

MINUTES

Tuesday, August 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 11:26 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. Director Patterson arrived at 11:30 a.m. Director Chan arrived in Conference Room 8 at 11:38 a.m.

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

PUBLIC COMMENT

- Addressing the Board were the following: 1) Ivette Rivera commented on remarks she made at the Planning Committee meeting earlier, documents she provided to the Board, and played excerpts of a recording; and 2) Eric Larsen, President, AFSCME Local 444 asked for clarification on the personnel exception language in Closed Session Agenda Item 3. General Counsel Derek T. McDonald provided clarification.

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 1:21 p.m. in the Administration Building Boardroom.

ROLL CALL

Directors April Chan, Luz Gómez, 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.

Women's Business Enterprise Council 2024 Top Corporation Award

General Manager Clifford C. Chan announced the District was honored on June 25, 2024 by Women Business Enterprise Council (WBEC) Pacific as one of the organization's Top Corporations for 2024. Established in 2000, WBEC Pacific is a strategic sourcing partner supporting women entrepreneurs by facilitating procurement opportunities, business networking, and supplier development. Based in the State of Washington and serving Northern California, Oregon, Washington, Alaska, Idaho, and Montana, this organization is one of fourteen regional partners of Women Business Enterprise National Council. Mr. Chan introduced Dr. Janice R. Green, President and CEO of WBEC Pacific, who thanked the Board for the District's dedication and commitment to support the community and women businesses and acknowledged Contract Equity Administrator Beverly Johnson in her absence for her work. Special Assistant to the General Manager Derry L. Moten accepted the award on behalf of the District.

ANNOUNCEMENTS FROM CLOSED SESSION

President McIntosh announced that due to time constraints the Board did not hold the annual performance evaluation of the General Counsel. The Board will continue the evaluation to the August 27, 2024 Regular Closed Session meeting. There were no other announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Ivette Rivera commented on a picture collage she provided and an excerpt of a recording she played during Closed Session public comment and the Pierce/Bland case; and 2) Matthew Taylor commented on water flooding from a neighbor's property onto his property at the Camanche Mobile Home Park. He announced he would be attending the August 16 Upper Mokelumne River Watershed Authority meeting to comment on the District's 12.5 percent annual rent increase for mobile home park residents. President McIntosh requested an information memo on the water flowing from Mr. Taylor's neighbor's property.

CONSENT CALENDAR

- Agenda Items 1 and 15 were pulled from the Consent Calendar for separate discussion.
 - Motion by Director Young, seconded by Director Linney, to approve the recommended actions for Items 2-14 on the Consent Calendar carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Young, Patterson and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Approve the Regular Meeting Minutes of June 25, 2024 and July 9, 2024.**
 - Addressing the Board was Ivette Rivera who commented the meeting minutes do not reflect her public comments.
 - Motion by Director Linney, seconded by Director Patterson to approve the recommended actions for Item 1 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 157-24 – Approved the Regular Meeting Minutes of July 9, 2024. *(The Regular Meeting Minutes of June 25, 2024 were not included in the meeting materials and will be submitted for approval at the August 27, 2024 Regular Meeting).*

2. The following correspondence was filed with the Board: **1)** Presentation entitled, “Proposed Amendments to the Wastewater Control Ordinance, Second Reading” dated August 13, 2024; **2)** Presentation entitled, “Update on Nutrient Watershed Permit” dated August 13, 2024; **3)** Speakers’ Bureau and Outreach Record CY24, dated August 13, 2024; **4)** Email dated July 30, 2024 (with attachments) from Ivette Rivera to Board of Directors regarding For the 8/13/24 Board Meetings: Please distribute this public record, “Exhibit 3, for Rivera v EBMUD/AFSCME Tort Claim 2024-L-114” to Risk Management and the EBMUD Board of /Directors; **5)** Email dated August 2, 2024 from Ivette Rivera to Board of Directors regarding Please include in Board Meeting information for EBMUD Board of Directors @ 8/13/2024 Board Meetings: Clip from SF TRIAL LAWYER OF THE YEAR video (Pierce et al v East Bay Mun... **6)** Email dated August 6, 2024 from Ivette Rivera to Board of Directors regarding Rischa, Please distribute these two charge numbers to Board members attending the next EBMUD afternoon BOD Public Meeting: EEOC charges # 555-2024-01560, against EBMUD, & #555-2024-01436 against AFSCME 444 & AFSCME COUNCIL 57 & AFSCME International; **7)** Email dated August 6, 2024 (with attachments) from Ivette Rivera to Board of Directors regarding Please include the email below as a public record for the August 13, 2024 Board of Directors meetings and 2. Consider this email ALSO a CPRA request: Please provide me every copy of Juan Valencia’s signed (in June 2024) Grounds Maintenance Foreman...; **8)** Document from Ivette Rivera containing a picture collage of comments and articles regarding the Pierce/Bland case (undated); **9)** Alameda Journal Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **10)** Alameda Times-Star Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **11)** Berkeley Voice Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **12)** Contra Costa Times Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **13)** Daily Review Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **14)** El Cerrito Journal Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **15)** Montclarion Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **16)** Oakland Tribune Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **17)** Piedmonter Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **18)** San Ramon Valley Times Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **19)** West County Times Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Legal No. 0006838687 published July 5 and July 12, 2024); **20)** El Mundo Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (CNSB #3825531 published July 4 and July 11, 2024); **21)** Oakland Post Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (CNSB #3825530

published July 3 and July 10, 2024); **22)** Sing Tao (S.F.) Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (CNSB #3825532 published July 5 and July 12, 2024); **23)** MO Magazine Proof of Publication Notice of Election for the Office of Director of the East Bay Municipal Utility District (Sō 1899 published July 6, 2024 and Sō 1900 published July 13, 2024); and **24)** Notarized Affidavit of Posting regarding the Notice of Election for the Office of Director of the East Bay Municipal Utility District, signed by Rischa S. Cole, dated August 9, 2024.

3. **Motion No. 145-24** – Awarded a contract to the lowest responsive/responsible bidder, Anvil Builders, Inc., in an amount not to exceed \$11,566,669 for construction of the Carter Reservoir Rehabilitation, Arroyo Pumping Plant Improvement, and Arroyo Reservoir Replacement Project, under Specification 2185.
4. **Motion No. 146-24** – Awarded a contract beginning on or after August 13, 2024 to the lowest responsive/responsible bidder, Core and Main Company, for supplying resilient seated gate and butterfly valves for two years, with three options to renew for additional one-year periods for a total cost after the addition of taxes, including option years, not to exceed \$6,902,035 under Request for Quotation No. 2414.
5. **Motion No. 147-24** – Awarded a contract beginning on or after August 13, 2024 to the lowest responsive/responsible bidder, Ferguson Enterprises, LLC, for supplying a 36-inch motor operated gate valve for Wastewater Pump Station H, for a total cost, after the addition of taxes, not to exceed \$241,448 under Request for Quotation No. 2410.
6. **Motion No. 148-24** – Awarded a contract beginning on or after August 13, 2024 to the lowest responsive/responsible bidder, Larson Electronics, LLC, for supplying a medium voltage transformer for the Lafayette Water Treatment Plant for a total cost, after the addition of taxes, not to exceed \$101,349 under Request for Quotation No. 2406A (Schedule I).
7. **Motion No. 149-24** – Awarded a sole source contract beginning on or after August 13, 2024 to Evoqua Water Technologies LLC, for supplying six clarifier sludge collectors and drives for the Main Wastewater Treatment Plant, for two clarifiers in the next two years, with the option to supply equipment for up to four additional clarifiers in the next four years for a total cost, after the addition of taxes, including option years, not to exceed \$6,318,036.
8. **Motion No. 150-24** – Authorized an agreement beginning on or after August 13, 2024 with Nichols Consulting Engineers, Chtd. for \$1,395,400 for three years with two options to renew for additional one-year periods, plus \$1,956,000 for optional construction management and inspection services, for a total amount, including option years, not to exceed \$4,342,200 for pavement management and design services for the Facility Paving Project.
- 9a. – **Motion No. 151-24** – Ratified the payment of \$82,194 to Aetypic, Inc. for design, construction inspection, and engineering services during construction for the Main Wastewater Treatment Plant Operations Center Improvements Project under SD-424 through August 13, 2024; and authorized an amendment to the agreement previously authorized under Board Motion No. 187-20 with Aetypic to increase the agreement amount by \$120,312, which incorporates the ratified amount from the action above, to a total amount not to exceed \$663,301 for additional design, construction inspection, and ESDC for the MWWTP Operations Center Improvements Project under SD-424.
- 9b.

10. **Motion No. 152-24** – Authorized an amendment to the agreement previously authorized under Board Motion No. 203-23 with Info-Tech Research Group, Inc. dba McLean & Company to increase the agreement amount by \$272,698 to a total amount not to exceed \$416,210 and extend the agreement term to August 20, 2027 for additional online human resources and diversity, equity, and inclusion advisory services.
 - Addressing the Board was Ivette Rivera who commented on the services provided under the agreement.
 11. **Motion No. 153-24** – Authorized an amendment to the agreement previously authorized under the General Manager’s authority with P&A Administrative Services, Inc. to increase the agreement amount by \$290,000 to a total amount not to exceed \$600,500 and extend the agreement term to December 31, 2029, with an option to extend the agreement term for an additional one-year period, to provide employee Flexible Spending Account administrative services.
 12. **Motion No. 154-24** – Authorized an amendment to the agreement previously authorized under Purchase Order No. EBM207487 with United Rentals (North America), Inc. to increase the agreement amount by \$20,000 to a total not to exceed \$100,000 and extend the agreement term to February 18, 2025 for supplying a temporary diesel tank for the standby generator at the Sobrante Water Treatment Plant.
 13. **Motion No. 155-24** – Authorized the Office of General Counsel to continue the employment of the law firm of GinnLaw,P.C. for specialized legal services related to construction, public contracts and procurement, claims, and litigation matters in an amount not to exceed \$200,000.
 14. **Motion No. 156-24** – Approved the Water Supply Assessment requested by the Lawrence Berkeley National Laboratory for the 2025 Long Range Development Plan pursuant to California Water Code, Sections 10910-10915.
 15. **Adopt the Reporting Year 2023 Equal Employment Opportunity Program (EEOP).**
 - Addressing the Board was Ivette Rivera who commented on providing Director Gómez a copy of the District’s 2014 EEOP report and information and data in previous reports.
 - Motion by Director Linney, seconded by Director Patterson to approve the recommended actions for Item 15 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).
- Motion No. 158-24** – Adopted the Reporting Year 2023 Equal Employment Opportunity Program.

DETERMINATION AND DISCUSSION

16. Legislative Update.

Manager of Legislative Affairs Kathy Viatella reviewed Legislative Report No. 06-24 which contained one bill – H.R. 8682 (Huffman) Water Conservation Rebate Tax Parity Act. The bill would amend the Internal Revenue Code to ensure that rebates provided to public utility

customers for the purchase or installation of any water conservation, stormwater management, or wastewater management measure are exempt from federal taxes, similar to energy conservation rebates. The District provides rebates to its residential customers for the installation of water conservation improvements. Staff is recommending a support position on H.R. 8682. She reported the Legislative/Human Resources Committee met earlier today and voted to support the staff recommendation. Next, she provided updates on federal and state legislative activities and the status of SB 1255 (Durazo) Public Water Systems: Needs Analysis: Water Rate Assistance Program and SB 867 (Allen) Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clean Air Bond Act of 2024. Staff was asked to present SB 867 for Board consideration in September.

- Motion by Director Patterson, seconded by Director Gómez to approve the recommended actions for Item 16 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 159-24 – Received Legislative Report No. 06-24 and approved a position on the following bill: 1) SUPPORT H.R. 8682 (Huffman) Water Conservation Rebate Tax Parity Act.

17. **Conduct a second reading and adopt an ordinance amending Ordinance No. 355-11, as previously amended, which is the Wastewater Control Ordinance, to incorporate changes to the local limits, clarify appellate procedures for enforcement orders, modify permit categories and permitting procedures, adopt modifications recommended by federal auditors, and make other clarifications to ensure consistency with federal regulations.**

Manager of Wastewater Environmental Services Alicia R. Chakrabarti presented the second reading of the proposed amendments to the ordinance, which was last amended in 2013, and provides authority for the District to operate its Pretreatment Program as required by federal regulations and the National Pollutant Discharge Elimination System (NPDES) permit for the Main Wastewater Treatment Plant (MWWTP). The District established limits for certain constituents for wastewater discharges to the community sewer to ensure regulatory compliance and protect MWWTP processes. The MWWTP NPDES permit requires that these limits be evaluated every five years. A local limits study was completed in 2023 and staff proposes modifications to limits for volatile organics as well as oil and grease. The District did not receive any objections to the proposed changes to the local limits during the federally required public comment period. On March 28, 2024, the San Francisco Regional Water Quality Control Board (Regional Board) approved the proposed changes and advised the District to proceed with modifying the ordinance. These changes will help the District control pollutants at their source to protect treatment staff, maintain treatment processes, and prevent contaminants from being discharged to the San Francisco Bay. They will also ensure compliance with federal pretreatment requirements and maintain effective ordinance enforcement. Ms. Chakrabarti summarized the proposed changes, and highlighted minor edits made to the ordinance following the first reading conducted during the July 9, 2024 Board meeting. If approved, in accordance with the Municipal Utility District Act, the amendments (or a summary of the amendments) must be published once a week for two successive weeks in a local newspaper of general circulation published within the Special District Number One service area. The ordinance amendments become effective on the 31st day after passage.

- Motion by Director Young, seconded by Director Linney to approve the recommended actions for Item 17 carried (7-0) by the following voice vote: (Chan, Gómez, Katz, Linney, Patterson, Young, and McIntosh); NOES (None); ABSTAIN (None); ABSENT (None).

Ordinance No. 377-24 – An Ordinance Amending Ordinance No. 355-11, As Previously Amended, Which Is The Wastewater Control Ordinance (*Second Reading and Vote*).

18. **General Manager's Report.**

Update on Nutrient Watershed Permit

Director of Wastewater Amit K. Mutsuddy presented the update. The San Francisco Regional Water Quality Control Board (RWQCB) has regulated nutrient discharges from 40 Bay Area wastewater facilities that discharge treated wastewater into the Bay via one combined Nutrient Watershed Permit since 2014. The permit is reissued every five years. On July 10, 2024, the RWQCB adopted the third Nutrient Watershed Permit which requires significant reductions of nutrient levels in treated wastewater from the 40 Bay Area wastewater facilities within the next ten years. Mr. Mutsuddy reviewed discharge requirements in the previous two permits, and how requirements in the newly adopted permit will impact the District, noting the most impactful change is the adoption of a final effluent limit for nutrients beginning around October 1, 2034. The District's interim effluent limit is 11,000 kg/day of total inorganic nitrogen (TIN); its final effluent limit is 3,300 kg/day of TIN as a seasonal average for discharges between May 1 and September 30 each year. This limit reflects a reduction of approximately 65 percent of TIN from past discharges. He reviewed dry weather effluent TIN loading between 2012-2023 which averaged 9,170 kg/day, noting the 2023 values reflect nutrient reduction from the District's biological nutrient reduction (BNR) pilot project. Since 2020, the District has been conducting a BNR pilot to test different operating strategies for nutrient removal at the MWWTP. In 2023, the BNR pilot achieved up to 65 percent removal of nutrients in half of the plant being used for the pilot testing. In summer 2024 and summer 2025, the pilot will expand to test the nutrient removal capacity for the entire MWWTP. Based on results achieved in 2023, this expansion and optimization of the BNR process is expected to reduce seasonal nutrient loads by about 65 percent and achieve most, if not all of the required nutrient reductions in the TO. However, since this is a new and innovative process, back-up plans, including the design of alternate treatment systems will be planned to maintain dry weather capacity and future growth. Alternative analyses for redundancy and growth will be identified by 2026. He highlighted the RWQCB responses to the District's May 8, 2024 comment letter and reported they confirmed the District qualifies as an early actor, which means they will consider available regulatory mechanisms to provide additional time to the District to comply with the final effluent limits, if necessary. Next steps include rehabilitating or upgrading equipment and infrastructure, identifying and evaluating additional sidestream nutrient reduction alternatives, remaining involved with the Nutrients Science Program and other regional efforts, and adding two new reactor decks for redundancy and future growth. Mr. Mutsuddy and General Manager Clifford C. Chan responded to Board questions on potential costs and funding in the capital budget for equipment upgrades, and whether recycling wastewater would help reduce the District's nutrient discharges. Staff was asked to consult with the RWQCB on a method for the District to earn credits by helping other agencies reduce their nutrient loads.

Monthly Report – July 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.

REPORTS AND DIRECTOR COMMENTS

19. Committee Reports.

- Filed with the Board were the Minutes for the June 25, 2024 Sustainability and Finance/Administration Committees and for the July 9, 2024 Planning and Legislative/Human Resources Committees.
- Chair Marguerite Young reported the Planning Committee met earlier and received updates on the Dam Safety Program Annual Report, the Los Vaqueros Reservoir Expansion Project, and Trench Soils Management.
- Chair Patterson reported the Legislative/Human Resources Committee met earlier and received updates on the Reporting Year 2023 Equal Employment Opportunity Program Report and Legislative Report No. 06-24.

20. Other Items for Future Consideration.

None.

21. Director Comments.

- Director Linney announced he will not seek re-election to the Board and expressed pride in his work and service to the community over the past 24 years. He commented on the Board's role as a liaison with the public and thanked fellow Board members and staff.
- Director Patterson announced that he will not seek re-election to the Board.
- Directors Chan, Gómez, Katz, Young and President McIntosh had no reports.

ADJOURNMENT

President McIntosh announced today's meeting will be closed in honor of Ellen M. Corbett who passed away on August 9. Director Patterson highlighted Ms. Corbett's life, career and many accomplishments as mayor of the City of San Leandro, California Assemblymember, and California State Senator. He noted she was a tireless advocate for environmental stewardship and a key partner in managing our vital watershed lands. Her contributions to both EBMUD and as an East Bay Regional Park District Board member have left a legacy.

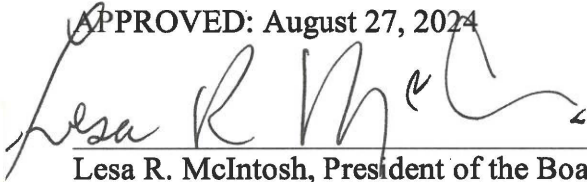
President McIntosh adjourned the meeting at 2:28 p.m.

SUBMITTED BY:



Rischa S. Cole, Secretary of the District

APPROVED: August 27, 2024



Lesa R. McIntosh, President of the Board