contract extension and read an excerpt from the Rules of
 Conduct for attorneys; and 2) George Cleveland commented on the proposed salary increase
 for the General Counsel, the need to reopen union negotiation discussions regarding PEPRA,
 and concern regarding a settlement for the Shaunte Scott lawsuit.
- Director Patterson left the meeting at 3:16 p.m. and returned at 3:19 p.m.
- Motion by Director Katz, seconded by Director Linney, to approve the recommended actions for Item 14 carried (4-1) by the following voice vote: (Katz, Linney, Young, and McIntosh); NOES (Coleman); ABSTAIN (None); ABSENT (Chan and Patterson).

Resolution No. 35379-24 – Authorizing First Amendment To General Counsel Employment Agreement (effective January 15, 2024).

15. Six-Month Forecast of Board Committee and Workshop Topics for 2024 and Summary of 2023 Committee and Workshop Topics.

General Manager Clifford C. Chan said this information was being presented based on feedback received during the Board's retreat on November 3, 2023. He reviewed the proposed topics and schedules for committee meetings and Board workshops and said staff is seeking feedback from the Board. Board members commented on the proposed workshops scheduled for October which is also when the District holds the annual Pardee BBQ. There was additional discussion by the Board regarding the schedules and the workshops proposed in the fall. Mr. Chan said Board members can

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provide feedback at any time regarding the workshop schedules and said he would begin reviewing committee topics with committee chairs once committee assignments are established by the Board. Staff was asked to prioritize scheduling the Cost of Service and Rate Structure workshops in the fall and to consider scheduling the Infrastructure Workshop in September or deferring it. Staff was also asked to include information on new recycled water laws and regulations at the upcoming Recycled Water Master Plan workshop.

16. General Manager's Report.

Speakers Bureau Topics for 2024

General Manager Clifford C. Chan highlighted the District's community outreach and messaging in 2023. He asked the Board to review the staff report and provide feedback on additional outreach opportunities, topics of interest, and ward briefing dates and locations to the Community Affairs Representatives by January 23 so that the outreach plan can be finalized for the year.

Water Supply Update

Director of Operations and Maintenance David A. Briggs presented the update on Water Year 2023 which ended September 30, 2023 and the following data as of January 3: gross water production; precipitation in the East Bay (4.92 inches) and in the Mokelumne (12.23 inches); the snow depth (25 inches) and snow water content (3.37 inches) at Caples Lake; and the District's total system storage (617 thousand acre-feet). He reviewed snowpack levels and snow water equivalent in the Sierras as of January 4 and precipitation forecasts across the states for January through March 2024. In response to a Board question on whether Forecast Informed Reservoir Operations (FIRO) modeling could be used at Pardee Reservoir, staff advised this topic would be discussed at the Climate Action Plan Workshop scheduled for January 23, 2024.

General Manager's Monthly Report – December 2023

General Manager Clifford C. Chan announced the monthly report had been provided in the agenda materials and he was available to answer questions from the Board.

REPORTS AND DIRECTOR COMMENTS

17. Committee Reports.

- Filed with the Board were the Minutes for the December 12, 2023 Planning and Legislative/Human Resources Committee meetings.
- Planning Committee Chair Doug A. Linney reported the Committee met earlier in the day and received reports on Accessory Dwelling Units and the Walnut Creek Water Treatment Plant Pretreatment Project Update.
- Legislative/Human Resources Committee Chair Lesa R. McIntosh reported the Committee
 met earlier in the day and received updates on the Employees Retirement System Board
 Health Insurance Benefit Study and Proposed Revisions to EBMUD's Campaign Finance
 Reform Ordinance. Due to time constraints, the update on federal priorities for 2024 and
 State legislative priorities for 2024 legislative year was held over to the Regular Board
 meeting.

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DERWA representative John A. Coleman reported the DERWA Board met on December 11, 2023 and approved meeting minutes and the Treasurer's Reports and Quarterly Investment Report; accepted the Independent Auditor's Report; discussed a proposed DERWA Cash Reserves Policy; approved the appointment of Richard G. Sykes as Interim Authority Manager and authorized an agreement for interim services; and discussed the recruitment for Authority Manager.

18. Other Items for Future Consideration.

None.

19. **Director Comments.**

- Director Coleman reported on plans to attend the UMRWA Board meeting in Pardee on January 26; the Lafayette Presbyterian Church water talk in Lafayette on February 1; the DERWA Board meeting in Dublin on February 5; and the East Bay Leadership Group Board meeting (remote) on February 16.
- Director Patterson commented on the crime rates in the state and Bay Area and on staff's comments regarding worker safety. He commended General Manager Clifford C. Chan and General Counsel Derek T. McDonald for their work.
- Directors Chan, Katz, Linney, Young, and President McIntosh had no reports.

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ADJOURNMENT

President McIntosh adjourned the meeting at 3:49 p.m.

SUBMITTED BY:

Rischa S. Cole, Secretary of the District

APPROVED: February 13, 2024

Lesa R. McIntosh, President of the Board

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