

MINUTES

Tuesday, June 11, 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 11:02 a.m. in the Administration Building Boardroom.

ROLL CALL

Directors Luz Gómez, Andy Katz, Doug A. Linney, Marguerite Young and President Lesa R. McIntosh were present at roll call. Directors April Chan and William B. Patterson were absent (excused).

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 Regular meeting agenda Item 20, and her Public Records Request for documents relating to the investigation of alleged violations by former Director John Coleman of Policy 6.04, Ethics of the EBMUD Board of Directors, the Political Reform Act and Government Code section 1090.

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 1:17 p.m. in the Administration Building Boardroom.

ROLL CALL

Directors Luz Gómez, Andy Katz, Doug A. Linney, William B. Patterson, Marguerite Young, and President Lesa R. McIntosh were present at roll call. Director April Chan was absent (excused).

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.

Recognizing graduates of the East Bay Municipal Utility District’s Peralta College Cohort Learning Program

General Manager Clifford C. Chan announced the District has a strategic goal of creating an environment that attracts, retains, and engages a high-performing diverse workforce. This includes “growing our own” by providing educational support, resources, and programs that create career mobility and promotional opportunities. Thirteen District employees recently completed the third EBMUD Peralta College Cohort Learning Program. The Cohort is a partnership between the District and Laney College, which brings college courses to District employees to support their career development and mobility goals. He highlighted student accomplishments and recognized their dedication and perseverance to complete the program. The following students were in attendance and recognized by staff and the Board: Austin Brilz, Water Distribution Plumber II; Neal Brown, Mechanical Supervisor; Rosaland Cammack, Janitor; Fermin Cazares Jr., Water Distribution Plumber IV; Thomas Christopher, Janitor; Ena Ferdinand, Dispatch Center Representative; Dominick Giovannetti, Water Distribution Plumber III; Adrian Gonzalez, Automotive Mechanic B; Margaret Langry, Administrative Clerk; Antonio Murillo, Grounds Maintenance Specialist II; Seth Rosellini, Pipeline Welder III; Leonardo Sandoval, Senior Mechanical; James Sveum, Truck Driver II; and Christopher Tran, Wastewater Plant Operator Trainee. General Manager Chan introduced class valedictorian Ena Ferdinand who recounted her experience participating in the program and thanked the Board for the opportunity for advancement and to learn more about the District. On behalf of the Board of Directors, President McIntosh congratulated the graduates and thanked them for their hard work. She also thanked Ms. Ferdinand for her comments.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board was Ivette Rivera who commented on her Public Records Request for records that were provided for the investigation of alleged violations by former Director John Coleman of Policy 6.04, Ethics of the EBMUD Board of Directors, the Political Reform Act and Government Code section 1090.

CONSENT CALENDAR

- Motion by Director Young, seconded by Director Linney to approve the recommended actions for Items 1-10.3 on the Consent Calendar carried (6-0) by the following roll call vote: (Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).
1. **Motion No. 102-24** – Approved the Special Meeting Minutes and Regular Meeting Minutes of May 28, 2024.
 2. The following correspondence was filed with the Board: **1)** Presentation entitled, “Public Hearing Fiscal Year 2025 Proposed Non-Prop 218 Rates, Charges & Regulations,” dated June 11, 2024; **2)** Presentation entitled, “Second Reading of Ordinance Amending the Retirement Ordinance Pertaining to Board Members’ Pension Benefits” dated June 11, 2024; **3)** Presentation entitled, “Walnut Creek Water Treatment Plant Pretreatment Project Final EIR and Project Approval” dated June 11, 2024; **4)** Speakers’ Bureau and Outreach Record CY24, dated June 11, 2024; **5)** Email dated June 4, 2024 from Ivette Rivera to Board of Directors et al. regarding

Rivera EBMUD 2024 Tort, with attachments; 6) Email dated June 1, 2024 from Ivette Rivera to Board of Directors et al. regarding Opposition to EBMUD's PROPOSED Grounds Maintenance Foreman Performance Plan and Appraisal Criteria Changes, with attachments; 7) Email dated June 7, 2024 from Clifford Shaw to Board of Directors regarding June 11, 2024 EBMUD Board Meeting: Agenda Item WCWTPP Project; 8) Email dated June 7, 2024 from Donna Colombo to Board of Directors regarding Request to Delay Vote on FEIR for Walnut Creek Pre-Treatment Plant; 9) Email dated June 7, 2024 from Julia Jackson to Rischa Cole regarding Please circulate to Board Members; 10) Email dated June 7, 2024 from Julia Jackson to Board of Directors regarding June 11 Meeting, WCWTPP project agenda item with video attachment; 11) Email dated June 7, 2024 from Julia Jackson to Board of Directors regarding June 11 Meeting, WCWTPP project agenda item with video attachments; 12) Email dated June 7, 2024 from Mardi Veiluva to Board of Directors regarding June 11, 2022 (sic) meeting, Agenda Item WCWTPP project; 13) Email dated June 8, 2024 from Robin Gigoux to Board of Directors regarding June 11 Board Meeting re Larkey Site, Agenda Item WCWTPP project; 14) Email dated June 9, 2024 from Julia Jackson to Board of Directors regarding June 11 meeting, Agenda Item #19 WCWTPP with video attachment; 15) Email dated June 9, 2024 from Jodie Johnson to Board of Directors regarding June 11, 2024 meeting, Agenda Item WCWTPP project; 16) Email dated June 9, 2024 from Rebecca Shaw to Board of Directors regarding Agenda Item WCWTPP; 17) Email dated June 9, 2024 from Julia Jackson to Board of Directors regarding Agenda Item #19 WCWTPP with attachment; 18) Email dated June 10, 2024 from Robert Ferris to Board of Directors regarding June 11, 2022 (sic) meeting Agenda Item WCWTPP project; 19) Email dated June 10, 2024 from Barbara Doss to Board of Directors regarding June 11, 2022 (sic) meeting Agenda Item WCWTPP project; 20) Email dated June 10, 2024 from Ellie Welsh to Board of Directors regarding June 11, 2022 (sic) meeting Agenda Item WCWTPP project; 21) Email dated June 10, 2024 from Michael Borke to Board of Directors regarding June 11, 2022 (sic) meeting Agenda Item WCWTPP project; 22) Email dated June 10, 2024 from Richard Doss to Board of Directors regarding Agenda Item WCWTPP; 23) Email dated June 10, 2024 from Leila Ferris to Board of Directors regarding June 11, 2022 (sic) meeting Agenda Item WCWTPP project; and 24) Letter dated June 10, 2024 to Board of Directors from Mayor Loella Haskew regarding EBMUD WTP Pretreatment Project – June 11, 2024 Board Meeting.

3. **Motion No. 103-24** – Authorized an agreement beginning on or after June 11, 2024, with American Industrial Scaffolding, Inc. for three years, with one option to renew for an additional two-year period for a total amount, including option years, not to exceed \$643,000 for as-needed scaffolding installation, rental, and removal at the Main Wastewater Treatment Plant.
4. **Motion No. 104-24** – Authorized an agreement beginning on or after June 11, 2024 with GardaWorld Security Services for three years, with two options to renew for additional one-year periods for a total amount, including option years, not to exceed \$39,900,192 for contract security services.
5. **Motion No. 105-24** – Authorized an agreement beginning on or after June 11, 2024 with MCK Americas, Inc., in an amount not to exceed \$1,213,597 for construction management and inspection services for the following occupied facilities projects: Administration Building Fiber Optic Backbone Replacement; Administration Building Security Camera Upgrades; and Adeline Maintenance Center Administration Building Heating, Ventilation, and Cooling Replacement.

6. **Motion No. 106-24** – Authorized an agreement beginning on or after June 11, 2024 with Restoration Design Group Inc. in an amount not to exceed \$180,000 for design and permitting services for the Pinole Creek Tomato Stand Fish Passage Project in the Pinole Creek watershed.
7. **Motion No. 107-24** – Authorized the purchase of IBM Maximo Asset Management software licenses with software subscription beginning on or after June 11, 2024 from Advanced Integrated Solutions, Inc., for wastewater facilities for one year, with four options to renew for additional one-year periods for a total amount not to exceed \$975,271 under Request for Quotation No. 2413. This purchase will be made under State of California contracts available for use by local governments.
8. **Motion No. 108-24** – Authorized an amendment to the agreement previously authorized under Board Motion No. 170-20 with Trussell Technologies, Inc. to increase the agreement amount by \$482,920 to a total amount not to exceed \$2,691,456 for the East Bayshore Recycled Water Project Water Quality Improvement Pilot Study.
9. **Resolution No. 35401-24** – A Resolution Recognizing The Centennial Of The Woodbridge Irrigation District.
- 10.1. **Resolution No. 35402-24** – Ordering, Calling, Providing For, And Directing That Notice Be Given Of An Election To Be Held In Wards Of The East Bay Municipal Utility District, State Of California, On Tuesday, November 5, 2024, For The Purpose Of Electing Four Directors, And Consolidating Said Election With The General State Election To Be Held On The Same Date.
- 10.2. **Resolution No. 35403-24** – Requesting The Boards Of Supervisors Of Alameda And Contra Costa Counties To Consolidate With The General Election To Be Held On November 5, 2024, The East Bay Municipal Utility District Election To Be Held In Four Wards On The Same Date For The Election Of Directors.
- 10.3. **Resolution No. 35404-24** – Establishing Criteria For Candidates' Statements To Be Filed B Candidates For The 2024 Election To The East Bay Municipal Utility District's Board Of Directors And Authorizing The Secretary Of The District To Bill Candidates For Certain Costs.

PUBLIC HEARING

11. **Conduct a public hearing to consider revisions to the water and wastewater system schedules of rates and charges, capacity charges and other fees recommended in the Biennial Report and Recommendation of the General Manager for Fiscal Years 2024 and 2025.**

President McIntosh opened the public hearing at 1:31 p.m.

Principal Management Analyst Phoebe A. Grow provided the presentation and reviewed actions related to the District's mid-cycle budget and rates process. On May 14, 2024, staff filed the Report and Recommendation of the General Manager for Revisions to the Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject to Proposition 218, and Regulations and the Board voted to set today's public hearing. On May 28, 2024, staff conducted a Mid-Cycle Budget Workshop and reviewed

proposed revisions to the following non-Proposition 218 rates, charges, and fees for FY 2025: Account Establishment Charge (Schedule B); Charges for Special Services (Schedule C); Water Service Installation Charges (Schedule D); Private Fire Service Installation Charges (Schedule E); Public Fire Service Installation Charges (Schedule F); Water Main Extension Charges (Schedule G); Standard Participation Charge (SPC) (Schedule H); System Capacity Charges (SCC) (Schedule J); Water Demand Mitigation Fees (Schedule N); Public Records Act Fee Schedule; Real Property Use Application Fees; Recreation Use Fees; Wastewater Department Industrial Permit Fees (Schedule C); Wastewater Department Other Fees (Schedule D); Wastewater Department Testing Fees (Schedule E); Wastewater Department Rates for Resource Recovery Material Treatment (Schedule F); Wastewater Department Capacity Fees (Schedule G); and Wastewater Department Wastewater Interceptor Connection Review, Coordination, and Inspection Fee (Schedule H). Staff also proposes updating Sections 1 and 29 in the District's Water Service Regulations. There were no comments from the public.

President McIntosh asked for a motion to close the public hearing and closed the public hearing at 1:37 p.m.

- Motion by Director Patterson, seconded by Director Linney to close the public hearing carried (6-0) by the following roll call vote: (Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Motion No. 109-24 – Conducted a public hearing to consider revisions to the water and wastewater system schedules of rates and charges, capacity charges and other fees recommended in the Biennial Report and Recommendation of the General Manager for Fiscal Years 2024 and 2025.

DETERMINATION AND DISCUSSION

12. **Adopt the revised Water System and Wastewater Systems rates, charges, and other fees not subject to Proposition 218, and the revised regulations recommended in the “Report and Recommendation of the General Manager for Revisions to the Water and Wastewater System Schedule of Rates and Charges, Capacity Charges, and Other Fees Not Subject to Proposition 218, and Regulations for Fiscal Year (FY) 2025,” filed with the Board on May 14, 2024. These rates, charges, and other fees not subject to Proposition 218 include System Capacity Charges, Wastewater Capacity Fees, Public Records Act fees, Real Property Use Application fees, Recreation Use fees.**

- Motion by Director Young, seconded by Director Gómez to approve the recommended actions for Item 12 carried (6-0) by the following roll call vote: (Gómez, Katz, Linney, Patterson, Young and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Resolution No. 35405-24 – Adopting Revised Water And Wastewater Systems Schedule Of Rates, Charges, And Other Fees Not Subject To Proposition 218 For Fiscal Year 2025; Adopting Revised Regulations Governing Water Service; And Approving An Exemption Under The California Environmental Quality Act And Directing Staff To File A Notice Of Exemption.

13. **Affirm the Fiscal Year (FY) 2025 Operating, Debt Service, and Capital Budgets for the Water and Wastewater Systems as recommended in the FY 2024 and FY 2025 Mid-Cycle Budget Update submitted to the Board of Directors on May 28, 2024. The FY 2025 budget is unchanged from the amounts adopted by the Board on June 13, 2023.**

- Motion by Director Gómez, seconded by Director Patterson to approve the recommended actions for Item 13 carried (6-0) by the following roll call vote: (Gómez, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Resolution No. 35406-24 – Affirming The Budget Of The East Bay Municipal Utility District Water And Wastewater Systems For Fiscal Year 2025 And Establishing The Terms And Conditions For The Payment Of Demands Against The District.

14. **Approve the Mid-Cycle Position Resolution for Fiscal Year (FY) 2025 to implement necessary classification changes as recommended in the FY 2025 Mid-Cycle Budget Update submitted to the Board of Directors on May 28, 2024.**

- Motion by Director Young, seconded by Director Linney to approve the recommended actions for Item 14 carried (6-0) by the following roll call vote: (Gómez, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Resolution No. 35407-24 – Mid-Cycle Resolution For Fiscal Year 2025 Authorizing The Number And Character Of Positions And Authorizing The General Manager To Take Action In Connection Therewith.

15. **File the Report and Recommendation of the General Manager to Transfer Unpaid Liens for Delinquent Charges to Alameda and Contra Costa counties' 2024-2025 Property Tax Rolls.**

- Motion by Director Linney, seconded by Director Young to approve the recommended actions for Item 15 carried (6-0) by the following roll call vote: (Gómez, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Motion No. 110-24 – Filed the Report and Recommendation of the General Manager to Transfer Unpaid Liens for Delinquent Charges to Alameda and Contra Costa counties' 2024-2025 Property Tax Rolls.

16. **Appoint the Manager of Facilities Maintenance and Construction.**

General Manager Clifford C. Chan announced Sharon C. Hu as the candidate for appointment to the position of Manager of Facilities Maintenance and Construction and highlighted Ms. Hu's education and experience.

- Motion by Director Linney, seconded by Director Patterson to approve the recommended actions for Item 16 carried (6-0) by the following roll call vote: (Gómez, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Ms. Hu thanked the Board for the appointment and said she looks forward to working in her new role.

Resolution No. 35408-24 – Appointing Sharon C. Hu As Manager Of Facilities Maintenance & Construction (*effective June 17, 2024*).

17. **Legislative Update.**

General Manager Clifford C. Chan reported the Legislative/Human Resources Committee met earlier and supported the staff recommendation for Legislative Report No. 04-24. Manager of Legislative Affairs Kathy Viatella reviewed the report. Staff is requesting Board approval to sponsor or support a proposal to pursue minor changes to Municipal Utility District (MUD) Act section 12823 through a sponsored bill, committee bill, or other vehicle. MUD Act section 12823 currently contains a 12-month limitation on payment plan extensions for certain customers who are late on their utility bill payments and who request flexibility from EBMUD to pay off their debt. EBMUD is seeking statutory changes to have greater flexibility in determining the length of a payment plan and the ability to go beyond the 12-month limitation contained in the MUD Act, should a customer have an undue hardship. The proposed changes to the MUD Act would align with existing law contained in the Water Shutoff Protection Act, enacted by SB 998 (Dodd). MUD Act section 12823 has not been amended since 1985. Staff is working to identify a legislative vehicle to advance the proposal this year. In response to a question from the Legislative/Human Resources Committee, Ms. Viatella clarified that, if the revision is adopted, the District and other municipal utility districts would not be required to extend their payment plans beyond the 12-month limitation contained in the MUD Act and that while Sacramento Municipal Utility District supports the proposed revisions, the other municipal utility districts have not commented on this item. Ms. Viatella also confirmed that the municipal utility districts would not charge interest on those late payments over the 12- or 24-month period. Next, she reported staff will ask the Board to consider approving a position on Assembly Bill 460 (Bauer-Kahan) and Senate Bill 1255 (Durazo) at its meeting on June 25 and responded to questions regarding the climate bond and the status of the California Supreme Court decision regarding the Taxpayer Protection and Government Accountability Act.

– Director Patterson left the meeting at 1:44 p.m. and returned at 1:48 p.m.

- Motion by Director Gómez, seconded by Director Young to approve the recommended actions for Item 17 carried (5-0) by the following roll call vote: (Gómez, Katz, Linney, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan and Patterson).

Motion No. 111-24 – Received Legislative Report No. 04-24 and approved a position on the following: SUPPORT a proposal to support or sponsor legislation to modernize the Municipal Utility District Act’s payment extension provisions (MUD Act Modernization: Payment Plan Extension Proposal).

18. **Conduct a second reading of and adopt an ordinance to amend East Bay Municipal Utility District Retirement Ordinance No. 40 to limit the pension benefits of future members of Board of Directors.**

Assistant General Counsel Lourdes M. Matthew presented the second reading of the ordinance to amend the Retirement Ordinance to (a) exclude EBMUD retirees who are elected or appointed to the Board from the Retirement System during their service on the Board and define the term “Director”; (b) limit the terminal compensation that may be applied to the Retirement Allowance

of a future Board member; (c) bifurcate the service of a future Board member from service earned as a District employee; and (d) clarify the effect of the bifurcation of service on eligibility for and the amount of any Health Insurance Benefit to be provided under the Retirement System. The first reading of this ordinance to amend the Retirement Ordinance was conducted at the May 28, 2024 Regular Board meeting. She reviewed the proposed amendments and provided clarification on the proposed changes to the definition of employee and the new definition of Director. She further clarified that the amendment to exclude District Retirees who are appointed or elected to serve on the Board of Directors from membership in the Retirement System during their service as an appointed or elected member of the Board will apply to Directors who are first elected or appointed after the effective date of the ordinance amendments. If approved, the ordinance amendments will take effect no earlier than the thirty-first day after passage, or on Friday, July 12, 2024; however, for administrative purposes, staff would begin applying the ordinance amendments on Monday, July 15, 2024.

- Addressing the Board was Lonna Coleman who commented on whether the amendments applied to Directors who have not retired from the Board by July 15, 2024 and if changes to the ordinance must be approved by CalPERS.

Ms. Matthews responded to Ms. Coleman’s questions.

- Motion by Director Young, seconded by Director Gómez to approve the recommended actions for Item 18 carried (6-0) by the following roll call vote: (Gómez, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Ordinance No. 376-24 – An Ordinance To Amend Retirement Ordinance No. 40, Which Is The East Bay Municipal Utility District Employees’ Retirement System Ordinance, To: (1) Exclude District Retirees Who Become Directors From The Retirement System And Define The Term “Director”; (2) Limit The Terminal Compensation That May Be Applied To The Retirement Allowance Of A Future Board Member; (3) Bifurcate The Service Of A Future Board Member From Service Earned As District Employee; And (4) Clarify The Effect Of The Bifurcation Of Service On The Health Insurance Benefit. *(Second Reading and Vote).*

- 19a-
19e. **Take actions related to the Walnut Creek Water Treatment Plant Pretreatment Project to: certify the Final Environmental Impact Report for the Walnut Creek Water Treatment Plant Pretreatment Project; make findings in accordance with the California Environmental Quality Act, including a Statement of Overriding Considerations; adopt the Mitigation Monitoring and Reporting Program in accordance with CEQA; adopt the Practices and Procedures Monitoring and Reporting Plan; and approve the Project.**

President Lesa R. McIntosh announced the Planning Committee received a presentation on this project earlier in the day. Planning Committee Chair Marguerite Young announced the Committee voted to accept the report but did not vote to support the staff recommendation. Associate Civil Engineer Chien Wang provided the presentation. If approved, the project will add pretreatment and ozone facilities at the WCWTP to reliably treat a broader range of untreated water quality from various sources, increase the capacity to meet planned future demands, improve water system reliability and operational flexibility, and allow decommissioning of the aging Lafayette WTP. Ms. Wang reviewed the project’s purpose and need; emergency raw water treatment needs; project briefings and staff reports to the Board;

renderings of the current and proposed facilities; rerouting of the social footpaths near the site; staging areas; and work at the Lafayette WTP to be completed during the first phase of the project. A Draft EIR was completed and circulated for a 45-day public review period from September 29 to November 13, 2023. The Draft EIR analysis identified potential impacts from construction noise that are significant and unavoidable and require the District to approve a Statement of Overriding Considerations when approving the project. The remaining potential impacts are either less than significant or would be less than significant with mitigation. The District conducted extensive public outreach with neighbors, stakeholders and local entities between 2021 and 2023. All comments received as well as issues and concerns raised are addressed in the Final EIR. She reviewed key mitigation measures to address noise and transportation, revisions to the Draft EIR to address comments and concerns from stakeholders, traffic during operation and maintenance at the WCWTP, and how staff plans to address noise impacts from early morning concrete truck activity. The District considered various alternatives including adding pretreatment at the Bixler Chlorination Facility near Brentwood in Contra Costa County and at Camanche Reservoir near Clements in San Joaquin County. Ms. Wang discussed the Bixler alternative, which is preferred by neighbors of the WCWTP, and explained why this is not a feasible alternative. If approved, project design will occur from 2024 through 2026, followed by Phase 1 construction from 2027 through approximately 2030. Phase 2 design and construction would depend on future untreated water quality conditions and the timing of future demands. Director Gómez thanked staff for the presentation and commented on whether risks, hazards, and evacuation plans due to wildfire had been analyzed; the notification process for neighbors during intensive phases of the project; enforcing mitigation measures during peak truck traffic; costs for the Bixler alternative; and impacts to customers in the event of a poor water quality event at the plant. Secretary of the District Rischa S. Cole reported on the emails and documentation received from the public regarding the project and said the information would be filed with the meeting minutes.

- Addressing the Board were the following: 1) Julia Jackson commented on documents she provided to the Board, concerns with the project, and neighbors not receiving notification about the project. She asked the Board to delay taking action on the Final EIR and to direct staff to explore the project alternatives; 2) Dave Turner commented on the risk from fire at the project and exploring other options. He asked the Board to delay taking action on the Final EIR and to direct staff to explore the project alternatives; 3) Lance Young commented on daily traffic, staffing levels at the plant, and truck traffic and safety issues on Larkey Lane. Mr. Young asked the Board to postpone the project until the neighbors concerns have been addressed; 4) Del Olsen commented on fire, health, traffic risks, locating the project at the Bixler facility; 5) Michael Milani commented on EIR comments regarding repairs on Larkey Lane, traffic on Larkey Lane, safety, and fire exposure and said he shared the same concerns expressed by other neighbors; and 6) Arvind Mallya commented on earthquake preparedness and disaster recovery, District memos that discuss potential earthquake impacts on water infrastructure, and asked the Board to vote no on the Final EIR and direct staff to reassess the project alternatives.

Director Gómez thanked the speakers and commented on the concerns raised by residents as well as her communications and meetings with neighbors. She also acknowledged staff for their work on the project.

Director Gómez asked the Board to consider delaying action on the project to allow time for more dialogue with the community and put forth a motion to postpone the vote on the Final EIR and approval of the project until the July 9, 2024 Board meeting. She asked staff to work with the Walnut Creek City Manager's office to ensure the project is considered and evaluated as part of the city's Emergency Operations Plan (EOP), which is part of the county's hazard mitigation plan and is currently in draft form.

President McIntosh asked for direction from the General Manager and General Counsel on postponing action on the project. General Manager Clifford C. Chan recounted the actions taken to meet with neighbors and to respond to their requests to locate the project at the Bixler facility. He reiterated why the Bixler facility is not a feasible alternative and that there are no other project alternatives to be considered. Ms. Wang addressed some of the concerns raised during public comment regarding general chemical storage and transport, traffic, wildfire risk, the District's EOP which includes procedures to address natural disasters, storms, system failures, or even terrorist attacks, and clarified the District does not have the authority to directly signal an emergency to the public. She noted it is the responsibility of county agencies, the county fire protection district and local police to issue emergency notifications and evacuation warnings. She noted staff has been working the City of Walnut Creek since 2022 on the city's emergency evacuation and notification procedures. Ms. Wang responded to questions from the Board regarding fuels management around the treatment plant and the alternative site locations for the project. Board members commented on addressing similar concerns from constituents on projects in their wards and Director Gómez's request to delay taking action on the project. There was additional discussion by the Board. General Manager Clifford C. Chan said staff can continue the dialogue with neighbors on their concerns regarding the project and that staff would present the recommendation to certify the Final EIR and approve the project for Board consideration at either the June 25 or July 9 Regular meeting.

Director Young said she would support the motion put forth by Director Gómez for the Board to delay taking action on the project to allow time for more dialogue with the community.

There was additional discussion by the Board and staff on next steps and further clarification on the motion by Director Gómez.

- Motion by Director Gómez, seconded by Director Young to approve postponing the vote to certify the Final Environmental Impact Report for the Walnut Creek Water Treatment Plant Pretreatment Project (Project) and approve the Project until the Regular Board meeting on July 9 and for staff to continue communicating with neighbors of the Project and seek to understand their issues and concerns with the Project carried (6-0) by the following roll call vote: (Gómez, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (Chan).

Motion No. 112-24 – Approved postponing the vote to certify the Final Environmental Impact Report for the Walnut Creek Water Treatment Plant Pretreatment Project (Project); make findings in accordance with the California Environmental Quality Act (CEQA), including a Statement of Overriding Considerations; adopt the Mitigation Monitoring and Reporting Program in accordance with CEQA; adopt the Practices and Procedures Monitoring and Reporting Plan; and approve the Project until the Regular Board meeting on July 9. Staff will continue communicating with neighbors of the Project and seek to understand their issues and concerns with the Project.

20. **Vote to direct the District's independent investigator to prepare a report on the findings of an investigation of alleged violations by former Director John Coleman of Policy 6.04, Ethics of the EBMUD Board of Directors, the Political Reform Act and Government Code section 1090, for presentation and discussion at the June 25, 2024 regular Board meeting.**

General Counsel Derek T. McDonald reported District Policy 6.04 – Ethics of the EBMUD Board of Directors, charges the President of the Board with the duty to investigate reported, perceived violations of the policy. Director Young requested that Director Katz (serving as President of the Board at the time of her request), investigate whether certain statements to staff and Board members by former Director John Coleman, in relation to his lawsuit against the District, violated the policy and related ethics laws. President Katz approved the retention of an independent outside investigator to conduct an investigation. The investigator completed the investigation and prepared a draft attorney-client privileged report to the Board which may not be publicly discussed or shared. In order to proceed with any public discussion of this matter, the Board will need to vote to direct the investigator to prepare a non-privileged report of the investigation findings. If a majority of the Board approves preparation of a non-privileged report, that report will be provided for presentation and discussion at the Regular Board meeting on June 25.

- Addressing the Board were the following: 1) Ivette Rivera commented on retaliation against John Coleman, Penal Code 424, findings from the Jan Duffy report from the Pierce/Bland case, and publicizing private documents; and 2) John Coleman commented on his service to the District and said he was never contacted about the investigation. He expressed hope that the Board would delay taking action until he was interviewed by the investigator.

Director Katz confirmed the scope of the investigation included directing the investigator to attempt to interview Mr. Coleman and asked for clarification from the General Counsel on whether the investigator attempted to interview Mr. Coleman. General Counsel Derek T. McDonald said because his knowledge of how the investigation was conducted comes from the report itself, he is unable to discuss the matter because the report is privileged. Director Young commented on her request to investigate this matter and on the Board's duty to the public and its constituency to publicly address any issues that question the ethics or integrity of Board members.

Director Young put forth a motion to direct the District's independent investigator to prepare a report on the findings of an investigation of alleged violations by former Director John Coleman of Policy 6.04, Ethics of the EBMUD Board of Directors, the Political Reform Act and Government Code section 1090 and for the report to clarify whether the investigator reached out to John Coleman. The report would be on the agenda for presentation and Board discussion at the Regular Board meeting on June 25.

General Manager Derek T. McDonald clarified the report would need to be non-privileged and presented in the public for discussion. He stated he could confer with President McIntosh about Board member concerns on whether Mr. Coleman was interviewed by the investigator prior to creation of a public report. There was considerable Board discussion about moving forward with directing the District's independent investigator to prepare a public version of the report, ensuring Mr. Coleman was interviewed as part of the investigation, accountability to the ethics

Board members pledged to and providing clarification and closure on the investigation for the public. There was additional Board discussion on a substitute motion to direct the investigator to prepare a public version of the report that includes information from an interview with John Coleman and an option for the Board to decide if the report will be presented for discussion by the Board at a future meeting.

Director Linney put forth a “substitute motion” to direct the District’s independent investigator to contact former Director John Coleman to be interviewed and prepare a publicly-available report on the findings of an investigation of alleged violations by John Coleman of Policy 6.04, Ethics of the EBMUD Board of Directors, the Political Reform Act and Government Code section 1090. Director Patterson seconded the “substitute motion”. There was additional Board discussion and Director Young withdrew her motion.

- Motion by Director Linney, seconded by Director Patterson to direct the District’s independent investigator to contact former Director John Coleman to be interviewed and prepare a publicly-available report on the findings of an investigation of alleged violations by John Coleman of Policy 6.04, Ethics of the EBMUD Board of Directors, the Political Reform Act and Government Code section 1090 (4-1-1) by the following roll call vote: (Katz, Linney, Patterson, and Young); NOES (McIntosh); ABSTAIN (Gómez); ABSENT (Chan).

Motion No. 113-24 – Voted to direct the District’s independent investigator to contact former Director John Coleman to be interviewed and prepare a publicly-available report on the findings of an investigation of alleged violations by John Coleman of Policy 6.04, Ethics of the EBMUD Board of Directors, the Political Reform Act and Government Code section 1090.

21. **General Manager’s Report.**

Monthly Report – May 2024

General Manager Clifford C. Chan announced the Monthly Report was included in the agenda materials and the Speakers’ Bureau and Outreach Record CY24 had been provided at Board places. He reported the Speakers’ Bureau would be corrected to reflect Director Young’s participation in the City of Orinda’s Fourth of July parade.

REPORTS AND DIRECTOR COMMENTS

22. **Committee Reports.**

- Filed with the Board were the Minutes for the May 28, 2024 Finance/Administration Committee.
- Chair Marguerite Young reported the Planning Committee met earlier and received an update on Wastewater Control Ordinance Changes and the Walnut Creek Water Treatment Plant Pretreatment Project Update and Final Environmental Impact Report.
- President McIntosh reported the Legislative/Human Resources Committee met earlier on items that were covered in the Regular meeting. General Manager Chan announced staff also discussed the Draft Board of Directors Governance Policies. The Committee directed

staff to prepare an Information Memo requesting feedback on the draft policies from the entire Board by June 28. The draft policies will be presented for Board discussion at the July 9 Regular meeting.

23. **Other Items for Future Consideration.**

None.

24. **Director Comments.**

- Director Gómez reported providing highlights on the District's Duffel Photovoltaic Project at the Contra Costa Mayor's Conference in Pittsburg on June 6. Director Linney asked staff to inform the Board when the project is connected to PG&E.
- Director Patterson reported on the press and publicity he observed regarding the Duffel Photovoltaic Project.
- Director Young reported attending the Duffel Photovoltaic Project event in Orinda on May 30 along with other Board members and noted it was an impressive event.
- Directors Chan, Katz, Linney, and President McIntosh had no reports.

ADJOURNMENT

President McIntosh announced today's meeting would be adjourned in honor of Dr. Donald Godbold, former Chancellor of Peralta Community College District who passed away on May 25. Director Patterson recounted Dr. Godbold's personal and professional history, highlighted his work with community colleges in various states, and how his commitment to community colleges transformed the way the system serves the East Bay today. Mr. Patterson noted that Dr. Godbold was his good friend and left the Peralta Community College District to become executive director of the Alameda County Youth Development, Inc. and the Scotlan Youth and Family Center.

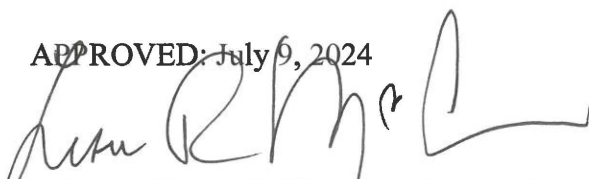
President McIntosh adjourned the meeting at 4:23 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: July 9, 2024



Lesla R. McIntosh, President of the Board