

## MINUTES

**Tuesday, February 13, 2024  
East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California**

### Regular Closed Session Meeting

President Lesa R. McIntosh called to order the Regular Closed Session Meeting of the Board of Directors at 11:10 a.m. in the Administration Building Boardroom.

### ROLL CALL

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

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 the February 8, 2024 Information Memo to the Board of Directors from Director of Human Resources Cindy R. Charan regarding District Procedures on Discipline addressing concerns raised by Local 444 during the January 9, 2024 Board meeting and the status of the ongoing investigation of a Local 444 member. He asked that the District notify the union and provide timelines for each step of future investigations and disciplinary proceedings; and 2) Ivette Rivera commented on the February 8, 2024 Information Memo referenced by Eric Larsen, documents she provided to the Board regarding the Pierce/Bland case, and the remarks made by Eric Larsen regarding the ongoing investigation of a Local 444 member.

General Manager Clifford C. Chan was asked to provide the Board with written information regarding the investigation referenced by Eric Larsen and the District's investigation process.

### ANNOUNCEMENT OF CLOSED SESSION AGENDA

President McIntosh announced the closed session agenda and the Board convened to Administration Building Conference Room 8 for discussion.

### Regular Business Meeting

President Lesa R. McIntosh 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, Andy Katz, Doug A. Linney, William B. Patterson, Marguerite Young and President Lesa R. McIntosh 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 McIntosh led the Pledge of Allegiance.

### **Update 2024 Board Assignments for Committees, Joint Powers Authorities, and Associations**

President McIntosh announced Board members had received the updated 2024 assignments in their agenda materials. The 2024 assignments were updated based on Director Coleman's upcoming departure from the Board in March. Director Young asked that the Board review the 2024 assignments after the appointment process to fill the vacant seat for Ward 2 has concluded.

- Motion by Director Coleman, seconded by Director Chan, to approve the updated 2024 assignments for Board committees, joint powers authorities, and associations, 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. 027-24** – Approved the updated 2024 Board Assignments for Committees, Joint Power Authorities, and Associations

#### **Planning**

Director Young, Chair  
Director Chan  
Director Linney

*2<sup>nd</sup> Tuesday of the month at 9:15 a.m.*  
Administration Center Building

#### **Legislative/Human Resources**

Director Patterson, Chair  
President McIntosh  
Director Young

*2<sup>nd</sup> Tuesday of the month at 10:15 a.m.*  
Administration Center Building

#### **Finance/Administration**

Director Katz, Chair  
Director Chan  
Director Patterson

*4<sup>th</sup> Tuesday of the month at 10:00 a.m.*  
Administration Center Building

#### **Sustainability**

Director Linney, Chair  
Director Katz  
Director Young

*4<sup>th</sup> Tuesday, quarterly, time to be determined*  
Administration Center Building

#### **DSRSD/EBMUD Recycled Water Authority (DERWA)**

Director Chan  
Director Young

*1<sup>st</sup> Monday in Feb.;*  
*3<sup>rd</sup> Monday in May;*  
*4<sup>th</sup> Monday in March, July, Sept., and*  
*Nov. meets at 6:00 p.m.*

#### **Freeport Regional Water Authority**

Director Patterson  
Director Katz

*2<sup>nd</sup> Thursday, quarterly at 10:00 a.m.,*  
*location to be announced*

**Los Vaqueros Reservoir Joint  
Powers Authority**

Director of Water and Natural  
Resources Tognolini  
Director Linney, Alternate

*2<sup>nd</sup> Wednesday of the month at 9:30 a.m., location to  
be determined*

**Retirement Board**

Director Chan  
Director Young

*3<sup>rd</sup> Thursday odd numbered months at 9:00 a.m.  
Administration Center Building*

**Upper Mokelumne River  
Watershed  
Authority**

Director Patterson  
Director Katz, Alternate

*4<sup>th</sup> Friday, quarterly at 1:30 p.m.  
McLean Hall, Pardee Center*

**Business Forum (Ad Hoc)**

Director Linney  
President McIntosh  
Director Patterson

*Meeting dates, times, and location to be determined*

**EBMUD/EBRPD Liaison**

Director Katz  
Director Chan  
Director Young, Alternate

*Meeting dates, times, and location to be determined*

**Oakland Chamber of Commerce**

Director Linney  
Director Patterson, Alternate

**Special Districts Association of Contra Costa County**

Director Young, Member  
Director Katz, Alternate

**ANNOUNCEMENTS FROM CLOSED SESSION**

President McIntosh announced the Board met in closed session to consider authorization of an appeal in the matter of *Saji Pierce et al. v. East Bay Municipal Utility District et al.* All Directors were present. Directors Katz, Linney, Patterson, Young and President McIntosh voted to authorize the Office of General Counsel to file an appeal in this matter. Directors Chan and Coleman voted against filing an appeal. The District will file an appeal within the time required by statute. There were no other announcements required from closed session.

**PUBLIC COMMENT**

- Addressing the Board were the following: 1) Tracie King, EBMUD Dispatch Center Representative expressed concerns regarding safety and afterhours security in the Administration Building; and 2) Ivette Rivera commented on documents she provided to the Board and on the Pierce/Bland case.

General Manager Clifford C. Chan commented Director of Operations and Maintenance David A. Briggs

would contact Tracie King regarding her concerns.

### **CONSENT CALENDAR**

- Items 6.1. and 6.2. 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, and 7.1-7.2 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. 028-24** – Approved the Regular Meeting Minutes of January 9, 2024, and the Special Meeting Minutes and Regular Meeting Minutes of January 23, 2024.
  2. The following correspondence was filed with the Board: **1)** Presentation entitled, “Options for Filling a Board Vacancy,” dated February 13, 2024; **2)** Presentation entitled, “Credit Ratings of Water System & Wastewater System Revenue Bonds,” dated February 13, 2024; **3)** Presentation entitled, “Water Supply Update,” dated February 13, 2024; **4)** Speakers' Bureau and Outreach Record CY24 dated February 13, 2024; **5)** Email dated February 12, 2024 from Henrich to Office of the Secretary regarding Attn: Board of Directors members, Regular Agenda item 9; **6)** Document labeled Excerpt from Jan Duffy Report (undated); **7)** Document titled, “US District Court Pierce et al., v. EBMUD Case 3:21-cv-04325-AGT Document 277 filed July 24, 2023”; **8)** Document titled, “2014 Affirmative Action Plan”; and **9)** Document titled, “Case4 15-cv-00380-DMR Document 10 Filed July 7, 2015” (with attachments).
  3. **Motion No. 029-24** – Awarded a contract to the lowest responsive/responsible bidder, Certified Coatings Company, in an amount not to exceed \$15,281,498 for the construction of the Recoat Mokelumne Aqueduct No. 1 Phase 13 – Gully Crossings Project under Specification 2156.
  4. **Motion No. 030-24** – Authorized the purchase of Jira software and Service Management software beginning on or after February 13, 2024 from Carahsoft for one year for a total amount not to exceed \$146,000. This purchase will be made under State of California contracts available for use by local governments.
  5. **Motion No. 031-24** – Authorized the Office of General Counsel to continue the employment of the law firm of Best, Best & Krieger, LLP, for specialized legal services related to federal and state water law, rates, charges, fees, taxes, liens, real estate and bankruptcy, and litigation involving such matters in an additional amount not to exceed \$100,000.
  - 6.1.- **Ratify the extension of the agreement with Government.Jobs.com dba NEOGOV**  
6.2. **(NEOGO) authorized under Board Motion No. 041-18 to February 12, 2024 and the total payment of \$45,750 to NEOGOV for the continuous work of providing online recruitment and onboarding services rendered between April 11, 2023 and February 12, 2024; and authorize an agreement beginning on or after February 13, 2024 with NEOGOV through June 30, 2026 in an amount not to exceed \$154,155 for online recruitment and onboarding services.**
    - Addressing the Board was Ivette Rivera who commented on testing for a recent recruitment, paying recruitment firms to post jobs, and employee retention.

- Motion by Director Linney, seconded by Director Young, to approve the recommended actions for Items 6.1– 6.2 carried (7-0) by the following voice vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 033-24** – Ratified the extension of the agreement with Government.Jobs.com dba NEOGOV (NEOGO) authorized under Board Motion No. 041-18 to February 12, 2024 and the total payment of \$45,750 to NEOGOV for the continuous work of providing online recruitment and onboarding services rendered between April 11, 2023 and February 12, 2024; and authorized an agreement beginning on or after February 13, 2024 with NEOGOV through June 30, 2026 in an amount not to exceed \$154,155 for online recruitment and onboarding services.

- 7.1.- **Motion No. 032-24** – Ratified the extension of the agreement with DataBank IMX LLC (Databank) authorized under Board Motion No. 014-15 to February 12, 2024 and the total payment of \$42,947 to Databank for the continuous work of providing software maintenance services to OnBase by Hyland Software (OnBase) rendered between January 1, 2020 and February 12, 2024; and authorized an agreement beginning on or after February 13, 2024 with DataBank through December 31, 2028, in an amount not to exceed \$85,000 for annual maintenance services, file scanning, staff training, and software upgrades to OnBase software.
- 7.2.

## **DETERMINATION AND DISCUSSION**

### **8. Legislative Update.**

Special Assistant I Debbie Michel reviewed Legislative Report No. 01-24. S. (TBD) (Padilla) The Low-Income Household Water Assistance Program (LIHWAP) Establishment Act would permanently establish a LIHWAP program at the federal level to award grants to eligible entities (states or tribes) to provide funds to owners and operators of public water systems or treatment works. These funds would assist low-income households in paying arrearages and other rates charged to such households for drinking water or wastewater services. The LIHWAP Establishment Act is intended to build upon the existing temporary LIHWAP created and funded through various federal COVID-19 relief packages in 2021. Staff is recommending a “support” position for the bill. Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met earlier and unanimously voted to support the staff recommendation. Next, Manager of Intergovernmental Affairs Kathy Viatella provided an update on state and federal legislative activities. Ms. Viatella reported that Friday, February 16 is the last day for state legislators to introduce new bills and that the governor released his proposed \$291.5 billion dollar budget. She highlighted changes in legislative leadership as Senator Toni Atkins stepped down as Pro Tem and was replaced by Senator Mike Maguire. She provided updates on actions regarding the federal budget and upcoming March deadlines for Congress to produce a budget resolution and appropriation bills. Ms. Viatella responded to questions from the Board and explained approximately 2,000 new bills are usually introduced in a year and described potential sectors that could be included in a climate bond. Ms. Viatella was asked to provide the Board with a list of the committee memberships for EBMUD’s state delegation.

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

**Motion No. 034-24** – Received Legislative Report No. 01-24 and approved a position on the following bill: SUPPORT S. (TBD) (Padilla) The Low-Income Household Water Assistance Program (LIHWAP) Establishment Act.

9. **Discuss options outlined in the Municipal Utility District Act for the Board of Directors to fill a vacant Board seat. The discussion will include an option to appoint an Ad Hoc Committee of the Board to facilitate an appointment process.**

General Manager Clifford C. Chan provided the presentation. Staff is seeking the Board's direction on how to fill the vacancy in Ward 2 due to the resignation of Director John A. Coleman which will be effective in early March 2024. Under Municipal Utility District Act (MUD Act) section 11865 et seq., the Board may fill a vacancy by Board appointment or through a special election called by the Board. The Board must exercise one of these options within 60 days of the effective date of Director Coleman's resignation. If the Board does not exercise one of these options, the Contra Costa County Board of Supervisors would have until early June to either fill the vacancy by appointment or order EBMUD to call a special election. If the Board elects to appoint someone, the appointee would fill the vacancy until the November 2024 general election. The person elected in the November 2024 general election would serve the remainder of Director Coleman's term (until December 31, 2026). If the Board elects to call a special election, they must do so no later than early May 2024. The earliest a special election could be held is August 27, 2024 (election date established by the county in accordance with Government Code section 1780). The person elected in a special election would serve the remainder of Director Coleman's term. Mr. Chan reviewed requirements for noticing the vacancy; proposed timelines for an appointment process or special election; and estimated costs for the general election (between \$370,000 to \$590,000) and a special election (between \$1.3 million to \$2.1 million) in Ward 2. If the Board take no action, the Contra Costa County Board of Supervisors would have until early June to either fill the vacancy by appointment or order EBMUD to call a special election. If the Board of Supervisors fails to act by this date, the MUD Act requires the EBMUD Board to call a special election to fill the vacancy. The Board discussed the options and there was consensus that appointing someone to fill the vacancy in lieu of a calling a special election is the quickest way to fill the seat and is more economical. Board members also commented on the timing for a special election in August and the upcoming general election in November; the appointment process being open and transparent; accelerating the timeline if the Board elects an appointment process; options if the Board posts the notice of vacancy and Director Coleman decides he does not want to resign; which county has the authority to fill a vacancy in a District ward that spans two counties; and appointing an Ad Hoc Committee to facilitate an appointment process. Director Young made a motion to approve an appointment process to fill the vacant Board seat.

- Motion by Director Young, seconded by Director Linney, to approve an appointment process for filling the vacant Board seat in Ward 2 carried (7-0) by the following voice vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 035-24** – Approved an appointment process for filling the vacant Board seat in Ward 2.

Next, Mr. Chan said staff will need feedback from the Board on the appointment process or the Board could consider appointing an Ad Hoc Committee to provide guidance. If the Board elects to appoint an Ad Hoc Committee, staff will provide an update on the appointment process at the next Board meeting. Directors Chan, Katz, and Young volunteered to serve on the Ad Hoc Committee to develop the appointment process. Mr. Chan said the Ad Hoc Committee would need to meet quickly so that staff will be ready to provide an update at the next Board meeting. There was Board

discussion on Director Coleman providing feedback to the Ad Hoc Committee on locations for posting the notice of vacancy. General Counsel Derek T. McDonald explained Director Coleman could provide feedback to staff.

- Motion by Director Coleman, seconded by Director Patterson, to appoint Directors April Chan, Andy Katz, and Marguerite Young to serve as the Ad Hoc Committee to develop the appointment process for filling the vacant Board seat carried (7-0) by the following voice vote: (Chan, Coleman, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

**Motion No. 036-24** – Appointed Directors April Chan, Andy Katz, and Marguerite Young to serve as the Ad Hoc Committee to develop the appointment process for filling the vacant Board seat.

10. **Resolution Recognizing Irma L. Anderson.**

President McIntosh highlighted the life, education, and accomplishments of former Mayor of Richmond Irma L. Anderson. Mrs. Anderson was the second Black woman to attend and graduate Cornell School of Nursing and went on to receive a master's degree from the University of California, Berkeley School of Public Health. She worked for the Contra Costa County Health Department and was the first Black Director of Public Health Nursing in Contra Costa County. Mrs. Anderson was the first Black woman elected to the Richmond City Council in 1990 and became the City of Richmond's first Black woman mayor and served on the Metropolitan Transportation Commission from 2003 to 2007. She was instrumental in developing a historic partnership with the West Contra Costa Unified School District dubbed "Kids First", which secured over \$1.8 million dollars to pilot after-school programs in the City of Richmond. Mrs. Anderson passed away on Sunday, January 28, 2024 at the age of 93, having dedicated a lifetime to public health and public service, influencing, mentoring, and training a host of community members and civic leaders, and becoming a role model and mentor for Black women throughout the Bay Area. President McIntosh commented on the impact Mrs. Anderson had on her life and career, and Directors Coleman and Patterson commented on their previous work and interactions with her. President McIntosh requested that a copy of the resolution be sent to Mrs. Anderson's son and grandson.

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

**Resolution No. 35384-24** – Resolution Recognizing Irma L. Anderson.

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

Credit Ratings of Water and Wastewater System Revenue Bonds

Director of Finance Sophia S. Skoda and Treasury Manager Robert L. Hannay provided the presentation. On January 26, 2024, S&P Global Ratings and Moody's Investors Service assigned AAA and Aaa ratings, respectively, to the District's Water System Revenue Bonds, Series 2024A (Green Bonds) and Water System Revenue Refunding Bonds, Series 2024B and affirmed the District's AAA and Aaa ratings on outstanding Water System revenue bonds. The District remains the only water agency in California rated Aaa by Moody's. Also on January 26, 2024, S&P and

Moody's assigned AAA and Aa1 ratings, respectively, to the District's Wastewater System Revenue Bonds, Series 2024A (Green Bonds) and affirmed the District's AAA and Aa1 ratings on outstanding Wastewater System revenue bonds. Ms. Skoda reviewed the District's credit strengths and concerns and explained Moody's has also assigned the District an Environmental, Social, and Governance (ESG) credit impact score (CIS) of CIS-2 indicating that ESG considerations do not have a material impact on the current rating. Mr. Hannay noted the District's credit ratings reflect S&P and Moody's views of the District's overall management and the finances of the District as well as the strong oversight of the Board and ongoing support for long-term financial stability all which allow the District to borrow at low interest rates for the benefit of District ratepayers. Board members commended staff for their work and efforts in achieving these credit ratings. Ms. Skoda and Mr. Hannay responded to Board questions on the interest rate received for the recent bond issuance and potential interest rates for a water agency assigned an AA rating. President McIntosh thanked staff, in particular the Finance team, for their work in achieving these credit ratings and recognized the following key staff who work in this area: Principal Management Analyst Jackie Lee; Treasury Manager Robert L. Hannay; Accounting and Financial System Analyst Melody Wang; Accountant III Yenny S. Coburn; Accounting Systems Supervisor Winsun Hsieh; Accounting Systems Supervisor Lisa Chan; Accounting Systems Supervisor Kevin Ma; Manager of Budget Samuel A. Feldman; and Director of Finance Sophia D. Skoda. Staff was asked to provide the Board with information on how credit ratings affect borrowing rates and to include the credit rating agencies' documents regarding the District in onboarding materials for new Board members.

Water Supply Update – Water production; precipitation to date; reservoir storage; and forecasted supply conditions for the remainder of water year 2024

Director of Operations and Maintenance David A. Briggs provided an update on the District's current water supply, the State's water supply, and water supply projections. He highlighted the following data as of February 7: gross water production; precipitation in the East Bay (12.52 inches) and in the Mokelumne (23.76 inches); and the snow depth (70 inches) and snow water content (12.55 inches) at Caples Lake. He reviewed a comparison of radar imagery from Next Generation Weather Radar (NEXRAD) and Advanced Quantitative Precipitation Information (AQPI); snowpack levels and snow water equivalent in the Sierras as of February 8 and water supply data for northern California reservoirs as of February 6. The District's total system storage as of February 7 was 643,000 acre-feet and projected to be about 630,000 acre-feet by September 30. Mr. Briggs responded to Board questions on whether the AQPI technology is beneficial for local forecasting; flood prevention; and water releases from Pardee. In response to a question on whether the District is planning to store additional groundwater in San Joaquin, Director of Water and Natural Resources Michael T. Tognolini commented the District stored groundwater as part of the pilot Demonstration Recharge, Extraction and Aquifer Management Project under a permit from San Joaquin County that was specifically for the pilot. The District would need another permit to store additional groundwater.

- President McIntosh left the meeting at 2:33 p.m. and returned at 2:34 p.m.

General Manager's Monthly Report – January 2024

General Manager Clifford C. Chan announced he was available to answer questions from the Board regarding the Speakers' Bureau and Outreach Record CY24 provided at Board places and the monthly report provided in the agenda materials.

President McIntosh commented on a resolution to the Board to support Black History Month. Secretary of the District Rischa S. Cole as co-facilitator of the Black Employee Network Affinity



Group said the Office of Diversity, Equity and Culture is aware of this request and that this item will be discussed with the General Manager.

## **REPORTS AND DIRECTOR COMMENTS**

### **16. Committee Reports.**

- Filed with the Board were the Minutes for the January 23, 2024 Finance/Administration Committee.
- Chair Marguerite Young reported the Planning Committee met earlier in the day and received an update on Policy 3.08 – Advisory Election for Annexations Outside the Contra Costa County Urban Limit Line.
- Chair John A. Coleman reported the Legislative/Human Resources Committee met earlier in the day and received an update on Proposed Revisions to EBMUD’s Campaign Finance Reform Ordinance; the Legislative Update; and Diversity, Equity, and Inclusion Strategic Plan Update.
- Director John A. Coleman reported the Upper Mokelumne River Watershed Authority Board met on January 26, 2024 and approved the Forest Projects Plan – Phase 1 Project Implementation Report and Phase 2 Planning Report and the Special District Risk Management Authority Insurance.
- Director April Chan reported the Dublin San Ramon Service District-EBMUD Recycled Water Authority Board (DERWA) met on February 5, 2024 and elected Board Officers for 2024; approved the Meeting Minutes, Treasurer’s Reports and Quarterly Investment Report; adopted the Cash Reserves Policy; received a presentation on the EBMUD-Central San Recycled Water Feasibility Evaluation; approved a one-year Extension of Interim Agreement; and discussed filling the DERWA Authority Manager position.
- Director William B. Patterson reported the Freeport Regional Water Authority met on February 8, 2024 and discussed state actions related to the water system and elected the Board Chair and Vice Chair for 2024. Pat Hume from Sacramento County was elected Board Chair and Director Patterson was elected Vice Chair.

### **13. Other Items for Future Consideration.**

None.

### **14. Director Comments.**

- Director Chan asked if the upcoming Community Water Academy would be added to a future agenda. General Manager Clifford C. Chan said staff can provide an update and information on applications received.
- Director Patterson thanked the Black Employee Network for the tribute to him during the Black History Month kickoff on February 1.
- Directors Coleman, Katz, Linney, Young, and President McIntosh had no reports.

**ADJOURNMENT**

President McIntosh announced today's meeting will be adjourned in honor of the life and legacy of Irma L. Anderson, former Mayor of Richmond, California.

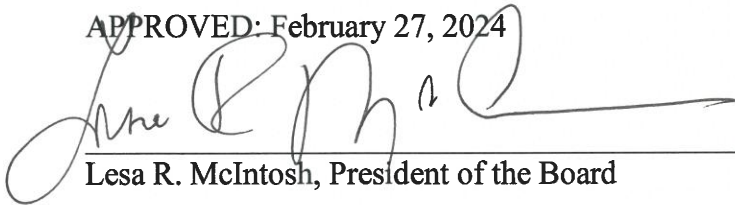
President McIntosh adjourned the meeting at 2:59 p.m.

SUBMITTED BY:



\_\_\_\_\_  
Rischa S. Cole, Secretary of the District

APPROVED: February 27, 2024



\_\_\_\_\_  
Lesla R. McIntosh, President of the Board