

MINUTES

**Tuesday, April 9, 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 11:04 a.m. in the Administration Building Boardroom.

ROLL CALL

Directors April Chan, Doug A. Linney, Marguerite Young, and President Lesa R. McIntosh were present at roll call. Directors Andy Katz and William B. Patterson arrived in Conference Room 8 at 11:20 a.m. and 11:31 a.m., respectively.

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

PUBLIC COMMENT

- Addressing the Board was Ivette Rivera who commented on documents she provided at earlier Committee meetings, stay interviews, employees' rights outside of the union, and the Pierce/Bland case. She asked the Board to address retaliation by her supervisor.

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 1:15 p.m. in the Administration Building Boardroom.

ROLL CALL

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

PRESENTATION

General Manager Clifford C. Chan announced the District received the American Society of Civil Engineers Region 9 Award for Outstanding Water Project of the Year for the San Pablo Clearwell and Rate Control Station Project. The award recognizes projects in California where the primary purpose is the supply, storage, and conveyance of potable and/or recycle water, and which demonstrate innovation and improvements to the state of practice for water supply and delivery projects. The following staff were present to represent the many employees from various departments that contributed to the success of the project: Tom Bullock, Associate Civil Engineer; Sanna Garcia, Associate Civil Engineer; Paresh Gandhi, Assistant Electrical Engineer; Robert Johnson, Senior Construction Inspector; Jin Lin, Assistant Engineer; Jennifer McGregor, Senior Civil Engineer; Yousef Nouri, Associate Civil Engineer; Kevin Smith, Maintenance Superintendent; Sonya Spala, Associate Mechanical Engineer; Jamie Sweet, Assistant Engineer; and Karl Tingwald, Senior Civil Engineer. On behalf of the Board, Director Andy Katz presented the award and thanked staff for their contributions.

ANNOUNCEMENTS FROM CLOSED SESSION

President McIntosh announced the Board met in closed session this morning to consider a request by the General Counsel to authorize initiation of litigation. All Directors were present at the closed session, including Director Patterson. All Directors present voted to authorize the General Counsel to initiate litigation in one matter. The action, parties, and other particulars will be disclosed upon inquiry once the actions are formally commenced. There were no other announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board was Ivette Rivera who commented on documents she provided to the Board, previous tort complaints she has filed against the District, employees' individual rights, the Director of Human Resources, and awaiting a response from Human Resources regarding the Grounds Foreman job description.

CONSENT CALENDAR

- Motion by Director Patterson, seconded by Director Linney to approve the recommended actions for Items 1-8 on the Consent Calendar carried (6-0) by the following voice vote: (Chan, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 058-24** – Approved the Special Meeting and Regular Meeting Minutes of March 26, 2024.
 2. The following correspondence was filed with the Board: **1)** Presentation entitled, "Water Supply Update," dated April 9, 2024; **2)** General Manager's Monthly Report – March 2024; **3)** Speakers' Bureau and Outreach Record CY24, dated April 9, 2024; **4)** Document entitled, "Case 4_15-cv-00380-DMR Document 10," filed July 7, 2015; **5)** Email dated April 5, 2024 from Eric Larsen to Juan Valencia and Ivette Rivera regarding Grounds Foreman (with attachments); **6)** Letter undated from Andi Li to Board of Directors regarding Letter of Recommendation for Bill Clarkson; **7)** Letter undated from Scott Gerbert to Board of Directors regarding Letter of Recommendation for Bill Clarkson; **8)** Letter dated April 1, 2024 from Kay Wang to Board of Directors regarding Letter of Recommendation for Bill Clarkson; **9)** Letter dated April 3, 2024 from Beverly Lane to Board of

Directors regarding Letter of Recommendation for Bill Clarkson; 10) Letter dated April 4, 2024 from Michelle Lee to Board of Directors regarding Letter of Recommendation for Bill Clarkson; 11) Letter dated April 7, 2024 from Rachel Hurd to Board of Directors regarding Letter of Recommendation for Bill Clarkson; 12) Letter dated April 7, 2024 from David Fong to Board of Directors regarding Letter of Recommendation for Bill Clarkson; 13) Letter dated April 8, 2024 from Sridhar Verose to Board of Directors regarding Letter of Recommendation for Bill Clarkson; 14) Letter dated April 8, 2024 from Dinesh Govindarao regarding Letter of Recommendation for Bill Clarkson; 15) Email dated April 5, 2024 from Jay Kerr regarding Letter of Recommendation for Bill Clarkson; 16) Email dated April 7, 2024 from Renee Morgan regarding Letter of Recommendation for Bill Clarkson; 17) Letter undated from Mark Armstrong regarding Letter of Recommendation for Bill Clarkson; 18) Letter dated April 5, 2024 from Heidi Kenniston-Lee regarding Letter of Recommendation for Bill Clarkson; 19) Letter dated April 2, 2024 from Jesse vanZee regarding Letter of Recommendation for Bill Clarkson; 20) Letter dated April 2, 2024 from Susanna Ordway regarding Letter of Recommendation for Bill Clarkson; 21) Email dated April 3, 2024 from Matt Stamey regarding Letter of Recommendation for Bill Clarkson; 22) Letter dated April 4, 2024 from W. Scott Perkins regarding Letter of Recommendation for Bill Clarkson; 23) Letter undated from Ann Marie Johnson regarding Letter of Recommendation for Bill Clarkson; 24) Letter undated from Karen Stepper regarding Letter of Recommendation for Bill Clarkson; 25) Letter dated April 8, 2024 from Dinesh Govindarao regarding Letter of Recommendation for Luz Gómez; and 26) Email dated April 9, 2024 from Heinrich Albert regarding Recommendation for Mariah Lauritzen.

3. **Motion No. 059-24** – Awarded a sole source contract beginning on or after April 9, 2024, to Volvo Construction Equipment and Services for supplying one Volvo JL25H fully electric compact wheel loader with attachments for the Main Wastewater Treatment Plant for a total cost, after the addition of taxes, not to exceed \$189,157.
4. **Motion No. 060-24** – Authorized an agreement beginning on or after April 9, 2024, with Environmental Science Associates in an amount not to exceed \$205,909 for one year to conduct biological field surveys to verify the presence of groundwater dependent ecosystem (GDEs) in the East Bay Plain Subbasin and recommend a subset of verified GDEs for baseline and ongoing ecological health monitoring.

In response to a question from Director Chan, Director of Water and Natural Resources Michael T. Tognolini explained EBMUD is responsible for a larger portion of the East Bay Plain Subbasin and the agreement costs are in proportion to the amount of area for which each agency is responsible.

5. **Motion No. 061-24** – Authorized an agreement beginning on or after April 9, 2024 with Woodard & Curran, Inc. for one year, with one option to renew for an additional one-year period for a total amount, including option years, not to exceed \$756,197 for a Value Engineering and Rate Study for the Camanche and Pardee Recreation wastewater facilities.
- 6a. – **Motion No. 062-24** – Authorized amendments to the agreements previously authorized under
- 6b. Board Motion No. 121-22 with ALB, Inc.; American Asphalt Repair & Resurfacing Company; Carone & Company, Inc.; Forticon, Inc.; J.V. Lucas, Inc.; MCK Services, Inc.; and Public Agencies to increase the aggregate amount of those agreements by \$5,000,000 to a total aggregate amount not to exceed \$15,000,000 and extend the agreement terms to April 9, 2025 for paving and other related services; and authorized additional agreements for paving and other related services, on an as-needed basis and subject to the total aggregate amount authorized by the Board for such services on

April 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.

7. **Resolution No. 35393-24** – Reauthorizing Designation Of Agents To State Office Of Emergency Services For Disaster Reimbursement.
8. **Resolution No. 35394-24** – Authorizing Acceptance Of Grant Awarded By The Federal Emergency Management Agency For Phase 1 Of The Influent Pump Station Seismic Retrofit Project.

DETERMINATION AND DISCUSSION

9. **Discuss and consider options for amending the EBMUD Employees' Retirement System Ordinance No. 40 with respect to pension benefits for EBMUD Board members.**

Assistant General Counsel Lourdes M. Matthew reviewed options for amending the Retirement System ordinance. Director Young requested options for amending the ordinance with respect to the pension benefits conferred upon EBMUD Board members. The options were presented at the March 21, 2024 EBMUD Retirement Board meeting. The Retirement Board requested that the proposed options be presented to the EBMUD Board for discussion and to receive direction on next steps. Ms. Matthew discussed the ordinance's history and sections of the ordinance that allow Board members to participate in the Retirement System and accrue service on the same basis as full-time employees. Section 12331 of the Municipal Utility District (MUD) Act provides the Board considerable latitude in determining the terms governing the amount of pension to which Board members may be entitled. The 1986 amendment to the MUD Act did not *require* elected Board members to become members of the Retirement System, but rather permitted the Board to allow Board members to participate. She reviewed the following options for amending the ordinance with respect to the pension benefits conferred upon EBMUD Board members. Option 1 would be to revert back to pre-1987 rules and preclude Board members from participating in the Retirement System. Under this option, Board members would not be eligible to receive a retirement allowance from the District, which would preclude eligibility for reciprocity. This option would also allow District retirees to serve on the Board without being subject to provisions under the California Public Employees' Pension Reform Act (PEPRA) and would require the least administrative changes to the operation of the Retirement System. Option 2 would calculate service for Board members on a less than full-time basis to reflect the part-time nature of the Board members. The Board could pro-rate service that would be counted as creditable service for the purpose of calculating a Board member's pension. For example, for every full year of service, a Board member could receive 0.25 years of service. The pro-rated service would be used to calculate the amount of retirement allowance a Board member would be entitled. For purposes of calculating the years of service to determine whether a member may remain in the Retirement System, the Board could treat one year of service on the Board as a full year and not pro-rate that service. Implementing the pro-rating option would require significant administrative changes to the operation of the Retirement System. Additionally, the ordinance currently excludes employees employed as part-time, limited-term, temporary, and temporary construction. These changes would create a new class of members for Directors. Option 3 could offer an alternative benefit to Board members that would also be offered to District employees if the EBMUD Board decides to exclude Board members from joining the Retirement System. Next, Ms. Matthew reviewed PEPRA considerations for District retirees that may be

elected or appointed to the EBMUD Board. PEPRA expressly states: “[a] retired person shall not serve, be employed by, or be employed through a contract directly by a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement.” If a District retiree is elected or appointed to serve on the Board, the District retiree would be required to be reinstated to the Retirement System and the Retirement System would be required to stop payment of retirement benefits for the time the retiree serves on the Board. Reciprocal benefits of a District retiree could also be affected if a retiree reinstates from retirement to serve on the Board. The California Public Employees' Retirement System (CalPERS) considers reinstatement from retirement as breaking concurrent retirement. Retirement benefits after reinstatement would be based only on the final compensation from each agency where the retiree worked, rather than on the highest compensation across all agencies. The loss of reciprocity specifically affects District retirees who return to serve on the Board. However, this does not affect Directors who are not retirees of the District. To address these issues, the EBMUD Board could consider amending the Retirement ordinance to potentially exclude District retirees from being members of the Retirement System if they return as Board members. This would allow a retiree to continue receiving their pension, retain reciprocity, and receive compensation as Board members. There was considerable discussion by the Board regarding the options presented and potential impacts to vesting rights; using Government Code section 20039 to draft amendments to the Retirement ordinance; excluding Board members from receiving reciprocal benefits; results from the survey conducted by the Office of General Counsel regarding pension benefits for Board members at other agencies; modifying the Retirement ordinance without making modifications to the MUD Act; potential impacts to the retiree Health Insurance Benefit by any of the proposed options; and addressing amendments for Board member pension benefits and PEPRA requirements for District retirees that are elected or appointed to serve on the Board as separate items. General Counsel Derek T. McDonald clarified staff will prepare amendments to the Retirement ordinance based on the direction received and conduct a first reading of the ordinance amendments at an upcoming Board meeting. The Board can choose to vote separately on each proposed amendment at the first reading. The Board asked staff to prepare a chart depicting the current status, issues, and proposed amendments for each item for the upcoming discussion.

10. General Manager's Report.

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 highlighted the following data as of April 3: gross water production; precipitation in the East Bay (17.69 inches) and in the Mokelumne (38.68 inches); and the snow depth (88 inches) and snow water content (32.76 inches) at Caples Lake. He reviewed and snowpack levels and snow water equivalent in the Sierras as of April 4 and reported that as of April 3, the District's total system storage was 665,000 acre-feet and is still projected to be approximately 630,000 acre-feet by September 30.

Monthly Report – March 2024

General Manager Clifford C. Chan announced the Monthly Report and Speakers' Bureau and Outreach Record CY24 had been provided at Board places.

11. Committee Reports.

- Filed with the Board were the Minutes for the March 26, 2024 Finance/Administration Committee.
- Chair Marguerite Young reported the Planning Committee met earlier and received reports on the Wastewater Pretreatment and Pollution Prevention Programs Update; Los Vaqueros Reservoir Expansion Project Updates; and Annual Watershed and Recreation Report – 2023.
- President Lesa R. McIntosh reported the Legislative/Human Resources Committee met earlier and received an update on Maximizing Employee Retention and Engagement through Stay Interviews. Due to time constraints the Diversity, Equity, and Inclusion Strategic Plan Update was deferred to the Committee meeting in May.

REPORTS AND DIRECTOR COMMENTS

12. Other Items for Future Consideration.

None.

13. Director Comments.

- Director Young reported attending the Niagara Movement Foundation event on March 23 in Oakland along with Directors Chan and Linney where Director Patterson was honored with the Foundation's Legacy Award. She also reported participating in the first Community Water Academy presentation at the Adeline Maintenance Center and other nearby facilities on April 3 in Oakland and commented the diverse backgrounds, experience, and ages of the participants are impressive.
- Directors Chan, Katz, Linney, Patterson and President McIntosh had no reports.

President McIntosh adjourned the Regular Business meeting at 2:25 p.m. and announced the Board of Directors would reconvene to continue the Regular Business meeting at 4:00 p.m. to conduct public interviews and adopt a resolution to appoint a candidate to serve as the Director representing EBMUD Ward 2 until the general election on November 5, 2024.

Regular Business Meeting (continued)

President Lesa R. McIntosh called to order the continued Regular Business Meeting of the Board of Directors at 4:04 p.m. in the Administration Building Boardroom.

ROLL CALL

Directors April Chan, Andy Katz, Doug A. Linney, Marguerite Young, William B. Patterson, and President Lesa R. McIntosh (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 McIntosh announced Director Andy Katz would chair the remainder of the meeting.

DETERMINATION AND DISCUSSION

14. **Conduct public interviews with the following candidates – Kurt Arends, James Cervantes, Bill Clarkson, Luz Gómez, and Mariah Lauritzen, and adopt a resolution appointing one of the candidates to serve as the Director representing East Bay Municipal Utility District Ward 2 until the General Election on November 5, 2024. Ward 2 includes Alamo, Lafayette, the Town of Danville; portions of Pleasant Hill, San Ramon, and Walnut Creek; and the communities of Blackhawk and Diablo.**

Director Katz announced the Board would now conduct the public interviews. The Ad Hoc Committee, appointed by the Board of Directors, recommended all five candidates be interviewed and considered for appointment. Public comment on Agenda Item 14 would be received at the conclusion of all interviews. The Board will deliberate after all public comment has been received and consider appointing one of the candidates to serve as the Director representing Ward 2. If the Board determines more time is needed for deliberation, the Board will vote to confirm holding a special Board meeting on April 16 at a time to be determined and consider the appointment at that meeting or, during the regularly scheduled Board meeting on April 23. Director Katz asked if Board members had any questions. There were no questions from the Board. The order of the interviews was based on a random selection. The Board asked a series of questions and received responses from candidates in the following order: Luz Gómez, Bill Clarkson, Mariah Lauritzen, Kurt Arends, and James Cervantes.

PUBLIC COMMENT

- Addressing the Board were the following: 1) John Goia, Contra Costa County Board of Supervisors, spoke in support of Luz Gómez; 2) Kyle Levy, San Ramon resident spoke in support of Bill Clarkson; and 3) Jean Kuznik, San Ramon resident spoke in support of Bill Clarkson.

Director Katz announced the Board would take a 20-minute recess in individual locations and would reconvene in the Boardroom to begin deliberations. The Board recessed at 6:11 p.m. and reconvened at 6:36 p.m.

Board members deliberated and discussed the candidates' qualifications and responses to the interview questions. Directors Young, Katz, and McIntosh expressed support for Luz Gómez. Directors Chan, Linney and Patterson expressed support for Luz Gómez and Bill Clarkson.

General Counsel Derek T. McDonald explained that under the Municipal Utility District Act, the candidate appointed to the Board seat will commence their duties immediately upon appointment and be a member of the Board this evening. He noted the appointee would still have to take the oath of office within 14 days of appointment. Following additional discussion, Director Young put forth a motion to nominate Luz Gómez to fill the vacant Board seat in Ward 2.

- Motion by Director Young, seconded by Director McIntosh to appoint Luz Gómez to fill the vacant Board seat in Ward 2 until the General Election on November 5, 2024, carried (6-0) by the following roll call vote: (Chan, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
- **Resolution No. 35395-24** – Appointing Luz Gómez To The Board Of Directors Of The East Bay Municipal Utility District.

Director Katz thanked the candidates for their participation and offered Ms. Gómez the opportunity to address the Board. Ms. Gómez thanked the Board and said she was honored and humbled and looked forward to serving on the Board. The Board congratulated Ms. Gómez on her appointment.

ADJOURNMENT

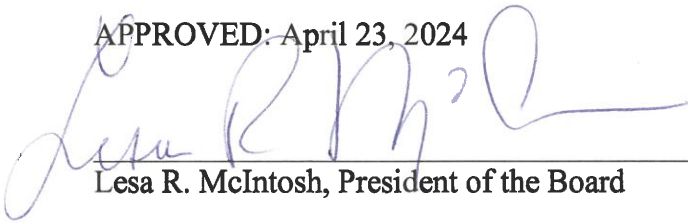
Director Katz adjourned the meeting at 7:04 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: April 23, 2024



Lesa R. McIntosh, President of the Board